

# Draft Pavement Licensing Policy



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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 removable 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 (excluding public holidays), 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).

### 2.4 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.

### 2.5 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 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 by the Government at £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 (excluding public holidays), 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](http://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 Borough 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 e-mail.

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 (excluding public holidays) 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 needs of disabled people and 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 (Government best practice guidance on creating a barrier free pedestrian environment issued by the Department of Transport which is available at <https://www.gov.uk/government/publications/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 (excluding public holidays), 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 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 in 3.5 above. The Council 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 a 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' seating area 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. 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; or

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

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, where 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](mailto: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](http://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.
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 minimising any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises.

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 1<sup>st</sup> September 2020, with the exception of pre-packaged confectionery, 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 the 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 licensed area 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 each day 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 these conditions in exercise of his powers under clause 5(8) of the Business and Planning Act 2020 and may publish conditions for pavement licences in addition to the statutory conditions 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 – a ‘no obstruction condition’ – as set out at section 5(5) of the Business and Planning Act 2020:

It is a condition that anything done by the licence holder pursuant to the licence or any activity of other persons which is enabled by the licence must not:

- (a) prevent traffic, other than vehicular traffic, from—
  - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
  - (ii) passing along the relevant highway, or
  - (iii) having normal access to premises adjoining the relevant highway,
- (b) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- (c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- (d) prevent the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

as set out in section 3(6) of the Act.

### Condition relating to provision of a no smoking seating area - ‘a smoke free seating condition’ – as set out at 5(6) of the Business and Planning Act 2020:

It is a condition of the legislation that a licence-holder 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 2 metres 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.