



PAVEMENT LICENSING POLICY

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1. INTRODUCTION

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.

Pavement licences were first introduced as a temporary measure under the Business and Planning Act 2020 to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic.

The Levelling Up and Regeneration Act 2023 has made the temporary legislation permanent with some enhancements. The key features of the Business and Planning Act 2020 are retained but changes include an increase in the fee cap, provision that licences can be issued for up to two years, increased length of time for consultation from 7 days to 14 days, provision for a renewal process and enforcement powers for local authorities.

This policy was approved by the Licensing Committee on xxx and implemented on xxx.

2. SCOPE OF PAVEMENT LICENCES

Types of 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 including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

Activities Permitted

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.

Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible. However, they can apply for permission to place furniture on the pavement under

Locations Permitted

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).

Pavement Cafés should generally occupy an area directly in front of and be visible from the existing premises and should not extend beyond the width of the frontage. The layout and size of the Pavement Café will depend upon the characteristics of the location of the premises, the available space in which to place furniture and also the nature of the premises.

Where the Pavement Café does not abut the frontage of the Applicants premises, the Applicant must demonstrate in their application the operational controls in place to ensure appropriate

management of its customers, staff training and use of equipment – this must be shown by way of a Health & Safety Risk Assessment.

Furniture Permitted

The furniture which may be placed on the pavement include:

- 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, planters, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be **removable** and related to the serving, sale and consumption of food or drink. Furniture **must not** be a permanent fixed structure and must be moved easily and stored away at night, unless previously agreed with the Council.

Furniture **NOT** permitted under this licence would include furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink. Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing separate consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007. Applicants wishing to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

No other items may be placed on the highway within the licenced area other than that approved in accordance with the application and the licence when granted.

The Council expect the type of furniture to be “in keeping” with the local area.

Further information is provided in the Council’s Guidance to applicants document.

Hours of operation

Applicants are asked to consider the surrounding environment, neighbouring business and residential properties when setting out their proposed operating times. In order to minimise associated crime and disorder and noise nuisance, the Council generally will only permit Pavement Licences between 10:00 and 23:00 hours.

Applicants wishing to apply for operating hours outside of these timings are advised to seek guidance from the Council’s Environmental Health Team and Devon & Cornwall Licensing Police before submitting an application.

Applications outside these hours will be assessed in terms of the criteria within this guidance note. The Council however retains the right to specify permitted hours of trading outside of those applied for in appropriate circumstances.

3. DURATION OF PAVEMENT LICENCES

The Council will grant licences for a maximum of 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

The grant of a Pavement Café Licence does not provide the holder/s of that licence with an exclusive right to use the said area. Access must be provided for those times when cleaning, maintenance and repairs to the public highway, traffic signals, and electric, gas and telephone equipment etc. is required, and also where access by emergency services is required. During times when special events are taking place, access to and/or use of the cafe area may be also required.

Where Licence Holder/s are requested to move any tables, chairs or other items within their Pavement Café area by Officers of the Council, Emergency Services or Statutory Undertakers, they shall immediately comply with that request. Failure or delay to do so will place the holder/s in breach of that licence.

The Licence may be suspended where necessary to allow highway maintenance, events or any other necessary remedial work to be carried out at the location covered by the licence. Reasonable advanced written notice should be given wherever possible. The Council will not be liable for any loss of earnings arising out of the suspension of a licence.

Licences can be revoked at any time on the grounds that conditions have been breached.

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 2 years.

Licences are **non-transferrable** and can only be used by the named individual on the licence at the named premises.

4. APPLICATION PROCESS

Submission of the Application

Completed application forms must be accompanied by the following:

- Copy of public liability insurance to a minimum of £5 million
- A site plan (or plans), clearly showing the location of the premises highlighted by a red line, so the application site can be clearly identified. The plan should show the area covered by the licence in relation to the highway and be to a scale of 1:100. The plan should include the location of any entry/exit points to or from the premises and the precise location of any furniture to be placed on the highway (Please see further information for Pavement Licence Plans below).
- Evidence of no objection from neighbouring frontager(s) to use footway space outside their property (if applicable)
 - Furniture layout
 - Measurements of clear space, including walkways
 - Locations and types of barriers to separate the licenced area and the rest of the highway
 - Positions of any lighting columns, bins, trees, signs or any other existing furniture
- Photographs, brochures or drawings showing the design, dimensions and materials of the tables/chairs and any other furniture you propose to use

- (if renewal) reference of existing pavement licence. Please note that renewals can only renew what was originally applied for. If you wish to make any changes, then you will need to apply for a **new** application.

Pavement licence plan and layout

You must provide an adequate plan of the area that you wish to apply for a pavement licence in as part of your application. The plan provided must meet certain minimum standards:

- you must clearly define the proposed licensed area
- you must clearly define the surrounding highway area
- you must include measurements of the highway and the boundary of the proposed area
- you must include the location of any street furniture
- you must include a reasonable amount of 'smoke free' space within the licensed area with clear 'smoking' and 'non-smoking' areas with 'no smoking' signage displayed in the designated smoke free zones.

In considering whether the licence holder has made reasonable provision for no smoking areas, the Council must have regard to the guidance issued by the Secretary of State.

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 will be used for the purpose of consuming food or drink.

The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. Licence holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible. Your plan should clearly identify which area will be designated as 'non-smoking'.

No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.

The plan must show the view of the area 'from above'. It must clearly show the pavement or highway area that is proposed to be used. It must include details like lampposts or benches that are permanent fixtures in the area (known as street furniture). The proposed Licensed Area must be outlined in RED.

Site Notice

The applicant must post a notice on the premises to which it relates, on the same day the consultation period starts. Please use the template notice on our website at www.torridge.gov.uk/pavement-licences. 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.

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.

5. FEES

The fees for applying for a Pavement Licence are set locally but are capped nationally at £500 with respect to new applications and £350 with respect to renewals, paid online by credit or debit card.

The Council has determined not to charge the full fees. Current fees are detailed on the TDC website.

The fee is non-refundable in the event of refusal, surrender or revocation.

Applicants are advised not to submit any application unless they can satisfy all of the requirements and have included all of the required documentation.

The application shall be treated as a renewal if:

- A pavement licence (or temporary pavement licence) under the Business and Planning Act or Highways Act has been previously granted with respect to the premises in question.
- The application is from the same substantive applicant; and
- The extent, furniture, and days and hours of operation are the same as that most recent such licence.

In all other cases, the application will be considered to be a new application.

6. CONSULTATION

Once a valid application and supporting documents are submitted to the Council, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application.

Applications are consulted upon for 14 days, starting with the day after the day on which a valid application was made to the Council. It must be noted that the 14-day consultation period (and the 14-day determination period) does not include public holidays.

The Council will publish details of the application on its website.

Please note the consultation period does not start until all of the supporting documents have been received. An application is only considered as submitted once a completed application and all supporting documents have been received.

To ensure there are no detrimental effects to the application, in addition to members of the public, the Council will consult with the following:

- Highways
- Environmental Health
- Licensing Team
- Planning Department
- Devon & Cornwall Police
- Devon and Somerset Fire and Rescue Service
- Any other relevant person, body or organisation it believes necessary

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

Please note that the 'application fee' will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

7. SITE ASSESSMENT

The local authority will need to consider a number of factors, when determining whether to approve the 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.
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings, and its users, taking account of:
- considerations under the no-obstruction condition 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 fixed structures in place on the footway that already reduce access; and other users of the space, for example if there are high levels of pedestrian or cycle movements.

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. Please refer to section 4.1 of the Government's Pavement Licence Guidance on www.gov.uk.

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.

Determination

- grant the licence in respect of any or all of the purposes specified in the application. The Council's standard conditions will be attached to all Pavement Licences, or
- grant the licence for some or all of the part of the highway specified in the application, and impose additional conditions, or
- refuse the application.

8. CONDITIONS

The Council's standard conditions are set out in the Council's Pavement Licence Guidance and available on the website: www.torridge.gov.uk/pavement-licences. This guidance also includes the two national conditions, which are a no-obstruction condition and a smoke-free seating condition.

In some cases, additional conditions 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 to the extent that it is inconsistent with it.

9. APPEALS

There is no statutory appeal process against a decision to grant or refuse an application (or revoke a licence). However, the Council has an internal appeal process and information about this included in the Council's Pavement Licence Guidance and available on the website: www.torridge.gov.uk/pavement-licences

10. 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.

If a condition imposed on a pavement licence is breached, the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence or amend it with the consent of the licence holder. The highways 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

servicing 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.

In some circumstances, the Council may enforce or revoke a licence. If a condition imposed on a licence is breached, the Council will issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the Council may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing.

Local authorities are encouraged to regularly review licences and enforce any breaches.

The Council may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

- If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised.
- there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
- this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or
- the use is causing, or risks causing, anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up.
- It comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed
- The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period

Where a licence is revoked, a notice will be issued detailing the reasons for doing so.

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.

Licences and accompanying conditions must be clearly displayed at all times in a prominent place within the Pavement Café Premises.