Pavement Licences Policy

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For any queries, please contact the licensing team:

Licensing Team
Vale of White Horse District Council

Abbey House
Abbey Close
Abingdon
OX14 3JE

01235 422556

licensing.unit@whitehorsedc.gov.uk

Licensing Team
South Oxfordshire District Council

Abbey House
Abbey Close
Abingdon
OX14 3JE

01235 422556

licensing@southoxon.gov.uk

Contents

1. Introduction 3
2. Scope 3
   2.1 Definition of pavement licence 3
   2.2 Eligible Businesses 3
   2.3 Eligible Locations 3
   2.4 Type of furniture permitted 4
   2.5 Planning Permission 4
   2.6 Existing tables/chairs 4
3. Application Process 4
   3.1 How to Apply 4
   3.2 Fees 5
   3.3 Consultation 5
   3.4 Site Notice 5
   3.5 Site Assessment 5
   3.6 Determination 7
   3.7 Issue of licences 7
   3.8 Rejected Applications 7
4. Conditions 8
5. Enforcement 8
6. Further information and contact 9

Annex A - National Conditions 10
Annex B - Pavement Licence Conditions 11

1. Introduction

The Business and Planning Act 2020 ('the Act') introduced provisions designed to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors, maximising their ability to trade, assisting them to operate safely and promoting economic recovery in response to the impact of the global COVID-19 pandemic.

The Act created a regime for processing applications for 'pavement licences' to authorise businesses such as cafes, restaurants and bars to place furniture on the highway. This is a fast-track procedure to get the same permissions a business would previously have had from a Part 7A Highways Act permit, street trading consent and planning permission (change of use).

The Levelling Up and Regeneration Act 2023 made the provisions of the Business and Planning Act permanent with effect from 31 March 2024.

This policy will be kept under review and may be amended periodically as required. We aim to formally review the document every five years. The government has also published their own guidance on pavement licences.

The council must also have regard to its wider duties, including those under the Public Sector Equality Duty, Equality Act 2010, Human Rights Act 1998, Environmental Protection Act 1990, and the Crime and Disorder Act 1998.

Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

2. Scope

2.1 Definition of pavement licence

A pavement licence allows the holder to place removable furniture on a section of the highway 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). Oxfordshire County Council maintains a map showing the extent of highway which may be useful to applicants.

A licence is not required for furniture sited on private land.

The licensed area is normally expected to be an area directly in front of and visible from the premises. The area should not extend beyond the width of its frontage unless there are exceptional circumstances.

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 when not in use. Furniture should also be of a type that is not likely to cause damage to the highway surface. Furniture should be non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction or a safety hazard.

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

2.5 Planning Permission

If a pavement 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 and remains in force.

2.6 Existing tables/chairs

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place. Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

3. Application Process

3.1 How to Apply

An application for a pavement licence (either grant or renewal) must be made electronically (either by email or through the online applications portal) on the council's application form and accompanied by the following:

- Public liability insurance to a minimum value of £5 million
- Site plan to a suitable scale or with clear measurements showing:
  - property boundary and proposed boundary of area to be covered by the pavement licence (with a red line to indicate the area to be licensed)
  - building and kerb lines
  - measurements of the clear space between the licensed area and any obstacles or the edge of the pavement/road
  - furniture layout
  - location and type of barriers to separate the licensed areas from the rest of the highway
  - position of any lighting columns, litter bins, road signs or other existing street furniture

There is no provision to vary a licence and therefore any such application will be required to be made as a grant.

An application will not be considered complete until the application form, all required documents and the application fee have all been received. The consultation period will commence the day after a complete application has been made.

3.2 Fees

The fee for applying for a licence is £500. This charge covers administration and compliance costs. This is not refundable in the event that an application is deemed invalid, rejected, or a licence subsequently surrendered, suspended or revoked.

The fee for the renewal of a licence is £350. A renewal application is defined as one made before expiry of the previous licence by the same holder, for the same premises and in the same terms.

3.3 Consultation

The consultation period is 14 days (not including public holidays), starting with the day after the day on which a valid application was made to the council.

The council will aim to publish details of the application on its website.

The council is required by law to consult with the Highways Authority, and will also aim to consult with the following:

- Planning
- Environmental Protection
- Food & Safety Team
- Thames Valley Police
- Oxfordshire Fire and Rescue
- Town/parish councils
- Ward councillors

The council must take into account any representations received during the consultation period and consider these when determining the application.

3.4 Site Notice

The applicant has to post a notice of the application (using the council's template, available on the website) on the premises to which it relates, on the same day that they submit the application. The notice must be easily visible and legible to the public and the applicant must ensure the notice remains in place for the whole of the public consultation period as detailed above.

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.

Applicants should record and retain evidence that they have complied with all requirements, including posting the notice at their premises. It is recommended that you take a photo of the notice on a mobile phone each day during the consultation period so that you can prove the notice was there for the required period.

3.5 Site Assessment

All applications will be considered on their merits. The following matters will be used by the council and consultees in considering the suitability of the proposed application:

- public health and safety including security – for example any reasonable crowd management measures needed as a result of a licence being granted;
- 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, its surroundings and its users, taking account of:

- considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, 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;
- whether there are other permanent street furniture or structures in place on the footway that already reduce access;
- the impact on any neighbouring premises; and
- the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Inclusive Mobility, and other users of the space, for example if there are high levels of pedestrian or cycle movements.

Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm of 'clear space' is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. The council will take a proportionate approach if this is not feasible due to physical constraints but a minimum width of 1500mm is regarded as the minimum acceptable 'clear space' under most circumstances, as this should enable a wheelchair user and a walker to pass each other.

The positioning of furniture should not discourage pedestrians from using the footway or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded.

In general, all parts of the highway may be used for pavement furniture, assuming all safety and non-obstruction requirements are met. The exceptions are:

- Any carriageway or 'shared use surface'
- Any highway verge
- Where the width of the pavement makes it impractical
- Where other authorised street furniture makes it impossible
- Where sight lines are compromised and may give rise to health and safety issues.

Emergency exit routes, including those of adjacent buildings, must not be obstructed by the furniture and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.

In granting pavement licences, it is important to ensure that the rights and safety of other persons using the highway are not detrimentally affected, with special attention to wheelchair users and those with impaired vision. The licensed area should be at least partially enclosed with barriers, to demarcate the area and to contain the furniture, thus making it distinguishable to other pavement users, and particularly to assist blind and visually impaired pedestrians. Any barrier should ideally have solid bars/elements at around 100mm and 1000mm above ground level 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, as these are not necessary for the consumption of food, 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. Advertising boards are not included in the definition of furniture within the licensing regime, therefore should not be used as a barrier.

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.

All licences will be issued with a condition requiring a licence holder to make reasonable provision for seating where smoking is not permitted. It is expected that this will be the majority of the area. 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 metre distance between non-smoking and smoking areas, wherever possible.

3.6 Determination

At the end of the consultation period, the council has 14 days (excluding public holidays) to determine the application.

If the council determines the application before the end of the determination period the council 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
- reject the application.

If the council does not determine the application within the determination period, the application will be deemed to have been granted subject to any local conditions published by the council at the time the application is submitted.

3.7 Issue of licences

If the council chooses to approve the application, a pavement licence will be issued to which conditions will be attached. The licence will also contain specific details such as days and hours when furniture is permitted for use, and a copy of the plan to confirm the authorised positions for furniture.

Licences will be granted for two years unless there are good reasons for granting a licence for a shorter period, such as plans for future changes to the highway in that area.

If the council does not decide the application with the determination period, the licence which was applied for is deemed to be granted for two years with the standard conditions.

The council will generally only grant pavement licences to operate between 08:00 and 21:00.

Applicants wishing to operate outside these hours may wish to include additional information as to how they will prevent nuisance affecting nearby residents. The council also retains the right to specify permitted hours on the licence that are reduced from those specified above in appropriate circumstances.

Licences are not transferable, so a new application would be required to issue a licence to a new licence holder.

3.8 Rejected 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 rejected. There is no statutory appeal process against a decision to reject an application.

If an applicant or objector does not believe due process has been followed when determining an application, they are entitled to use the council's complaints procedure.

4. Conditions

The Council's standard conditions can be found at Annex B. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis, and the council will confirm the reasons why any additional conditions have been imposed.

The Act contains two national conditions that all granted and deemed granted licences must adhere to if the council fails to publish their own conditions, or the published conditions fail to make provision for observing the national conditions. The two conditions are:

- a no-obstruction condition
- a smoke free seating condition

The council's published conditions make provision for these conditions, but for the sake of transparency, the national conditions are detailed in Annex A to this document.

The Act also allows for the Secretary of State to produce via regulations conditions for pavement licences, and to stipulate whether these conditions have effect as well as, or instead of, the conditions placed on a licence by the council. If such conditions are created, this policy will be amended to reflect them, and all licence holders will be notified of any changes this may create.

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

5. Enforcement

The highway authority retains the power under s.149 of the Highways Act 1980 to remove items on the highway which are a nuisance – whether they are licensed or not. This power is exercisable immediately in cases where the furniture causes a danger.

Where a business sites furniture for use by customers to consume food or drink without a licence, a notice may be served under 7A of the Act requiring the business to remove the furniture before a specified date, and to refrain from putting furniture on the highway without a licence. If furniture continues to be sited without permission, the council can remove the furniture and store it. The business will be liable for any costs associated with removal and storage, and the furniture will not be removed until such costs are paid in full. After 3 months of serving of the notice, the furniture can be disposed of as the council sees fit, which may include sale of the furniture with the proceeds applied towards the costs of storage.

Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, such as health and safety legislation, food hygiene requirements and premises licence conditions under the Licensing Act 2003.

All enforcement activity by the council will be undertaken in line with our Enforcement Policy. Periodic inspections of premises with pavement licences will be made by the council to ensure compliance with the licence and conditions.

If there is a breach of a licence condition, the council may either revoke the licence, or serve a notice on the licence holder requiring them to take steps to remedy the breach within a specified time. If the licence holder fails to comply with a notice, the council may revoke the notice or take the steps itself and recover the costs of doing so from the licence holder.

The council may also revoke a licence where:

(a) 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.
(b) there are risks to health or safety – for example by placing tables and chairs too close together
(c) the use of the highway is causing an unacceptable obstruction – for example the furniture preventing a wheelchair user from passing along the highway
(d) there is anti-social behaviour or public nuisance
(e) it comes to light that the applicant provided false or misleading statements in their application, or
(f) the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

Where a licence is revoked, full notice with reasons will be given.

In addition, licences can be amended (with the agreement of the licence holder) to remedy any concerns in respect of items (a) to (d) above.

The usual procedure for a breach of conditions will be a warning to comply and that further contravention will result in revocation of the licence. The licensee will be allowed reasonable time to comply. If the contravention continues or is repeated within the licence period, the licence is likely to be revoked. If any breaches of conditions are serious enough in nature, the licence may be revoked without the warning letter stage.

6. Further information and contact

The application form, template notice and our contact information can be found on our websites www.southoxon.gov.uk/pavementlicences and www.whitehorsedc.gov.uk/pavementlicences

Annex A - National Conditions

[All section references are to the Business and Planning Act 2020]

No-obstruction condition

Section 5(5)

A “no-obstruction condition” 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 have an effect specified in section 3(6):

Section 3(6)

The effects referred to in subsection (5) are-

a) preventing traffic, other than vehicular traffic, from—
   i. entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
   ii. passing along the relevant highway, or
   iii. having normal access to premises adjoining the relevant highway,

b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,

c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

Smoke-free seating condition:

Section 5(6)

A “smoke-free seating condition” is a condition that, 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.

Annex B - Pavement Licence Conditions

Please note that these conditions are not an exhaustive list. Each application will be considered on its own merits and individual, specific conditions may be attached where deemed appropriate.

Where a licence is deemed granted, the applicant is deemed to be a 'licence holder' and is required to comply with all of the below conditions. In such circumstances, references to 'licensed area' should be understood to mean the area proposed for licensing within the application.

1) The licence holder must ensure that no activity undertaken by them by the placing of furniture on the highway will:

   (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.

2) The licence holder must ensure clear routes of access are 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 the Department for Transport's Inclusive Mobility document.

3) 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.

4) Furniture placed on the highway must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval from the council.

5) The licence may be suspended where necessary to allow highway maintenance, any other necessary remedial work and special events to take place. In addition the licence holder must comply with any request to remove the furniture due to an emergency situation. A reasonable period of notice will be given to the licence holder where possible. The Highway Authority and/or council will not be liable for any loss of earnings arising out of the suspension of a licence.

6) Furniture must not be set out on the highway before 07:30 for a 08:00 trading start, and the area must be closed by 21:00 and all furniture removed from the highway by 21:30. When not in use, all furniture must stored securely inside a premises away from the highway. (*timings to be amended as appropriate from the application*)

7) If the furniture is (a) not removed outside the permitted hours or (b) located in breach of the licence, conditions or other regulatory requirements, the Highway Authority may remove and store of or dispose furniture, at the cost of the licence holder and with no responsibility for safekeeping.

8) A clear route of access shall fall equally either side of the centre line of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street. A clear pathway of at least 1 metre wide shall also be maintained to allow entry and exit from the premises.

9) Furniture must not protrude beyond the designated boundary of the licensed area or interfere with required vision lines for traffic and pedestrians.

10) The licensed area should be separated from the rest of the highway (for example, with a barrier or planters) to guide persons with a visual impairment around the area.

11) The licence holder shall ensure that the footway is not obstructed by patrons waiting to be seated, or by any other items of furniture or personal possessions of patrons.

12) The placement of furniture must not obstruct any emergency exits from the premises or any adjacent buildings, and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.

13) Any furniture shall be kept in a clean, safe and well maintained condition. Any canopies or umbrellas must be adequately secured.

14) The licensed area must be kept clean and tidy at all times. This will include washing down the area, and removing any refuse and litter on the highway in the immediate vicinity of the furniture.

15) No forms of musical entertainment (i.e. live music, recorded music and background music) are permitted in the area.

16) The licence holder must ensure that the licensed area is monitored regularly by staff to ensure compliance with the licence conditions and to ensure that the area operates in a safe and orderly manner to reduce the risk of nuisance.

17) The licence holder shall not allow their customers to cause any form of nuisance or annoyance to:

    (a) any other users of the highway
    (b) any neighbouring residents, or
    (c) any neighbouring businesses.

18) During hours of use, the licence holder or a nominated representative shall be available to receive and respond to nuisance-related complaints. A contact number shall be readily available to neighbouring residents and businesses upon request.

19) 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 area must be approved in writing by the Highway Authority.

20) When the licensed area is in use, the licence holder shall make toilets and hand washing facilities available for customers, including to wheelchair accessible standards where it is practicable and reasonable to do so.

21) The licence holder shall ensure that disabled persons and wheelchair users can be adequately served.

22) 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 the Highway Authority. Any costs incurred as a result of damage to the highway or council property, due to the use of the area under this licence, will be recovered in full from the licence holder by the Highway Authority.

23) If the premises does not hold a licence under the Licensing Act 2003 which authorises the sale of alcohol, the licence holder must not allow the consumption of alcoholic liquor within the licensed area. Only alcohol purchased from the connected premises may be consumed within the licensed area.

24) The front page of the licence and Annex 1 plan must be prominently displayed on the premises so that it may be easily viewed.

25) The licence holder shall maintain a policy of public liability insurance indemnifying the council and Highway Authority against any injury or damage to any person or property and against any claim, liability, expense or damage arising by reason or in consequence of the use of the area under this licence. The policy shall provide cover of not less than £5 million in respect of any one incident.

26) At the end of the licence period or on revocation of the licence the licence holder must remove any tables, chairs and other furniture immediately and reinstate the highway to its former state and condition. If they fail to do so, the Highway Authority will be empowered to carry out such work of reinstatement and recover the costs of such work from the licence holder.

27) These conditions may be varied where necessary and the new conditions will come into effect upon written notification by the council.