



# Business and Planning Act 2020

## Pavement Licence Guidance

Version 1.0

CONTENTS		
Section	Title	Page
1	Introduction	2
2	Scope	2
3	Application and Determination of Pavement Licences	3
4	Conditions	7
5	Enforcement	9
6	Additional information	10
Appendix 1	Template notice for application	11
Appendix 2	Conditions	12
Appendix 3	Appeal process	15

## **1.0 Introduction**

- 1.1 The Covid-19 pandemic has affected businesses across the economy, causing many to cease trading for several months while others have had to significantly modify their operations.
- 1.2 On 22 July 2020, the Business and Planning Act 2020 (the “Act”) received Royal Assent (and come into effect) with the aim of helping the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.
- 1.3 The Act modifies provisions in the *Licensing Act 2003* to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. This will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.
- 1.4 The Act also introduced a temporary fast-track process for businesses to obtain permission, in the form of a “Pavement Licence”, from Mid Devon District Council for the placement of furniture (such as tables and chairs) on the pavement outside their premises. This will enable them to maximise their capacity whilst adhering to social distancing guidelines.
- 1.5 Prior to this Act, street café licences were the responsibility of the Highways Authority, under Part 7A of the Highways Act 1980. Nationally, the fees for such licences varied and there was a 28 day consultation period for applications. The new temporary measure places a cap on the application fee (£100.00) and introduces a new 14 day application process, ensuring that businesses can obtain licences in a timely and cost effective manner.
- 1.6 These provisions are also set to last until the end of September 2021.

## **2.0 Scope**

### Definition of pavement licence

- 2.1 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.

### Eligible businesses

- 2.2 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. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.
- 2.3 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.

### Eligible locations

- 2.4 Licences can only be granted in respect of highways listed in section 115A(1) *Highways Act 1980*.
- 2.5 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).

### Type of furniture permitted

- 2.6 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.
- 2.7 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 every evening.
- 2.8 The Council would expect the type of furniture to be 'in keeping' with the local area.

### Planning permission

- 2.9 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).

## **3.0 Application and Determination of Pavement Licences**

### Submission of the application

- 3.1 An application for a Pavement Licence must be submitted to the Council on the relevant form, which is available on the Council's website (<https://www.middevon.gov.uk/business/licensing/>). The following information must be submitted with the application:
- A plan (or plans) showing the location of the premises highlighted by a red line, so the application site can be clearly identified. The plan should show the area covered by the licence in relation to the highway and be to a scale of 1:100. The plan should include the location of any entry/exit points to or from the premises and the precise location of any furniture to be placed on the highway.
  - Photographs, brochures or drawings showing design, dimensions and materials of the tables / chairs and any other furniture you propose to use.

- Evidence of Public Liability Insurance (£5 million)
- Evidence of no objection neighbouring frontager(s) to use footway space outside their property (if applicable)
- Application fee of £100 (cheque payments cannot be accepted but the Council can ring for payment over the phone)
- Additionally, there is a requirement for the applicant to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the Council. The notice must remain in place for 7 days, beginning the day after the application is submitted to the authority. The applicant must submit (alongside the application) photographs of the Public Notice. One photograph should be taken of the wording on the notice, and another showing the notice in situ.

### Fees

- 3.2 The fee for applying for a licence under the new process is set locally, but is capped at £100. The Council has determined that the fee for applications will be £100.
- 3.3 Application fees must be paid in order for the application to be considered valid and for the consultation period to commence.
- 3.4 The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

### Consultation

- 3.5 Applications are consulted upon for 7 days, starting with the day after the day on which a valid application was made to the Council. It must be noted that the 7 day consultation period (and the 7 day determination period) does not include (a) Christmas Day, (b) Good Friday, or (c) a day which is a bank holiday.
- 3.6 The Council will publish details of the application on its website.
- 3.7 The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are no detrimental effects from the application the Council will also consult the Police, Health and Safety (MDDC), and Environmental Health (MDDC). Additionally, the Council may also consult any person, body or organisation it believes necessary.
- 3.8 Members of the public (and other parties) can submit representations to the Council but they must be submitted during the consultation period. Any representations received outside this period will not be accepted.
- 3.9 The Council must take into account representations received during the public consultation period and consider these when determining the application.

### Site notice

- 3.10 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. The applicant must submit (alongside the application) photographs of the Public Notice - one photograph should be taken of the wording on the notice, and another showing the notice in situ. The Council may make its own random checks to ensure that notices are in place and if they are not, the application may be refused.
- 3.11 A template notice is attached as Appendix 1.

### Site assessment

- 3.12 The following matters will be taken into account by the Council in considering the suitability of the proposed application:
- 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;
  - 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:
  - considerations under the no-obstruction condition, in particular considering the needs of disabled people;
    - 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;
    - any other social distancing measures in place, for example any queuing systems that limit the space available on the pavement;
    - 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 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

- the impact on the licensing objectives in respect of premises with a Premises Licence issued in accordance with the Licensing Act 2003

3.13 Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying for a licence, and take any issues around noise and nuisance into consideration as part of the proposal.

#### Determination

3.14 Once the application is submitted the Council has 14 days from the day after the application is made 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 period has ended. It must be noted that the 7 day consultation period and the 7 day determination period does not include (a) Christmas Day, (b) Good Friday, or (c) a day which is a bank holiday.

3.15 If the Council determines the application before the end of the determination period, they 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.

3.16 If the Council does not determine the application within the 14 day period, the application will be deemed to have been granted subject to any published local or national conditions.

#### Approval of applications

3.17 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 location of the furniture (corresponding to the application).

3.18 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.

#### Licence duration

3.19 If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the end of the public consultation period) the duration of the licence will be specified, subject to a minimum duration of 3 months.

3.20 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. However, it should be noted that a shorter length licence may be granted but this decision will be made on a case by case basis.

- 3.21 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.
- 3.22 A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

#### Refusal of Applications

- 3.23 If the site is deemed unsuitable for a Pavement Licence then the application will be refused (assuming any issues cannot be mitigated by imposing conditions).

#### Appeal

- 3.24 There is no statutory appeal process against a decision to refuse an application (or revoke a licence). However, the Council has an internal appeal process and information about this is attached as Appendix 3.

### **4.0 Conditions**

- 4.1 The Council's standard conditions are set out at Appendix 2. This Appendix also includes the national conditions, which are a no-obstruction condition and a smoke-free seating condition.
- 4.2 In some cases, additional conditions may be required. This will be determined when assessing any application, on a case by case basis.
- 4.3 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 to the extent that it is inconsistent with it.

#### Additional information on national conditions

- 4.4 As mentioned above, there are two national conditions which apply to all licences. These are a no-obstruction condition and a smoke-free seating condition and as part of the application form, the Council asks for information about how both of these conditions will be complied with.
- 4.5 The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that the Council consider the needs of disabled people. In order to do this, the Council will consider the following matters when setting conditions, determining applications (in the absence of

local conditions), and when considering whether enforcement action is required:

- 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;
- any need for a barrier 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;
- so that 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, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

4.6 In addition to this, Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who don't, and foster or encourage good relations between people who share a protected characteristic and those who don't.

4.7 The smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

4.8 The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- 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.

4.9 Further, businesses must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

## **5.0 Enforcement**

5.1 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.

5.2 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 Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to operating.

5.3 If a condition imposed on a licence 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.

5.4 The Council may revoke a licence in the following circumstances:

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

b) 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);
- the 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 alongside 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.
- c) 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. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. It is good practice for local authorities to give reasons where these powers are used.

## **6.0 Additional information**

- 6.1 The Government have produced guidance on pavement licences and this is available to view here:  
<https://www.gov.uk/government/publications/pavement-licences-draft-guidance>
- 6.2 The Business and Planning Act 2020 can be viewed here:  
<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>.
- 6.3 Further details on pavement licences, including how to apply, how to view applications and how to make a representation can be found on the Councils website here: <https://www.middevon.gov.uk/business/licensing/>.

## BUSINESS AND PLANNING ACT 2020

### NOTICE OF APPLICATION FOR THE GRANT OF A PAVEMENT LICENCE

Full name of applicant:	
Name and full postal address of premises (to which the application relates):	
Date application submitted to Mid Devon District Council (and date of this notice being published):	
Brief description of application (including number of tables, chairs and details of any other furniture):	
Final date for representations:	
<p>The application for a 'Pavement Licence' has been made to Mid Devon District Council and can be viewed on the Council's website: <a href="https://www.middevon.gov.uk/business/licensing/">https://www.middevon.gov.uk/business/licensing/</a>.</p> <p>Any person wishing to make representations regarding this application may do so by writing to <a href="mailto:licensing@middevon.gov.uk">licensing@middevon.gov.uk</a> no later than the final date for representations.</p>	
<p>Signed:</p> <p>Dated:</p>	



## PAVEMENT LICENCE CONDITIONS

Pavement Licences are subject to conditions; rules that have to be followed by the licence holder. It is important that all conditions are complied with. Where the Council considers that one or more have been breached, it has the power to take enforcement action, which includes revocation of the licence completely.

There are two compulsory, or "national" conditions that all licences will have (further details below), along with local conditions which will apply to all licences, including those that are deemed to have been granted. In addition to this, the Council can also attach any conditions that it thinks are reasonable in any particular case.

### National conditions

#### 1. No-obstruction condition

Nothing must be done by the licence-holder (or any other person which is enabled by the licence) to:

- 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.

Particular regard must be had to the needs of disabled people, and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State. This 'Inclusive mobility' guidance can be found here:

<https://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility>

Section 3.1 of the 'Inclusive mobility' guidance sets out a range of recommended widths which would be required, depending on the needs of particular pavement users and states that: *'a clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another'*.

## 2. Smoke-free seating condition

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.

### **Local conditions**

3. A licence is not transferable and the subletting of any licence is prohibited. The licence holder shall be responsible for any rates, taxes and other outgoings which may be charged.
4. The permitted hours of use (i.e. the days and times in which furniture can be placed and used in the licensed area) is as stated on the licence.
5. All furniture must be contained within and located as shown exactly on, the licensed area identified in the plan (or plans) attached to the licence as Annex 1.
6. Any furniture or equipment used must not overhang (or extend) outside the licensed area and must be stable enough (e.g. weighted down) to withstand wind or accidental contact.
7. No changes must be made to the licensed area and locations of any furniture, including barriers, without written permission from the Council.
8. Outside of the permitted hours of use, all furniture must be removed from the licensed area of the highway and be stored securely.
9. The licence holder shall remove tables and chairs (and any other furniture) from the highway immediately if required to do so to permit works in or the use of the highway by the Council, the police, the fire service, the ambulance service and any statutory undertaker or telecommunications code operator.
10. Staff must regularly monitor the licensed area and visit it, when necessary, to ensure it is kept clean and tidy. Any litter or waste arising from use of the licensed area must be cleared away, whether within the licensed area or its vicinity.
11. Waste from the licence holders operations must not be disposed of in the permanent litter bins provided by the Council. Any commercial premises must have a trade waste agreement in place and waste receptacles kept within the boundaries of the premises, apart from on the day of collection.
12. The licence holder must make no fixtures to or excavations of any kind in the surface of the highway, which shall be left entirely undisturbed.
13. The licence holder must ensure that a copy of the licence is clearly visible to the public and made available upon request to an authorised officer of the Council or the police.
14. The licence holder must ensure that the licensed area is set out and managed in a way that maintains appropriate levels of social distancing during Covid-19 restrictions (as defined by Government Guidance). This includes the arrangement of furniture and also any queuing systems that may limit the space available on the pavement.

15. The licence holder shall make no claim or charge against the Council in the event of any item being displayed or used being lost, stolen or damaged in any way from whatever cause.
16. The licence holder must at all times be covered by Public Liability Insurance which:
  - has minimum cover of £5 million and
  - indemnifies the Council from and against all actions, proceedings, claims, losses, expenses and liabilities whatsoever in respect of loss of life or personal injury or damage to property, howsoever caused, arising out of or in any way attributable to the use of tables and chairs (or any other furniture / objects) on the highway.

Evidence of this insurance must be available for inspection by the Council on request.

17. The granting of a licence by the Council does not give any approval other than the permission which the Council is authorised to give under the Business and Planning Act 2020. The requirements of the Licensing Act 2003 are separate and the pavement licence does not permit the sale of alcohol, regulated entertainment or late night refreshment in the relevant area. This means that musical entertainment will not be permitted in the approved area unless authorised under the Licensing Act 2003.
18. The licence holder must ensure that where available on the premises, sanitary accommodation is available for any customer using any chairs or seating provided by the business.
19. Any furniture used in the licensed area must be of sufficient high quality and appearance as not to be detrimental to the area. Any furniture or associated item must be in a good state of cleanliness and repair at all times and not pose a danger to highway users.
20. The area designated under the licence must be inspected by the licence holder prior to use (on a daily basis) to ensure the highway area is in good repair. Any cracks, damage or areas of risk must be reported to Highways at Devon County Council on the same day of discovery.
21. Failure to comply with the terms of the licence may result in the Council serving notice on the licence holder to rectify the fault(s). Costs incurred may be recharged to the licence holder.
22. The Council reserves the right to suspend or revoke a licence if the licence holder breaches any of the conditions (or for any other relevant reason).
23. A licence granted by this Council can be surrendered at any time by giving written notice to the Council.

## **Business and Planning Act 2020**

### **Pavement Licence - Appeal Process**

Under the Business and Planning Act 2020, there is no statutory right of appeal for the refusal of an application or the revocation of a licence. However, Mid Devon District Council has implemented an appeal process, and this is as follows:

1. On notification of the decision by the Licensing Authority (i.e. to refuse an application or revoke a licence) the applicant / licence holder must email [licensing@middevon.gov.uk](mailto:licensing@middevon.gov.uk) an appeal notice. This must be emailed within 5 working days, starting the day after receiving notice of the decision to refuse / revoke a licence.
2. The appeal notice must have a subject line which reads: **PAVEMENT LICENCE – APPEAL AGAINST DECISION**. It must, as a minimum, contain the following information:
  - a) The name of the applicant / licence holder
  - b) Contact details for the applicant / licence holder
  - c) The name and full postal address of the premises to which the appeal relates
  - d) Reasons for the appeal
  - e) Any other relevant information that the applicant / licence holder would like to be considered during the appeal process
3. On receipt of an appeal, the Licensing Authority will endeavour to make a decision within 5 working days, starting the day after the submission of the appeal.
4. An Officer will determine the appeal and decide whether to uphold or overturn the initial decision. Once a decision has been made they will then notify the applicant / licence holder of the outcome via email. The Officer deciding the appeal will not be the same Officer that either refused the initial application or revoked the relevant licence.
5. While an appeal remains undetermined, the initial decision of the Licensing Authority remains unchanged, meaning that the application remains refused or the licence remains revoked.