

Licensing
Partnership



Pavement Licensing Policy

Effective: July 2020

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1. Introduction

The Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

When the economy started to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.

The Business and Planning Act made it easier for premises serving food and drink such as bars, restaurants and pubs, as lockdown restrictions were lifted but social distancing guidelines remained in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing. Although covid restrictions have been lifted, new regulations have been made to extend the expiry date of these benefits until 30th September 2023

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2023.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the District or Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premise which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Up until June 2020 , tables and chairs permissions were granted as Pavement licences by Kent County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varied between local authorities and there was a time consuming 28 day consultation period.

The new temporary measure places a cap on the application fee for businesses (£100), and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery.

2. Scope

2.1 Definition of pavement café

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

2.3 Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

2.4 Type of furniture permitted

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

An application for a Pavement Licence must be made electronically to the Council, and the following will be required to be submitted with the application:

- a completed Application Form
- the required fee of £100, paid by credit or debit card
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway
- the proposed duration of the licence (for e.g. 3 months, 6 months, or up to 30 September 2023)
- photos showing the proposed type of furniture and information on potential siting of it within the area applied
- (if applicable) reference of existing pavement licence currently under consideration by the local authority
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself)
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million, (caveat: there may be rare circumstances where a different minimum value may be agreed in advance before submission of application)
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

3.2 Fees

The fee for applying for a licence under the new process are set locally, but are capped at £100. The Council has determined that the fee for applications will be £100.

3.3 Consultation

Applications are consulted upon for 7 days, starting with the day after which a valid application was made to the Council.

The Council will publish details of the application on its website. The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- Environmental Health Service
- Police
- Fire Service

Members of the public and others listed above can contact the Council to make representations.

The Council must take into account representations received during the public consultation period and consider these when determining the application.

3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of the site notice requirement must be supplied to the Council.

The Site Notice must:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the consultation (5 working days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix 1.

3.5 Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
 - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
 - the impact on any neighbouring premises

- the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

3.6 Determination

Once the application is submitted the Council has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the local authority determines the application before the end of the determination period the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

If the local authority does not determine the application within the 10 working day period, the application will be deemed to have been granted.

3.7 Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

On approving the application, the Council will issue a Pavement Café Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions, which will be attached to all Pavement Café Licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement Café's between 07:00 and 23:00. However, there may occasions where longer hours maybe permitted. *An example of this may be where a premises has longer licensed operating hours and has previously held a highways licence for those hours without prior issue or problem.*

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

3.8 Licence Duration

If the Council determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period, excluding public holidays) they can specify the duration of the licence, subject to a minimum duration of 3 months.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2023.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year.

A licence granted or deemed to be granted will not be valid beyond 30 September 2023.

3.9 Refusal of Applications

If the site is deemed unsuitable for a Pavement Café, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory appeal process against decision to refuse an application.

4. Conditions

The Council's standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case-by-case basis.

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National 'no obstruction conditions is shown in Appendix 3.

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol

and Entertainment Licensing, , and applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

6. Review Procedures

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2023.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Café's generally, relevant social distancing measures (if any are in place), or as a result of local considerations within the District / Borough.

Appendix 1

Licensing Partnership



Business and Planning Act 2020 Section 2 (6)

NOTICE IS GIVEN THAT

An application has been made to *Maidstone Borough Council
*Sevenoaks District Council / *Tunbridge Wells Borough Council
***DELETE AS APPROPRIATE**

(The Licensing Authority) for a

PAVEMENT LICENCE

In respects of the premise shown below.

[INSERT THE NAME OF YOUR PREMISES]

Details of the application may be inspected by contacting the Licensing Partnership on **01732 227004** or by visiting www.sevenoaks.gov.uk/licensing

Any interested party or responsible authority may make representations in respects of the application, which must be submitted in writing to the following address before the date shown below.

Licensing Partnership, Sevenoaks District Council, Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG or email licensing@sevenoaks.gov.uk

Name of Applicant **INSERT NAME**
Postal address of the premises **INSERT ADDRESS**

Dates by which representations must be made:

This notice remains in force from and including the day after the application was served on the Licensing Authority **INSERT DATE**, for seven consecutive days.

Appendix 2

Standard Conditions Attached to a Pavement Licence

1. The licence must only be used for the purpose of placing removable furniture on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the licence holder's business premises.
2. Furniture may only be placed within the area of the highway identified on the plan that accompanied the application for the licence.
3. The licence holder shall not make excavations or indentations of any description whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
4. The licence holder must observe and comply with any direction made by a Police Officer, Fire and Rescue Officer, or authorised officer of the local authority in relation to the use of the highway, including any direction to remove furniture from the highway.
5. The licence holder must at all times hold a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million (caveat: or other amount agreed in advance before submission of application).
6. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the licence.
7. The licence holder must not allow customers using the area to engage in anti-social or disorderly behaviour.
8. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that the conditions above are being adhered to.

9. Highway Authority Conditions

No tables, chairs or temporary street furniture sited on a footway are to be placed within 1.2m of the edge of an adjacent carriageway. A minimum clear footway width of 1.5m must be obtained at all times and 2m in busy locations or at busy times except in the following circumstances where additional width may be required:

- A – Proposals which place furniture within 20m of a road junction or roundabout.
- B – Proposals which place furniture within 15m of a push button, zebra crossing or pedestrian island crossing.
- C – Proposals which place furniture within 5m of a bus stop

Additional widths may be required to accommodate social distancing in line with the guidance issued by the Secretary of State.

- Every table, chair and item of temporary street furniture shall be positioned so that it does not impede the surface water drainage of the highway nor obstruct access to any premises unless the consent of the occupier of these premises has been obtained.
- No items shall be sited as to obstruct access to any premises unless the consent of the occupier of these premises has been obtained. No items shall be sited in such a way that is obstructs any fire exits or dry risers etc.
- No tables, chairs or temporary street furniture shall be left on the highway longer than is necessary. Tables, chairs and temporary furniture within a pedestrianised area covered by a traffic Regulation Order shall only be placed on the highway during the hours of pedestrianisation. Tables, chairs and temporary street furniture shall be taken inside and stored during the hours when business is not trading.
- All tables, Chairs and temporary furniture shall be separated from the remaining highway using disability compliant barriers. This means that barriers MUST:
 - (a) Be between 1000mm and 1200mm in height
 - (b) Have a continuous tapping rail (150mm to 200mm deep) or panel edge either on the ground or up to a maximum height of 200mm above the ground
 - (c) Have a colour contrast to ensure they are highly visible
 - (d) Be continuous around the area of tables, Chairs and temporary street furniture except for the access point.
- No tables, chairs or temporary street furniture shall remain on the highway pursuant to this permission after the period of the pavement license has expired.
- The licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times and shall ensure that any associated debris is removed at the end of each day and make good any damage caused to the surface area.
- No apparatus such as power cables or water pipes shall be allowed to be laid across or suspended above the highway for the purposes of providing services to outside areas on or off the highway.
- No wastewater or other substances shall be discharged on to the highway or highway drainage system.

Appendix 3

STATUTORY CONDITIONS ATTACHED TO A PAVEMENT LICENCE

1. Anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6). These effects are:
 - (a) preventing traffic, other than vehicular traffic, from:
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (ii) passing along the relevant highway, or
 - (iii) having normal access to premises adjoining the relevant highway,
 - (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

2. Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.