

Pavement Licence Application - Guidance For Applicants

Summary

Part 1 of the Business and Planning 2020 has been brought into force. It creates a new temporary process called a Pavement Licence.

It introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway in order to support such business to operate safely while social distancing measures remain in place.

Businesses

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

Use of Furniture

A Pavement Licence permits the Applicant to temporarily place removable furniture on the highway adjacent to the Premises, for example tables and chairs. However, a Licence Holder may only use the furniture to sell or serve food or drink and/or allow such furniture to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises. The Pavement Licence does not remove the requirement of other authorisations required by law, for example, a Premises Licence to sell alcohol or registration of a food business. The Pavement Licence only permits temporary furniture in the highway.

Highways

The area of highway which is the subject of the Application for a Pavement Licence must be a highway defined in S115A (1) of the Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. However, an Applicant should consider the provisions of the Act and Guidance.

Application

An Application must be made electronically on the form prescribed by the Council and the additional information or material required must be submitted with the Application Form.

Applicants should consider Part I of the Business and Planning Act 2020 and the Guidance issued by Government at the following link

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

Fee

There will be no application fee charged by the Council for a Pavement Licence.

Notice

The Applicant is required to 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 displayed on the date the Application is submitted and remain in place until the end of the public consultation period. The consultation period is seven days from the day after the Application was submitted. The Notice must be in the format prescribed by the Council.

Representations

Members of the public can make representations about the application within a period of seven days (excluding public holidays) starting on the day after the Application was made.

The Council must also consult with the Highway Authority and any other such body it considers appropriate for example,

- Cleveland Police Licensing Unit
- Cleveland Fire Brigade
- Public Health
- Public Protection (Environmental Health)
- Middlesbrough Council Licensing Section
- Relevant Ward Councillors

Decision

The Council must decide whether or not to grant a Pavement Licence within 7 days beginning on the first day after the end of the consultation period, otherwise the Application will be deemed to be granted.

The Council has discretion whether or not to grant a Pavement Licence in accordance with the provisions of the Act and must take into consideration representations received about the Application.

Conditions

The Council can impose specific bespoke conditions on individual Pavement Licences that it considers are reasonable.

The Council proposes that all Pavement Licences will be subject to the following standard conditions, any deemed Licences will also be subject to the conditions

1. The standard permitted hours of operation are from 11.00 hrs until 22:00 hrs daily (21:00 hrs in residential areas)
2. The licence holder shall ensure that the pavement licence activities do not:
 - a. prevent 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. 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.
3. The pavement licence area should be segregated with suitable barriers during the permitted hours of operation.
4. The removable furniture must not protrude beyond the defined area.
5. The removable furniture must be kept in good condition so as not to detract from the appearance of the street.
6. All removable furniture must be removed from the pavement licence area and securely stored within 30 minutes from the end of the permitted hours.
7. The licence holder is responsible for the supervision of the pavement licence area and must ensure that the pavement licence area and immediate vicinity are kept clean and tidy during the permitted hours of operation.
8. The Pavement Area must only be used for the relevant purposes under the Act, namely the use of the furniture by the Licensee to sell or serve food or drink supplied from or in connection with the use of the premises and / or the use by other person for the purposes of consuming food or drink supplied from or in connection with the Premises.
9. All customers must remain seated and table service should be facilitated at all times during the permitted hours of operation.
10. No vertical drinking shall be permitted.
11. No smoking or vaping is permitted in the Pavement Licence area.
12. The licence holder shall maintain a register of all customers and their contact details to facilitate a test and trace system in the event of a coronavirus outbreak.
13. The licence holder must maintain a suitable and sufficient, written Risk Assessment covering the risks to staff and others from the activities of the business, including risk of transmitting Covid19. The risk assessment should include effective measures to protect the safety of employees, visitors and other persons who may be affected by the activities of the business. Evidence that the Licence Holder has carried out this assessment, in either paper or electronic form, together with evidence of the safety measures implemented must be provided to Council Officers or Police and Fire Officers on request.
14. In all instances alcohol must only be served in plastic containers.

15. No amplified outside music, entertainment or broadcast of sporting events will be permitted.
16. The licence holder shall undertake regular assessments of the Pavement Licence Area to ensure that noise from the pavement licence activities does not cause a nuisance to neighbouring residential and commercial premises.
17. The licence holder is required to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence at any time. The Council will not be liable for any losses of from the suspension of the licence.
18. The licence holder must take out public liability insurance to the minimum sum of £5,000,000.

Duration

The Council may grant the Pavement Licence for such duration as it considers appropriate which must not be less than 3 months or exceed 30 September 2021. However, Middlesbrough has decided to issue most Pavement Licences for the full period until the 30 September 2021. A deemed Licence is granted for one year or until the 30 September 2021 whichever is the earlier.

Enforcement

The Council may take enforcement action against a Licence including revocation where there has been a breach of condition and / or public health, anti-social behaviour, nuisance, suitability of the highway or obstruction issues or where false or misleading statements have been made.

Appeal

There is no right of appeal against a decision to refuse to grant a Licence or a decision to take enforcement action against a Pavement Licence, other than an application for Judicial Review.