



# Pavement Licensing Policy

## Business & Planning Act 2020

Effective date: 23 July 2020

## **1. Introduction**

The Business & Planning Act 2020 was passed to promote economic recovery and growth in response to the impact of the COVID-19 pandemic, and Part 1 of the Act creates a temporary regime for the granting of Pavement Licences for premises serving food and drink to place furniture on the pavement adjacent to their premises.

This new regime is distinct from the already existing permitting scheme under the Highways Act 1980. It is designed to be quicker, cheaper and more streamlined in the hope that it helps support businesses to operate safely while social distancing measures are in place.

The regime is due to be in place until 30 September 2021, when these provisions will expire in accordance with section 10 of the Act, and pavement licences will cease to have effect.

## **2. Scope**

### **2.1 Definition of a pavement licence**

A pavement licence is a licence that is granted by, or deemed to have been granted by, the local authority, 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 make an application for a pavement licence. These include, but are not limited to, public houses, cafes, snack bars, restaurants, coffee shops, and ice cream parlours.

### **2.3 Relevant land**

Licences can only be granted in respect of highways listed in section 115A(1) of the Highways Act 1990. Generally, these are footpaths restricted to pedestrians or are roads or 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 that may be placed on the highway is as follows:

- 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
- Umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink

The furniture is required to be removable, so it should not be a permanent fixed structure, and it should be easily moved and stored away of an evening, in line with any conditions attached to the licence. The furniture should also be 'in keeping' with the local area and environment.

## 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 in force.

## 2.6 Off-sales of alcohol

If the premises is currently licensed under the Licensing Act 2003 for the sale of alcohol for consumption on the premises, the Act modifies this provision to automatically extend the terms of the licence to allow sales of alcohol for consumption off the premises, subject to a cut-off time of 11:00pm or the closure of the outside area (whichever is earlier), without the need for a licence variation. This modification only extends to consumption, and not sale, so the licensed area will remain as authorised by the premises licence or club premises certificate.

## 2.7 Interaction with Part 7A of the Highways Act 1980

The Pavement Licensing regime runs in parallel with the existing scheme for the granting of pavement cafe licences under the Highways Act 1980, and any existing licences granted under the Highways Act 1980 remain valid. Those wishing to place removable furniture on the highway may apply for either type of licence. It should be noted that the Pavement Licensing regime under the Business & Planning Act is temporary, and any licences granted will expire on 30 September 2021 unless previously surrendered or revoked.

## **3. Application process**

3.1 Applications must be made electronically, via this [link](#). Applications must be supported by the following:

- Public liability insurance to the value of £5m
- A plan of the business premises, clearly shown by a red line so that it can be easily identified
- A plan of the proposed area of the highway, with measurements clearly shown
- Photographs, brochures or website link to the proposed furniture

3.2 The Council has determined that the fee for making an application for a pavement licence is £100. This fee is non-refundable if the application is refused, withdrawn or if any licence granted is subsequently surrendered or revoked.

3.3 An application will not be considered complete until all of the application criteria is satisfied, including payment of the fee, and the consultation period will not commence until the day after a complete application has been made.

## **4. Consultation**

### 4.1 Applicant's duty to give notice of an application

The Act requires an applicant for a pavement licence to:-

- (a) On the day the application is made, fix a notice of the application to the premises so that it is readily visible to, and can be read easily by members of the public who are not on the premises, and
- (b) Secure that the notice remains in place until the end of the public consultation period, which means the period of 7 days beginning with the day after the day on which the application was made.

A template notice can be found [here](#). Evidence of compliance with the notice requirements must be supplied to the Licensing Authority.

#### 4.2 Consultation by the Licensing Authority

Before determining an application, the Licensing Authority will consult with the following:

- Solihull MBC Highways Authority
- Solihull MBC Planning Authority
- Solihull MBC Environmental Health
- Solihull MBC Economic Development
- Relevant Ward Members & Parish or Town Councils
- West Midlands Police
- West Midlands Fire Service

The Licensing Authority will also publish details of each application on its [website](#). The consultation period runs for 7 days, starting with the day after the day on which a complete application is made to the Licensing Authority. Members of the public and others listed above may make representations about an application within this period.

The Licensing Authority must take into account representations received during the consultation period and consider them when determining whether or not to grant a licence.

### **5. Determination of applications**

- 5.1 The Licensing Authority supports the aims of the Act and wishes to assist with economic recovery and will therefore seek to grant licences where possible. However this aim must be balanced with the need to ensure that the granting of a licence does not put public health and safety at risk, does not lead to antisocial behaviour or noise nuisance, and ensures that the public, particularly those with disabilities or additional needs are unhampered when walking along streets.
- 5.2 When considering the needs of disabled people, the Licensing Authority will ensure to take into account factors such as the use and construct of barriers to demarcate the area, the positioning of furniture so as not to impede sight-lines, and the weight and type of furniture to ensure it stays in place and does not cause an obstruction.
- 5.3 The Licensing Authority expects applicants to demonstrate how they will make provision for outside seating where smoking is not permitted. Consideration should be given to the following (although this is not an exhaustive list):
  - Clear 'smoking' and 'non-smoking' areas with 'no-smoking signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) Regulations 2012

- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified
- Licence holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible

5.4 The Licensing Authority will consider all of the relevant circumstances when considering an application, and will treat each case on its own merits.

5.5 The Licensing Authority will not grant a licence when doing so would lead to any of the following effects:

(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.

5.6 This list is non-exhaustive and there may be other reasons that the Licensing Authority may consider that the granting of the licence would, for example, undermine public health or safety, lead to anti-social behaviour or nuisance, or unreasonably hamper a pedestrian's ability to move freely.

5.7 The Licensing Authority will consider the following when determining applications:

- Public health and safety - for example, ensuring that use conforms with the latest guidance on social distancing and any reasonable crowd management measures required as a result of a licence being granted
- Public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise or 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, 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 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 of access and egress to the premises;
  - The impact on any neighbouring premises;

- The recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in section 3.1 of Inclusive Mobility; and
- Other users of the space, for example if there are high levels of pedestrian or cycle movements.

5.8 Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the Licensing Authority, and to take any issues or concerns around noise, nuisance etc. into consideration as part of the proposal.

5.9 The Licensing Authority must determine an application within 14 days (not including public holidays) beginning with the day after the day on which the application is made. After the 7 day public consultation period, and having considered any objections or comments in respect of an application, the Licensing Authority may:

- 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;
- Impose conditions on any licence granted; or
- Refuse the application

If the Licensing Authority does not determine the application within the 14 day period, the application will be deemed to have been granted subject to the published local conditions shown at Appendix 1 and any national conditions published by the Secretary of State.

5.10 Where the Licensing Authority have published and attached a local condition that covers the same matter as set out in any national conditions published by the Secretary of State, the local condition takes precedence over the national condition where there is reasonable justification to do so.

5.11 In addition to the standard national and local conditions, the Licensing Authority may attach further reasonable conditions where there is clear justification for doing so. The need for further conditions will be judged on a case by case basis.

## **6. Licence Duration**

6.1 All licences will be granted until 30 September 2021, when they will expire along with the provisions under the Act, unless:

- There is a good reason for granting a licence for a shorter period, such as plans for future changes in use of road space, in which case, this will be specified; or
- The licence is deemed granted because the Licensing Authority did not determine it within the 14 day period, in which case the licence will be valid for 12 months, or until 30 September 2021, whichever is the shorter.

## **7. Enforcement and Revocation of Licence**

7.1 The Licensing Authority will work closely with other agencies and licence holders in seeking to address any issues arising from the activities taking place under the authority of a pavement licence. In the first instance, advice and engagement will normally be appropriate.

7.2 If the issues cannot be resolved using this approach, and the Licensing Authority considers that the licence holder has breached any of the licence conditions, they may:

- (a) Revoke the licence; or
- (b) Serve a notice on the licence holder requiring the taking of such steps to remedy the breach as are specified in the notice, within such time as is so specified.

7.3 If the licence holder fails to comply with the notice, the Licensing Authority may:

- (a) Revoke the notice; or
- (b) Take the steps itself and recover the costs in doing so from the licence holder.

7.4 The Licensing Authority may also revoke a 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, or
  - (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 permitted by the licence);
- (c) Anything material stated by the licence holder in their application was false or misleading; or
- (d) The licence holder did not comply with the duty to advertise their application.

## **8. Appeals**

8.1 The Act does not provide a statutory right of appeal against a decision to refuse or revoke a pavement licence, or against an enforcement notice served on a licence holder.

8.2 The Licensing Authority will always provide clear and justifiable reasons if a licence is refused or revoked, or if an enforcement notice is served.

## **9. Review of Policy**

9.1 This policy or the local conditions may be reviewed from time to time should there be changes to legislation, social distancing guidance, or as a result of local environment or highways consideration.

## **Appendix 1**

### **Standard Local Conditions**

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 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 must ensure that furniture is positioned in such a way so as to ensure compliance with the relevant government guidance on social distancing, and that staff can service the space regularly for cleaning and other purposes in a manner that does not compromise their health and safety.
4. The licence holder must at all times the licence is in force ensure that they hold an insurance policy covering the activity for third party and public liability risks to a minimum value of £5m. The policy must indemnify Solihull Metropolitan Borough Council against all claims for injury, damage or loss to users of the highway arising from the use of the licensed area for the permitted purpose.
5. Furniture used shall be durable, stable and safe, and pose no risk to users. It should be securely fastened when in use to ensure that it is not liable to be moved by external forces, such as the effects of the wind or from being lightly knocked.
6. Clear routes of access along the footway must be maintained, taking into account the needs of people with disabilities. In all cases, at least 2 metres minimum of clear pedestrian passageway is to be maintained.
7. The area must be cleared regularly and as soon as possible between customers to minimise any litter on the highway. Litter must be cleared regularly from the highway in the vicinity of the removable furniture and washing down of the highway to remove any stains or spillages must be undertaken if necessary.
8. The licence holder must 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.
9. Unless another more restrictive condition has been attached to the licence in response to particular concerns raised during the public consultation period, the licence holder must ensure the furniture is not placed on the highway before 08:00 on any day and must remove it when the premises closes or by 22:00 on any day, whichever is the earliest.
10. The licence holder must observe and comply with any direction made a by a police officer, a fire and rescue officer or an officer of the Local Authority in relation to the use of the highway, including any direction to remove furniture from the highway.
11. The licence holder is responsible for the control of all noise emanating from the area of the highway covered by the licence and no amplified speech or music, musical instruments, radio or television shall be played within the area at any time.
12. The licence holder must not allow customers to engage in in anti-social behaviour or disorderly behaviour.
13. The licence holder must ensure that the area covered by the licence is monitored regularly to ensure that all conditions are being adhered to.
14. In no circumstances should any furniture placed on the highway under this licence interfere with required vision lines for traffic and pedestrians.



15. The Licence holder shall display this licence and accompanying plan prominently in an external window facing the frontage of the premises.
16. The licence holder shall return this licence to the Licensing Authority immediately on surrender or revocation of this licence.