

Licensing
Partnership



Pavement Licensing Policy

Effective: 31st March 2024

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1. Introduction

BACKGROUND

In 2020 the Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months while others 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.

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 28 day consultation period.

The Business and Planning Act 2020 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. These temporary regulations have been extended until 30 September 2024.

The Act introduced a 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.

CURRENT POSITION

The regulations under the Business and Planning Act 2020 in respect of pavement licensing have been amended and made permanent by the Levelling Up and Regeneration Act 2023 which received Royal Assent 26 October 2023. The amendments include:

- Increasing the public consultation period to 14 days (with a further 14 days to determine)
- Increasing the statutory fee cap
- Additional enforcement powers for unlicensed activity
- Duration of licences - no longer a minimum of three months, and can be granted for up to two years.

2. Scope

2.1 Definition of pavement licence

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which permits the licence-holder to place removable furniture on the public highway 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. For example, picnic tables which are not removable would not be suitable. Each application is determined on its own merits.

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 NEW 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, to be 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 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 (maximum duration is two years)
- photos showing the proposed furniture and information on potential siting of it within the area
- Reference of existing pavement licence if applicable
- evidence that the applicant has met the requirement to give a public Notice of the application (for example photographs of the notice displayed)
- 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.

An application for a RENEWAL of a pavement licence must be made electronically to the Council and be accompanied by the following:

- a completed application form
- the required fee
- 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 information or evidence requested
- Note: photographs of furniture are not required on renewal unless the proposed items differ from those currently licensed

NOTE: a renewal cannot be submitted after expiry of the current licence. A new application would be required.

3.2 Fees

The fee for applying for a licence under the new process are set locally, but are capped at £500 for a new application and £350 for renewal. Please refer to the Council's website to look up current fees. .

3.3 Consultation

Applications are consulted upon for 14 days, starting with the day after which a valid application was received by 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, the Council will consult with:

- Environmental Health Service
- Police
- Fire Service

Members of the public can also submit a representation in support of or against the application within the consultation period.

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 (14 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 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 encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and take any issues around noise and/or nuisance into consideration as part of the proposal.

3.6 Determination

Once the application is submitted the Council has 28 days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 14 days for public consultation, and then 14 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 28 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 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 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 will only permit Pavement Licences between 07:00 and 23:00. However, there may be occasions where longer hours may be 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. A request to operate outside of the permitted times must accompany the application, giving reasons for the request.*

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 they can specify the duration of the licence, subject to a maximum of 2 years. .

The Council will normally grant applications for a 12 month period unless a shorter period has been requested or it is necessary for good reason, such as known upcoming street works, for example.

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 period of two years.

3.9 Refusal of Applications

If the site is deemed unsuitable for a Pavement Licence, 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.

3.10 Variation of licences

There is no provision in the legislation to apply for variation of a pavement licence. Should the licence holder wish to vary the licence, they would need to submit a new application.

As an alternative to revoking the licence the Licensing Authority may, with the consent of the licence holder, amend the licence if it considers that—

(a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,

(b) as a result of the licence—

(i) there is a risk to public health or safety,

(ii) anti-social behaviour or public nuisance is being caused or risks being caused, or

(iii)the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),

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 agencies 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.

Where a licence is issued:

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council is able to issue a notice requiring the breach to be remedied.

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 transpires the applicant has 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.

Unlicensed activity

Where a person/business puts removable furniture on a relevant highway and is not authorised to do so, the licensing authority may, by issuing a notice, require the person/business to:

- Remove the furniture before the date specified on the notice and
- Refrain from putting furniture on the highway unless authorised to do so.

Contravention of such a notice may lead to the authority removing the furniture and storing it, and require the person/business to pay the authority's reasonable costs in removing and storing the furniture and to refuse to return the furniture until those costs are paid.

If, within the period of three months beginning with the day on which the notice is given, the person/business does not pay those reasonable costs, or does not recover the furniture, the local authority may-

- Dispose of the furniture by sale or in any other way it thinks fit, and
- Retain any proceeds of sale for any purpose it thinks fit

In this section, 'authorised' means authorised by –

- A pavement licence,
- Permission under Part 7A of the Highways Act 1980, or
- Permission granted under any other enactment

6. Review of Policy

This Policy covers the processes and procedures for Pavement Licences under the Business and Planning Act 2020 (as amended by the Levelling Up and Regeneration Act 2023).

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, 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 fourteen 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 license 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

- 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 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.