

Pavement Permit Licensing Policy

Version 1 - 5th August 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, the Government (on 25 June 2020) 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 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 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 the Council for the placement of furniture such as tables and chairs on the pavement outside their premise which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, Southend Borough Council issues Table and Chairs licences under the Highways Act 1980. The fee varies depending on the size of the licensed area. This Policy will replace any existing procedure and fee structure currently adopted by the Council until 30th September 2021, when the former procedure will be reactivated. (subject to any future Government extension or Council decision to the contrary)

Currently the fee varies between local authorities and there is a 28 day consultation period.

The new temporary measure places a cap on the application fee for businesses, and introduces a new 14 day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding 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, 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, and cannot be a permanent fixed structure. It must be able to be moved easily, and stored away at the end of the trading period.

The Council will also expect the type of furniture to be 'in keeping' with the local area. Examples of approved types are shown at the end of this policy in Appendix 4

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 taking place 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 with the application:

- a completed Application Form submitted via MySouthend
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a 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 they wish 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 entrance to the premises must also be shown
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- 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;
- 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);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

3.2 Fees

The initial licence is valid for 3 months and is free until 30th September 2020 after which an application fee of £100 applies. Any extension should be applied for at least 14 days before expiry. The renewal fee is £100.00 for 1 year, or part thereof and the licence will expire on or before 30th September 2021. It will not be necessary to resubmit all the original required documentation to renew unless something has changed. **To avoid the need to renew, the Council recommends one application is made for a licence to run until 30th September 2021.** The fee of £100 will be required to be submitted with the application Note: Demand is expected to be high and it is likely that renewal reminders will not be atomically sent out by the council. You should therefore diarise your renewal.

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 <https://publicaccess.southend.gov.uk/online-applications/>

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:

- Environmental Health Service (including Environmental Protection and Food and Safety Teams)
- Planning and Building Control
- Town Centre Management
- Essex Fire & Rescue Service
- Essex Police
- Community Safety Team & borough CCTV

Members of the public and others listed above can contact the Council to make representations.

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 by email to licact2003@southend.gov.uk

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 among those 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;

- 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;
 - Applications which create walkways where it would be necessary to walk through a licensed area will be rejected
 - 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 publication 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.

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/or impose conditions, or
- refuse the application.

If the local authority does not determine the application within the prescribed period, the application will be deemed to have been granted.

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 Table and Chairs Licence (Pavement Permit) 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, which will be attached to all Table and Chairs Licences (Pavement licence) 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 Table and Chairs Licences (Pavement licence) between 09:00 and 22:00. (21.00 within predominantly residential areas)

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, excluding public holidays) they may specify the duration of the licence, subject to a minimum duration of 3 months.

3.9 Refusal of Applications

If the site is deemed unsuitable for a Table and Chairs Licence (Pavement licence), or if relevant representations are made which cannot be mitigated by conditions then the application may be refused. You will be notified of this in writing

There is no statutory appeal process against decision to refuse an application but the Director of Public Protection will consider any appeal submitted in writing within 14 days of the refusal notice. You should clearly state your reasons for the appeal. The director's decision is final.

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 an existing CCTV system is in place at a premises, applicants should consider extending this to cover any external area. In some cases the Council may require this as a site specific condition added to the local standard conditions.

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.

However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National 'no obstruction' conditions is 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 The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a Consent 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 applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a 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 or allowing users to breach government guidance on social distancing;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – 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 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 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 Table and Chairs Licence (Pavement Licence) generally, relevant social distancing measures or as a result of local considerations within the Southend Borough.

Appendix 1

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

[Section x] of the Business and Planning Act 2020.

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] have applied to Southend 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: licact2003@southend.gov.uk

Southend Borough Council

Licensing Team

Civic Centre, Floor 13

Victoria Avenue

Southend-on-Sea

SS2 6ER

by: *(last date for representations being the date 7 days commencing the day 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 www.southend.gov.uk

Signed

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

Appendix 2

Standard Pavement Licence Conditions

1. The Licensee shall ensure that there is a minimum clear width of 2.0 metres between the edge of the seating area and the inside edge of the kerb.
2. The furniture and its surrounding area shall at all times be maintained in a clean and tidy condition.
3. Furniture shall not be placed in any other area than that stated in the Licence
4. Furniture shall be placed in such a manner as to achieve the minimum social distancing in accordance with national guidance.
5. The licensee shall ensure that no structure placed within a licensed area gives rise to any fire or safety concerns.
6. The licensee shall ensure groups of patrons do not pull tables together to create group tables
7. Furniture and temporary barriers shall be in accordance with the guidance issued by the Council
8. The Licensee shall ensure, so far as reasonably practicable, that the tables and chairs and the persons using them, do not at any time obstruct the free pedestrian flow or cause any danger to persons lawfully using the highway.
9. The Licensee shall ensure that the tables and chairs and use thereof by members of the public are at all times supervised so as to avoid nuisance being occasioned to members of the public lawfully using the highway.
10. Permission to operate a pavement licence does not imply an exclusive right to the area of public highway. The Council may suspend or remove the permission at any time in the event of work being carried out in, under or over the highway on which the tables and chairs are situated or any adjacent highway or in the case of any special event. There shall be no refund or reduction in fees associated with any suspension
11. The Licensee shall indemnify the Council against any costs, claims, actions or damages arising out of the placing of the furniture on the highway.
12. The Licensee shall bear absolute responsibility for ensuring that adequate Public Liability Insurance is in place in respect of the permitted area and the cover obtained shall be not less than £5,000,000, for any one claim.
13. The permission is not assignable.
14. The Licensee shall ensure that glasses, crockery, napkins, cutlery and any other items placed upon the tables and chairs by the person to whom the Licence is granted or by any other persons, are removed from the tables and chairs when they are not in use.
15. The Licensee shall not allow music to be broadcast on to the street.

16. The Licensee shall keep the licensed area free of litter and rubbish, including staining from food and drink spillages.
17. The Licensee shall make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by patrons, for a distance of up to 10 metres from the boundary of the licensed area.
18. The licensed area shall be washed down thoroughly, at the end of every day, using a method sufficient to remove food debris, grease and other spillages that may occur.
19. The Licensee shall ensure that customers consuming food or drink outside the premises (building) do not do so beyond the demarcated area.
20. The Licence does not authorise the Licensee to allow smoking or alcoholic drinks to be served or consumed at the tables and chairs where it is prohibited either by another licence or by law. It is the responsibility of the Licensee to ensure they do not breach any other licensing requirements of the main trading activity.
21. Where the consumption of alcohol is to take place only plastic or toughened glasses and bottles are to be permitted within the facility.
22. The Licensee shall ensure the external area is appropriately marshalled to ensure control of patrons. Particular attention shall be paid to patron behaviour and behavioural noise and that patrons are socially distancing in accordance with national guidelines.
23. The Licensee shall not make any excavations or indentations of any description whatsoever in the surface of the highway
24. Where portable heaters are used they must adhere to the general design requirements above. In addition they must be located within the designated area and not on its boundaries. They shall not be used as part of the means of enclosure.
25. When in use the permitted area must be enclosed and clearly distinguishable. The means of enclosure may consist of rigid or secure panels at heights specified by the officers of the Council.
26. When selecting a means of enclosure, consideration must be given to the needs of people with impaired vision.
27. When the Licensee is not using the permitted area or at the end of the consent time, all of the items associated with that use must be removed from the highway. Thus it is essential that they be suitably portable and capable of storage elsewhere. It may also be necessary to remove items from the pavement in the case of an emergency and this should be borne in mind when considering handling procedures
28. The Council may at any time vary the licence or conditions thereof.
29. The licence shall be displayed on the premises with a plan of the agreed layout of the pavement café.
30. If the Licensee breaches any one or more of the conditions thereof, the Council may serve a "default" notice requiring the breach of conditions to be remedied in a particular way within a stated time. Should it be necessary in order to remedy the default, the Council

may require the furniture to be removed from the highway either temporarily or permanently. The Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee. The Council will not be responsible for its safekeeping. The Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained or where the use of the licenced area causes issues in regard to Safety / Anti-social Behaviour / Noise / COVID 19 related matters such as social distancing

National Conditions

The Secretary of State publishes conditions in exercise of his powers under section 5 of the Business and Planning Act 2020:

Condition relating to clear routes of access: (No-obstruction condition)

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 www.gov.uk/government/publications/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

Smoke-free seating condition.

It 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.

Guidance on the effect of this condition

1. The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.
2. It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This

means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

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.

Appendix 4

Examples of acceptable furniture styles

