

To: All Members of the LICENSING AND
REGULATORY COMMITTEE
(Other Members for Information)

When calling please ask for:

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Calls may be recorded for training or monitoring

Date: 17 July 2020

Membership of the Licensing and Regulatory Committee

Cllr Robert Knowles (Chairman)
Cllr Roger Blishen
Cllr Martin D'Arcy
Cllr Jerome Davidson
Cllr Patricia Ellis
Cllr Maxine Gale

Cllr Michael Goodridge
Cllr Jerry Hyman
Cllr Anna James
Cllr Jacquie Keen
Cllr Michaela Martin
Cllr Ruth Reed

Substitutes

Cllr Peter Isherwood
Cllr Jenny Else

Cllr Joan Heagin
Cllr John Ward

Members who are unable to attend this meeting must submit apologies by the end of Thursday, 23 July 2020 to enable a substitute to be arranged.

Dear Councillors

A meeting of the LICENSING AND REGULATORY COMMITTEE will be held as follows:

DATE: THURSDAY, 30 JULY 2020

TIME: 11.00 AM

PLACE: ZOOM MEETING

The Agenda for the meeting is set out below.

The meeting can be viewed remotely in accordance with the provisions of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, via the Council's YouTube page.

Yours sincerely

ROBIN TAYLOR

Head of Policy and Governance

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This meeting will be webcast and can be viewed by visiting www.waverley.gov.uk

NOTE FOR MEMBERS

Members are reminded that contact officers are shown at the end of each report and members are welcome to raise questions etc in advance of the meeting with the appropriate officer.

AGENDA

1. **APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

To receive apologies for absence and to report any substitutions

2. **ELECTION OF VICE-CHAIRMAN**

To elect a Vice-Chairman of the Committee, following the resignation of Cllr Clark.

3. **APPOINTMENT OF MEMBERS TO SUB COMMITTEES**

To appoint Member(s) to fill the vacancies on the Licensing & Regulatory Sub-committees as shown below.

Following the resignation of Cllr Peter Clark from the Licensing & Regulatory Committee, there is a vacancy on the following Sub-Committees to be filled from among the Members of the Licensing & Regulatory Committee:

- Licensing (General Purposes) Sub-Committee
- Licensing Act 2003 Sub-Committee A

4. **DECLARATIONS OF INTEREST**

To receive from members declarations of interest in relation to any items included on the agenda for this meeting, in accordance with the Waverley Code of Local Government Conduct.

5. **QUESTIONS FROM MEMBERS**

The Chairman to respond to any questions received from Members in accordance with Procedure Rule 11.

The deadline for submission of written questions for this meeting is Thursday 23rd July 2020.

OTHER LICENSING ITEMS

6. **PAVEMENT LICENSING** (Pages 7 - 28)

1.1 The Government has swiftly introduced through Parliament a new streamlined process to apply for a "Pavement Licence". After proceeding through the Commons and Lords stages, on 21 July, the Commons accepted all amendments proposed by the Lords and has passed both Houses of Parliament. At the time of writing, Royal Assent

is awaited (a formality) and it is anticipated that this final stage will be reached shortly. This temporary authorisation will short-circuit the usual suite of consents required under the Highways Act and planning law. The purpose of the new licence is to help the struggling hospitality sector in a time of social distancing.

- 1.2 It is proposed that this new procedure will be administered by district and borough councils in non-unitary Council areas and Waverley will therefore need to adopt a policy, set the fee and delegate to officers the authority to issue, amend and or refuse licences, and deal with enforcement.
- 1.3 This report therefore proposes a policy for Waverley Borough Council attached at Annexe A, a fee level and seeks delegation to officers for the issue, amendment and or refusal of licenses, as well as enforcement of the new arrangements.
- 1.4 This report also advises on changes to the licensing laws which will allow premises with a premises licence for on-sales of alcohol to sell off-sales without the need to apply for a formal variation to their licence in the usual way, which are limited to 11pm at the latest and new permissions for off-sales do not apply to times when the premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.

Recommendation

The Council be recommended to:

- Adopt the policy set out in Annexe A
- Set the fee for a pavement licence at £100
- Delegate authority to the Head of Environmental and Regulatory Services to issue pavement licences and/or authority to refuse or amend pavement licences in consultation with the Portfolio holder for Operational and Enforcement Services.
- Delegate authority to Head of Environmental and Regulatory Services in relation to enforcement powers under the new proposed legislation (the Business and Planning Act 2020 once enacted).
- Delegate authority to the Head of Environmental and Regulatory Services to make minor or consequential amendments to the Policy and Licence conditions in the event of any amendments/ updating statutory instruments and or government guidance in consultation with the Chairman of the Licensing and Regulatory Committee.

7. EXCLUSION OF PRESS AND PUBLIC

To consider the following recommendation on the motion of the Chairman:-

Recommendation

That pursuant to Procedure Rule 20 and in accordance with Section 100B(5) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items on the grounds that it is

likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified in the appropriate paragraph(s) of the revised Part 1 of Schedule 12A to the Act (to be identified, as necessary, at the meeting).

8. LEGAL ADVICE

To consider any legal advice relating to any items in the agenda.

**For further information or assistance, please telephone
Kimberly Soane, Democratic Services Officer, on 01483 523258 or by
email at kimberly.soane@waverley.gov.uk**

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WAVERLEY BOROUGH COUNCIL

LICENSING AND REGULATORY COMMITTEE

DATE 30 JULY 2020

Title:

Business and Planning Act 2020 - Pavement Licensing (outdoor seating) and alcohol licensing : temporary off sales permissions

Portfolio Holder: Cllr. Nick Palmer Portfolio Holder for Operational and Enforcement Services

Head of Service: Richard Homewood, Head of Environmental & Regulatory Services

Key decision: Yes

Access: Public

1. Purpose and summary

- 1.1 The Government has swiftly introduced through Parliament a new streamlined process to apply for a "Pavement Licence". After proceeding through the Commons and Lords stages, on 21 July, the Commons accepted all amendments proposed by the Lords and has passed both Houses of Parliament. At the time of writing, Royal Assent is awaited (a formality) and it is anticipated that this final stage will be reached shortly. This temporary authorisation will short-circuit the usual suite of consents required under the Highways Act and planning law. The purpose of the new licence is to help the struggling hospitality sector in a time of social distancing.
- 1.2 It is proposed that this new procedure will be administered by district and borough councils in non-unitary Council areas and Waverley will therefore need to adopt a policy, set the fee and delegate to officers the authority to issue, amend and or refuse licences, and deal with enforcement.
- 1.3 This report therefore proposes a policy for Waverley Borough Council attached at Annexe A, a fee level and seeks delegation to officers for the issue, amendment and or refusal of licenses, as well as enforcement of the new arrangements.
- 1.4 This report also advises on changes to the licensing laws which will allow premises with a premises licence for on-sales of alcohol to sell off-sales without the need to apply for a formal variation to their licence in the usual way, which are limited to 11pm at the latest and new permissions for off-sales do not apply to times when the premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.

2. Recommendation

2.1 The Council be recommended to:

- Adopt the policy set out in Annexe A
- Set the fee for a pavement licence at £100
- Delegate authority to the Head of Environmental and Regulatory Services to issue pavement licences and/or authority to refuse or amend pavement licences in consultation with the Portfolio holder for Operational and Enforcement Services.
- Delegate authority to Head of Environmental and Regulatory Services in relation to enforcement powers under the new proposed legislation (the Business and Planning Act 2020 once enacted).
- Delegate authority to the Head of Environmental and Regulatory Services to make minor or consequential amendments to the Policy and Licence conditions in the event of any amendments/ updating statutory instruments and or government guidance in consultation with the Chairman of the Licensing and Regulatory Committee.

3. Reason for the recommendation

3.1 To have a clear policy and standard conditions for pavement licensing and enable the efficient and timely administration of the licensing and enforcement procedures for pavement licensing to support the revitalisation of the hospitality industry.

4. Background

4.1 On 21 July 2020, the the Business and Planning Act 2020 was passed and at the time of writing awaits Royal Assent, this legislation which makes two significant licensing changes to help businesses recover from the disruption caused by Covid-19 and to support them in implementing safer ways of working, in particular the need for social distancing. The new Act makes it easier for cafés, bars, restaurants and public houses in England and Wales to seat and serve customers outdoors through temporary changes to licensing law and outdoor seating/furniture. It introduces;

- a new (temporary) "**pavement licence**" to be issued by district, borough and London borough councils authorising the use of the public highway by pubs, cafes, bars and restaurants for removable seating; and

any premises holding a licence authorising on-sales of alcohol is deemed to also authorise **off-sales** subject to a cut off time of 11pm of the closure time of an existing outside area, whichever is the earlier. It is envisaged that these arrangements will be in place until 30 September 2021 and extensions to provisions can only be made where it is deemed reasonable necessary or appropriate for a purpose linked to the coronavirus pandemic.

.Pavement Licences (outdoor seating)

- 4.2 On 20 March 2020, the Prime Minister announced that cafés, pubs, bars and restaurants should close. Emma McClarkin, Chief Executive of the British Beer and Pub Association (BBPA), said that the pandemic “has been devastating for the pub sector”. In a Commons statement on 23 June 2020, the Prime Minister announced that pubs and restaurants could re-open from 4 July 2020. Guidance for business re-opening is available on Gov.UK.
- 4.3 The Business and Planning Act 2020 was passed on 21 July and expected to receive Royal Assent imminently includes temporary measures to support businesses selling food and drink through economic recovery as lockdown restrictions are lifted but social distancing guidelines remain in place
- 4.4 Ascafés, pubs and restaurants are now permitted to open, current social distancing guidelines will have considerable impact on the capacity to accommodate customers.
- 4.5 The measures set out within the new Act are designed to support businesses selling food and drink such as cafés, public houses and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the local council for the placement of removable furniture such as tables and chairs on the highway adjacent to their premises. This process has been introduced to assist businesses to secure licences in time for the summer.
- 4.6 This will enable them to maximise their capacity whilst adhering to social distancing guidelines and assist to protect hospitality jobs. The current process for businesses to obtain these permissions (under Part 7A of the Highways Act 1980 and operated by Surrey County Council) can be costly and time-consuming, with a longer consultation period of 28 days.
- 4.7 The Act includes temporary measures to place a cap on the application fee for businesses, enforcement and revocation powers so councils can protect public safety and amenity, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery. In addition, allowing representations to be made by consultees and the public on the basis of matters such as nuisance and amenity. There are additional safeguards in that authorities must have regard to the needs of disabled people when considering whether to grant a pavement licence and licence holders must also make reasonable provision for outside seating where smoking is not permitted. There are national mandatory conditions requirements in relation to pavement licences, including a no-obstruction condition so that the licence must not have the effects set out in section 3(6) of the Act. The second is a national smoke free condition which seeks to ensure customers have greater choice and businesses can cater to their customer’s preferences .
- 4.8 Licensing Officers across Surrey have been liaising with Surrey County Council and have developed a draft policy and local licence conditions for use by all district and borough councils to ensure consistency of approach. This draft policy is attached at Annexe A and is recommended for adoption by the Council. The Act also sets out two conditions which apply to pavement licences which are

granted or deemed to be granted which are a no-obstruction condition and a smoke – free seating condition which will apply to licences granted under the Business and Planning Act 2020 (not existing licences permitted under the Highways Act mentioned above or other legislation). In addition, businesses must continue to have regard to smoke free legislation under the Heath Act 2006 and regulations.

- 4.9 The Act caps the licence fee at a maximum of £100 to minimise the effect on businesses whilst recovering some of the cost of setting up and administering the new licences, including an element of enforcement along with other agencies. Most local authorities are setting the fee at £100 and the Council is recommended to do so for Waverley.
- 4.10 The Council also introduces reduced timescales for processing and approving applications and delegation of the authority to issue licences to officers is essential otherwise applications will be deemed to be approved if the deadlines are not met. Where it is likely that a licence should be refused it is recommended that this is delegated to officers in consultation with the relevant portfolio holder.
- 4.11 The Government has issued guidance on pavement licences (22 July) and which is available (and will likely be subject to further updating) at

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

Off-sales

- 4.12 The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales, subject to a cut off time It is designed to be a temporary measure to “boost the economy”, with provisions lasting until the end of September 2021,
- 4.13 The measures will make it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption off the premises. This will allow businesses to trade whilst keeping social distancing measures in place.
- 4.14 The provisions in relation to those licensed premises at paragraph 4.13 above remove the need for any application for a variation to the licence to be made, therefore no fee will need to be paid. This is designed to deliver savings to businesses, as well as providing them with certainty about how they are able to trade. It will also reduce the burden on local authorities and the police, who will not need to scrutinize any applications for licence variations from those premises affected by these measures.
- 4.15 Licensees who have had an application for an off-sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension. This is a safeguard to ensure that where it has recently been decided that the licensee should not have the permission, they do not receive it through this legislation.
- 4.16 The default hours in which off-sales will be permitted are limited to 11pm or the

closure of an existing outside area (whichever is the earlier). .. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off sales permission.

- 4.17 Conditions on existing dual premises licence (allowing on and off sales) that would prevent one or more of the following are also suspended under the temporary off sales provision : (i) off-sales of alcohol at a time when the premises are open for selling alcohol for consumption on the premises (subject to cut off time); (ii) off sales in an in open container; and (iii) allow deliveries of alcohol to residential or work buildings.
- 4.18 If there were problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operated using the new permission, any responsible authority, including the police or environmental health, could apply for a new summary off-sales review. The off-sales review process is modelled on the existing summary review process. In the event that a new off-sales review is triggered, it will only relate to off-sales authorised by virtue of these provisions, or conditions which have effect by virtue of these provisions: it cannot be used to revoke the existing licence or modify pre-existing licence conditions.
- 4.19 The Home Office has published (on 22 July) guidance 'Alcohol licensing : guidance on new temporary off-sales permissions which is available at:'

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 The Recommendations of this report will help support the Strategy's aims to support a thriving local economy, supporting local businesses and employment whilst striking a balance with the aim of having a sense of responsibility for our environment .

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

- 6.1.1 Income from licence fees will assist in covering the costs of setting up and administering the new licensing regime.

6.2 Risk management

- 6.2.1 Failure to process and determine applications in a timely manner would lead to a number of deemed approvals with less control over their impact on the environment or the community.

6.3 Legal

- 6.3.1 Legal commentary is provided throughout the body of the report.

6.4 Equality, diversity and inclusion

- 6.4.1 A public sector equality duty assessment has been undertaken by the Council in accordance with Section 149 of the Equality Act 2010 which 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. It is noted that the legislation makes provision for the Council to have regard to the needs of disabled people when considering whether to grant a pavement licence and the legislation confirms that the licence must not have the effects set out in section 3(6) of the Act .

6.5 Climate emergency declaration

- 6.5.1 The proposed policy and licence conditions take into consideration the need to reduce carbon emissions and the aspirations of the Climate Change and Sustainability Strategy.
- 6.5.2 The pavement licence arrangements require licence holders to make reasonable provision for outside seating where smoking is not permitted. 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.

7. Consultation and engagement

Consultation on the proposed policy, conditions and fees etc. with Licensing Managers at Councils across Surrey, SCC Highways, Surrey Police, WBC Planning Team, WBC Environmental Health. The proposed application procedure also requires a period of consultation.

8. Other options considered

- 8.1 The council is to be required to implement and administer the new temporary licensing arrangements and the pavement licensing scheme.

9. Governance journey

- 9.1 Report for Licensing & Regulatory Committee
Recommendation to Council for approval of policy, fee and delegations to officers

Annexes:

Annexe A – draft pavement licensing policy and conditions

References

CONTACT OFFICER:

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Position: Head of Environmental and Regulatory Services
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Email: richard.homewood@waverley.gov.uk

Agreed and signed off by:

Legal Services: date 22 July2020 GCJ

Head of Finance: date

Strategic Director: date

Portfolio Holder: date

Draft Pavement Licensing Policy

Draft Pavement Licensing Policy



Effective: (date)
Version 5 – Policy Draft
July 2020

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1. Introduction

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.

As the economy starts 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.

The Business and Planning Act 2020 makes it easier for premises serving food and drink such as cafes, bars, restaurants and pubs, as lockdown restrictions are lifted but social distancing guidelines remain in place, to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in clauses 1 – 10 of the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from Waverley Borough Council for the placement of removeable furniture such as tables and chairs on the pavement outside their premises. It will enable them to maximise their capacity and offer an al fresco service to customers whilst adhering to social distancing guidelines.

The Government has published the ‘COVID-19 Secure : safer public places guidance’ which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing, and which is available at <https://www.gov.uk/guidance/safer-public-places-urban-centres-and-green-spaces-covid-19> and may be updated from time to time

Currently, tables and chairs permissions are granted by Surrey County Council, the Highways Authority, under Part 7A (section 115E) of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28 day consultation period.

The new temporary pavement licence measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, involving a period of consultation to ensure protection of public safety and amenity and allow businesses to apply for pavement licences in a timely and cost effective manner aiding to their financial recovery.

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 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 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).

2.3 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 this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

2.4 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 Pavement Licence must be made to the Council, and the following will be required to be submitted electronically with the application:

- a completed Application Form
- the required fee of £100, paid on-line by credit or debit card
- a site plan showing the location of the premises shown by a red line, so the application site can be clearly identified.
- a detailed plan clearly 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 the applicant wishes 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 Act requires a licence-holder to make reasonable provision for seating where smoking is not permitted, the plan must clearly show the area that is designated as non smoking which will have a 2 metre gap from the smoking permitted area.

- a risk assessment demonstrating how the applicant will manage social distancing and the conflict between pedestrians using the footway, those using the tables and those queuing to access the premises,
- 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 (for e.g. 3 months, 6 months, a year or 30 September 2021);
- evidence of the right to occupy the premises (e.g. the lease);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £10 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.
- (Following Submission of the application) evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);

3.2 Fees

The fee for applying for a licence under the new process are set locally, but are capped at £100. The Council has determined that the fee for applications will be £100.

Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.

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.

3.3 Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council.

The Council will publish details of the application on its website at www.waverley.gov.uk/pavementlicence

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- Waverley Borough Council Economic Development
- Waverley Borough Council Environmental Health Service (both Food, Health and Safety and Environmental Protection Teams)
- Waverley Council Estate Management
- Waverley Borough Council Planning

- Waverley Borough Councillors
- Parish and Town Councils
- Chambers of Commerce
- Surrey Coalition of Disabled People
- Surrey Fire & Rescue Service
- Surrey Police

Members of the public and others listed above can contact the Council to make representations in writing and preferably by email.

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 (7 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 health and safety – 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:
 - 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 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.

Applicants are strongly 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.

3.6 Determination

Once the application is submitted the Council 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 period has ended.

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 for a period of one year subject to any published local or national conditions.

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 and National 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 generally will only permit Pavement Licences to operate between the hours of 09:00 and 22:00.

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 (which is 7 days, beginning with the first day after the public consultation period of 7 days, excluding public holidays) it can specify the duration of the licence, subject to a minimum duration of 3 months.

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 such as plans for future changes in use of road space. As such, the Council will normally grant applications with no limit on duration which will automatically expire under the Act on 30 September 2021.

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.

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

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.

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.

The national no-obstruction and provision of a no smoking area to be provided conditions apply to all Licences. The National conditions or standard conditions which are deemed attached to all Licences granted under the new regime are shown in Appendix 3.

5. Enforcement

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 section 149 of the Highways Act 1980 and will be dealt with by the Highways Authority or the Police and which can also be enforced by the local authority, under clause 7(6) of the new Act.

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

If a condition imposed on a Pavement Licence either by the Council (local condition) or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied. If the notice is not complied with, the Council may revoke the licence or take the required steps itself and recover the costs of doing so.

The authority may revoke a Pavement Licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or,
2. 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;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - anti-social behaviour or public nuisance is being caused or risks being caused – for example, the use is increasing the amount of noise generated 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 only 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.

6. Review Procedures

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act 2020 which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licences generally, relevant social distancing measures or as a result of local considerations within the Waverley Borough Council area.

Site Notice Template for display by an applicant for a Pavement Licence.

**[Section 2(5)] of the Business and Planning Act 2020.
NOTICE OF APPLICATION FOR A PAVEMENT LICENCE**

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] have applied to Waverley Borough Council for a 'Pavement Licence' at:

(postal address of premises)

known as

(name premises known by)

The application is for:

(brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink))

Any person wishing to make representations to this application may do so by writing, preferably by email, to:

Pavementlicence@waverley.gov.uk

or

Licensing Team
Environmental and Regulatory Services
Waverley Borough Council
The Burys
Godalming
GU7 1HR

by: *(specify the last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*

The application and information submitted with it can be viewed on the Council's website at: www.waverley.gov.uk/pavementlicence

Signed

Dated *(date the notice was placed which must be the same date as the date of application)*

Waverley Borough Council local standard pavement licence conditions

1. Permission to operate a Pavement Licence area does not imply an exclusive right to the area of public highway. The licence holder must be aware that Waverley Borough Council and others (e.g. Surrey Police, Highways Authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement licence area will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
2. The licence holder must hold Public Liability Insurance for the operation of the Pavement Licence. This must indemnify Waverley Borough Council and Surrey County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £10 million in respect of any one incident. Evidence of the insurance must be provided to Waverley Borough Council on request.
3. Tables and chairs etc. must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
4. Waverley Borough Council and/or Surrey County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for safekeeping.
5. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
6. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
7. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence area, which should not, in normal circumstances, extend beyond the width of the premises frontage.
8. Tables and chairs and other items permitted should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.
9. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
10. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.

11. The operation of the area must not interfere with highway drainage arrangements.
12. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority in writing.
13. No later than 1st September 2020, with the exception of pre-packaged confectionary, all food and drink containers and packaging shall be re-useable, recyclable or compostable
14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Pavement Licence area. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
15. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval from Surrey Highways
16. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within licensed area.
17. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Facility outside the hours in force for the premises itself.
18. The licence must be displayed on the premises with a plan of the agreed layout of the pavement licence area.
19. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.

NOTES:

These conditions should be read in conjunction with any mandatory national conditions concerning pavement licences, if the premises is licenced under the Licensing Act 2003, any relevant conditions attached to the premises licence, the latest government requirements concerning coronavirus and social distancing and any other relevant requirement of the Business and Planning Act 2020.

The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.

Waverley Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

National Conditions

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020 and may publish conditions for pavement licences in addition to the statutory 'no obstruction condition' referred to below. All and any national conditions must be complied with throughout the duration of the pavement licence period:

Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must 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 as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition:

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the 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 as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

Condition relating to provision of a no smoking area:

It is a condition of the legislation that a licence-holder to make reasonable provision for seating where smoking is not permitted.

Guidance on the effect of this condition:

1. Where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway in accordance with the licence. **The licence-holder is required 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 which can be viewed here.
 - 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.

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