

Pavement Licence Guidance

Business & Planning Act 2020



Introduction

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 pavement licence.

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. 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. These licences will remain in place for a year but not beyond 30 September 2021. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

This new process introduces a streamlined route for businesses to secure a licence to place furniture on the highway and support them to operate safely while social distancing measures remain in place. It is important that the local authority controls the positioning of items within the highway so that everyone can benefit. Without controls, these items may cause an obstruction or unnecessary hazards to the public, which would be unacceptable.

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 including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

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.

The grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.

This guidance does not apply where a business has its own forecourt adjacent to the highway. However, it is advisable to check whether planning consent is required for any in such places by contacting the Planning Authority.

The removable furniture which may be used:

- 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, to enclose the licensed area.

This furniture is required to be removable this means it is not a permanent fixed structure, and is able to be moved and stored away outside of permitted hours. Removable furniture shall be of a high quality construction, be stable, freestanding and suitable for the surface on which they are positioned.

Display furniture for goods on sale should be stable and suitable for the surface on which they are being used and robust enough not to be easily moved or displaced.

Objectives

- Support local businesses by ensuring compliance with new legislation;
- Ensure public safety by preventing obstruction of the highway;
- Ensure access to the highway and highway furniture;
- Ensure that powers contained with the Business & Planning Act 2020 are applied fairly and consistently.

Liability

The local authority has duties and responsibilities to ensure public safety and unobstructed passage along the highway. Any liability arising from an incident involving removable furniture remains firmly with the pavement licence holder as the owner of these items.

The pavement licence holder shall provide Public Liability insurance cover for the pavement licence and shall indemnify the local authority against all claims in respect of injury, damage or loss arising out of the granting of permission, (e.g. damage to the highway or highway furniture) to a minimum value of £5,000,000 unless such claims arise out of the local authorities own negligence.

Application Process

The fee for applying for a pavement licence is £100, an application must be made on a standard form and must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- include photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence;
- include a plan showing the location of the premises shown by a red line, so the application site can be clearly identified;
- include a plan clearly showing the proposed area covered by the licence in relation to the highway, and other permanent street furniture e.g. bins, benches, with measurements clearly shown;
- confirmation of the right to occupy the premises e.g. the lease;
- confirm how social distancing measures and how any local and national conditions will be satisfied;
- evidence that the applicant has met the requirement to give notice of the application.

The applicant is required to affix a prescribed notice to the premises, so it is easily visible and legible to the public on the day they submit the full application including plans and measurements to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 7 days beginning with the day after the day the application is submitted to the authority, public holidays are not included. Applicants are required to keep evidence of this.

The local authority will publish the application on their website and publicise the fact that representations may be made during the public consultation period and when that period comes to an end.

Consultation

The applicant is 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. Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

The local authority must consult the highways authority. The recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people and other users of space are set out in Section 3.1 of [Inclusive Mobility](#)

Highways considerations:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway;
- barriers to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;

- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
- where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, plastic patio furniture, is not suitable.
- 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 fixed structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

The local authority will need to consider a number of additional factors, when determining whether to approve the application. The local authority will also consult with:

Licensing Service, Cleveland Police, Counter Terrorism Security Advisors, Environmental Health, Cleveland Fire Service, Civic Enforcement Service, Trading Standards, Public Health, Ward Councillors.

Other Issues to consider include:

- public health and safety including security – 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 any other social distancing measures in place, for example any queuing systems that limit the space available on the pavement;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, no smoking provision, litter;
- 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; and
- reasonable provisions for setting where smoking is prohibited, for example clear smoking and non-smoking areas, signage, ashtrays only in smoking areas, ad 2m between areas where possible.

Members of the public can contact the local authority to make representations. Local authorities must take into account representations received from members of the public during the public consultation period.

Further information can be found at <https://www.stockton.gov.uk/our-people/licensing/current-applications-and-consultations/>

There is no statutory appeal process for these decisions.

Determination of Application

Once all the information required is submitted to the local authority, the authority has 14 days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 7 days for public consultation, and then 7 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 14 day period, the application will be deemed to have been granted, subject to the conditions below. The business can place the proposed furniture within the area set out in the application for the purpose or purposes proposed subject to the conditions published below.

Conditions of a Pavement Licence

A pavement licence is granted or deemed granted subject to the following published conditions:

PL1	The pavement licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people.
PL2	The licence holder shall ensure that the pavement licence activities do not: <ol style="list-style-type: none"> a. prevent traffic, other than vehicular traffic, from— <ol style="list-style-type: none"> 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. prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order, c. prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or d. prevent 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.
PL3	Where the removable furniture consists of seating for use by persons for the purpose of consuming food or drink, the pavement licence holder must make reasonable provision for seating where smoking is not permitted.
PL4	The pavement licence holder may use the licensed area for the placing of removable furniture in the course of business only during the hours permitted by the licence, within the defined area specified and in accordance with the details provided at the time of the application and the plans attached to the licence.
PL5	Designated areas should keep within the premise frontage. Any removable furniture provided must not protrude beyond the designated boundary of the licensed area and shall be kept in good condition so as not to detract from the appearance of the street.
PL6	Statutory and Emergency services will be permitted 24hr emergency access – without notice. The local authority may temporarily revoke the licence where an alternative use for the highway is required for example emergency highway maintenance, emergency scaffold access or use of the highway during events that are supported by the local authority. The local authority will not be liable for any loss of earnings arising from the suspension of the licence.
PL7	The pavement licence holder must retain access for residents, disabled and accessibility – at all times.
PL8	The pavement licence holder must undertake to make good any damage caused on the allocated highway area and is responsible for carrying out the reinstatement of the highway in the event of any damage occurring as a result of the operation of the pavement licence. The permanent surface reinstatement shall be carried out to the satisfaction of the local authority.
PL9	The pavement licence holder shall provide Public Liability insurance cover for the pavement licence and shall indemnify the local authority against all claims in respect of injury, damage or loss arising out of the granting of permission, (e.g. damage to the highway or highway furniture) to a minimum value of £5,000,000 unless such claims arise out of the local authorities' own negligence.
PL10	The pavement licensed area shall not be used by customers after 22:00hrs.
PL11	The pavement licence holder will be required to take responsibility for and supervise their licensed areas.
PL12	The pavement licence holder must strictly comply with the extant social distancing measures – as advised by Government – at any given time.
PL13	The pavement licence area should be segregated with suitable temporary barriers during the permitted hours of operation.

PL14	No barbecues, fire pits, naked flames, heaters, lights or other items may be placed on the highway.
PL15	No vertical drinking or eating shall be permitted. All customers must remain seated and table service should be facilitated at all times during the permitted hours of operation.
PL16	Where authorised by a licence issued under the Licensing Act 2003, alcohol must only be served in plastic containers.
PL17	Toilet provision will be serviced from the fixed premises.
PL18	There should be no noise from the pavement licensed area that could cause a disturbance to local residents. No amplified outside music, entertainment or broadcast of sporting events will be permitted.
PL19	The pavement licence holder or his representative shall conduct periodic assessments of the noise coming from the pavement licensed area and shall take steps to reduce the level of noise where it is likely to cause a disturbance to local residents. A written record shall be made of those assessments and shall include, the time and date of the checks, the person making them and the results including any remedial action, all records shall be retained for one year.
PL20	The pavement licence holder must keep their licensed area clean and tidy. The public area immediately surrounding the licensed area shall be regularly cleared of waste food containers, wrappings etc., during the stated operating hours and at the end of each trading day.
PL21	All removable furniture must be removed from the pavement licence area and securely stored within 30 minutes from the end of the permitted hours.

Local Unpublished Conditions

In addition, the local authorities may impose reasonable conditions whether or not they are published upfront conditions with justification for this, applications will be considered on their own individual merits taking into account the details disclosed by the applicant as well as any representations received during the public consultation.

Enforcement

The local authority reserves the right to take enforcement action where compliance is not achieved. The first steps to ensure that the removable furniture is set out in an appropriate manner will be to engage with the businesses to raise awareness of the issues the positioning of their furniture is have to passing pedestrians.

If any item of removable furniture that constitutes an immediate danger will be removed from the highway straightaway. Where appropriate any costs incurred will be recovered from the business.

If a condition imposed on a licence is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs. The local authority may revoke a licence in the following circumstances:

For breach of condition, (whether or not a remediation notice has been issued) or

Where:

- there are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together or where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
- this use of the highway is causing an unacceptable obstruction, breaching the non-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or a wheelchair users to pass along the highway or have normal access to the premises along side the highway.
- the use is causing 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.

The local authority 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.

Further Guidance

<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>

<https://www.gov.uk/guidance/safer-public-places-urban-centres-and-green-spaces-covid-19>

Any questions or advice should be addressed to:

Licensing Service
Municipal Buildings
Stockton-On-Tees
TS18 1LD
Email: licensing.administration@stockton.gov.uk
Telephone: 01642 524802

Highways, Transport & Design
Email: EGDS@stockton.gov.uk