

Pavement Licence Policy

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Contents

Introduction	3
Purpose	3
Scope	3
Who can apply for a Pavement Licence?	3
What can I do with a Pavement Licence?	4
Application Preparation	4
Application Fees.....	4
The Application Process.....	5
Application Form and Notice of Application	5
Consultation.....	5
Determination	5
Interaction with Alcohol Licensing	6
Delegated Authority.....	7
Licence Condition Compliance	7
Decision Appeals	8
Appendix A - Standard Pavement Licence Conditions.....	9
Appendix B – Template Notice of Application	11

Introduction

Pavement Licences are a temporary licensing regime introduced by The Business and Planning Act. They allow food and drink businesses the use of public highway adjacent to their premises to improve their customer capacity whilst maintaining social distancing.

Purpose

The Pavement Licence Policy's purpose is to facilitate socially distanced trade for food and drink businesses without compromising the safe and free movement of pedestrians, especially visually impaired and disabled people.

Scope

Relevant highway, or highway, means a highway to which Part 7A of the Highways Act 1980 applies and which is not over Crown land or maintained by Network Rail. The highway includes the carriageway for motor traffic and the pavement or footway for pedestrians.

Placing furniture on the highway without permission of the landowner, in this case the City of Wolverhampton Council Highway Authority, is an offence of, "wilful obstruction of the highway" (s.137 of The Highways Act 1980).

Items placed on private land are not subject to controls under the Highways Act 1980; however, businesses are advised to be mindful of the purpose of this policy and other legislation, such as The Health and Safety at Work etc Act 1974.

Anything that is done by a licence holder pursuant to a Pavement Licence does not need a Highways Act licence; it is deemed to have planning permission; and it is not street trading for the purposes of any of the various statutes regulating that activity.

A Tables and Chairs permit may still be applied for, as the Pavement Licence regime runs parallel, not instead of, the existing regime. Businesses are encouraged to apply for a 'Table and Chairs Licence' when the Pavement Licence regime expires on 30 September 2021.

It must be emphasised that the Council, in granting a Pavement Licence, cannot and does not seek to absolve anyone from any statutory risk which they may incur in placing or depositing any object on the highway.

Who can apply for a Pavement Licence?

Licences are granted to premises that are either:

- (a) used as a public house, wine bar or other drinking establishment;
- and/or
- (b) used for the sale of food or drink for consumption on or off the premises.

What can I do with a Pavement Licence?

The statutory purpose(s) of a Pavement Licence are

(a) to sell or serve food or drink supplied from, or in connection with the relevant use of the premises

and/or

(b) by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of the premises.

You can apply to place the following furniture on the highway adjacent to your business:

- (a) counters or stalls for selling or serving food or drink
- (b) tables, counters or shelves on which food or drink can be placed
- (c) chairs, benches or other forms of seating
- (d) umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink

This is a comprehensive list; no other types of furniture are licensable by a Pavement Licence.

Application Preparation

If the removal of existing street furniture is required for a business' intended use of the relevant highway, this must be agreed and completed by the Council prior to the application being made.

In exceptional circumstances, permission will be considered for those wishing to anchor enclosures but will be subject to the furniture within being removed at the end of each day.

Applicants will be expected to meet the cost of this work and provide full payment in advance. Requests of this nature should be made via email to licensing@wolverhampton.gov.uk

Application Fees

The fee of £25 is payable on application. This fee was set by the Non-Statutory Licensing Committee on 8 July 2020 and is subject to review. Application fees are non-refundable, including where the application is refused or the licence is surrendered.

The Application Process

Application Form and Notice of Application

All applications must be made via the Council's website.

Consultation

All applications are subject to public consultation. Upon application, a notice will be sent to the email address provided on the application. The applicant must, on the day of application, fix this notice to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises and securely so that the notice remains in place until the end of the public consultation period. The public consultation period is seven days beginning with the day after that on which the application is made. This excludes Christmas Day, Good Friday and bank holidays.

This notice is a statutory requirement. Failure to comply with this requirement will result in the application being rejected and application fees are non-refundable. The notice should be laminated or covered in a way to protect it from the weather.

Determination

Following the conclusion of the public consultation period, a seven-day determination period begins. This excludes Christmas Day, Good Friday and bank holidays. The local authority will also consult with Network Coordination, Traffic & Road Safety and the Disabled Access Team. The Council must take into account any representations made.

If the application is not determined within this period, the licence is deemed to be granted by the authority to the applicant.

Applications will be considered in light of the requirements below. Whilst applications that comply to these requirements will generally be granted, failure to do so does not necessarily mean an application will be refused as each application will be determined on its own merits.

- (a) A plan, detailing the premises, furniture, enclosure, highway and obstructions at a scale of no more than 1:100, should be included with the application. A red line should mark the perimeter of the premises and the area of relevant highway.
- (b) Furniture should not be located on the highway in areas where tactile paving is provided.
- (c) A minimum of 1.5 metres from the furniture placed on the highway to the nearest obstruction and/or carriageway should be available to pedestrians on the pavement. Where the highway is restricted to 1.5 metres between the licensable area and an obstruction, the maximum length of restricted width is six metres.

- (d) The licensable area should not prevent normal access to premises adjoining the relevant highway.
- (e) The licensable area should not prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway.
- (f) The licensable area should not 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.
- (g) The licensable area should not prevent any use of vehicles which is licensed by a pedestrian planning order or which is not prohibited by a traffic order.
- (h) The furniture should not cause a visual obstruction likely to cause injury to pedestrians or drivers.
- (i) The licensable area should be enclosed, with an access/egress point at least 1.2 meters wide. These may be constructed with planters.
- (j) The enclosure should be of a solid nature and height between 1.0 – 1.2 metres above ground level and must include a tapping rail. The material used for the enclosure should be lightweight in construction and portable but stable enough to prevent collapse if accidentally walked/stumbled into. Rope barriers should not be used. The material used should offer good colour contrast from the floor. Livery is licensed on the enclosure. However certain types of advertising may require additional planning consent and guidance should be sought via email from Planning@wolverhampton.gov.uk.
- (k) The licensable area and furniture within should not detract from the amenity of the area. Plastic tables or chairs should not be used.
- (l) The licensable area should be immediately adjacent to the premises.
- (m) The hours of operation shall not include 22:00 – 06:00.
- (n) The applicant should have a minimum of £5million Public Liability Insurance for the premises.
- (o) Any other reasonable requirement, particularly where there are challenges due to the location of the premises.

A Pavement Licence may be granted in respect of any or all of the purposes in relation to which the application is made and some or all of the part of the relevant highway specified in the application.

All Pavement Licences granted by City of Wolverhampton Council will expire on 30 September 2021. All Pavement Licences deemed to be granted shall have a duration of one year. A licence will only apply to one premises' location.

Interaction with Alcohol Licensing

A Pavement Licence, in respect of a business which has a current Premises Licence permitting the sale or supply of alcohol under The Licensing Act 2003, authorises off-sales and the consumption of alcohol within the licensable area. Every off-sale must be made at a time when the premises licence permits alcohol to be sold for consumption on the premises. The premises licence is treated as if it has been varied by the Pavement Licence. Licensees who have had an application for an off-

sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this provision.

If the premises is situated within an area where there is an order prohibiting the consumption of alcohol, signage advertising the prohibition of consuming alcohol outside of the licensable area must be displayed so as to be visible when exiting the licensable area. The licensable area must be supervised at all times. These are standard conditions of licence.

Delegated Authority

Authority is delegated by Non-Statutory Licensing Committee for the following actions:

Determination of applications with no representations:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Determination of applications with representations or applications non-compliant with policy:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Issuing notices of breach of licence conditions, or revoking licences:

- Licensing Officer, Licensing and Compliance Officer, Licensing Services
- Section Leader, Licensing Services

Review of decisions to refuse grant or revoke licence to:

- Section Leader, Licensing Services
- Commercial Regulation Manager, Business Services

Licence Condition Compliance

The licence holder may surrender a Pavement Licence at any time by giving written notice to the Council via email to licensing@wolverhampton.gov.uk.

A Pavement Licence does not give permission for the business to use the licensable area for any purpose in the regime, only those granted or deemed to have been granted. If there is a material difference between the way the space is being utilised by the business and the description provided in the application, the activities will be considered unlicensed.

Breaching the conditions of the licence will normally result in the serving of a notice on the licence holder requiring action to remedy the breach within a specified time. If the licence holder fails to remedy the breach within the specified time, the Council

may remedy the breach itself and recover the costs of doing so from the licence holder.

A serious breach, multiple breaches and/or failure to remedy a breach will normally result in revocation of the licence.

The Council may also revoke the licence if:

- some or all of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted;
- as a result of the licence there is a risk to public health or safety;
- as a result of the licence anti-social behaviour or public nuisance is being caused or risks being caused;
- as a result of the licence the highway is being obstructed (other than by anything done by the licence holder pursuant to the licence);
- anything material stated by the licence holder in their application was false or misleading;
- the licence holder did not fix the notice of application as prescribed in legislation.

Decision Appeals

Where an application is refused or a licence is revoked, an explanation will be provided to the applicant. Whilst there is no statutory right of appeal against a refusal to grant a Pavement Licence, a request to review the decision of the officer may be made to the Licensing Section Leader via email to licensing@wolverhampton.gov.uk. The Section Leader, or the Commercial Regulation Manager, can overturn the decision if they believe the deciding officer was wrong i.e. that no reasonable person would have made that decision.

Appendix A - Standard Pavement Licence Conditions

1. Any conditions published by the Secretary of State apply to this licence, including those published after the grant of this licence.
2. The conditions attached to this licence may be varied and added to by the Council at any time.
3. The licensable area must not prevent pedestrians from entering or passing along the highway.
4. A minimum of 1.5 metres from the furniture placed on the highway to the nearest obstruction and/or carriageway must be available to pedestrians on the pavement. Where the highway is restricted to 1.5 metres between the licensable area and an obstruction, the maximum length of restricted width is six metres.
5. The licensable area must not prevent normal access to premises adjoining the relevant highway.
6. The licensable area must not prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway.
7. The licensable area must not 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.
8. The licensable area must not prevent any use of vehicles which is licensed by a pedestrian planning order or which is not prohibited by a traffic order.
9. The furniture must not cause a visual obstruction likely to cause injury to pedestrians or drivers.
10. The licence holder must always have a valid public liability insurance policy for at least £5,000,000 covering the licensable area.
11. The licence holder must indemnify the Council against any claim in respect of injury, damage or loss arising out of the grant of the licence except where any claim in respect of such injury damage or loss is attributable to the negligence of the Council.
12. The licence holder must not allow the area to be used for any purpose other than that detailed in the granted licence. The layout of the area as detailed at the time of application must be maintained, unless expressly licensed otherwise in writing by the Council
13. Tables and chairs must be sited so that they are always clearly visible from inside the premises. Alternatively, the licensable area must always be supervised.
14. No music or entertainment is to be provided in the area licensed for tables and chairs.
15. If the premises is licensed to sell alcohol under The Licensing Act 2003 and the premises is situated within an area where there is an order prohibiting the consumption of alcohol, signage advertising the prohibition of consuming alcohol outside of the licensable area must be displayed so as to be visible when exiting the licensable area. The licensable area must be supervised at all times.
16. If the premises is licensed to sell alcohol under The Licensing Act 2003, no alcohol is to be served less than 30 minutes prior to the end of the Pavement Licence's operating hours.

17. All furniture must be cleared away no later than an hour after the Pavement Licence's operating hours.
18. No glassware must be permitted in the licensable area.
19. The licensable area must be kept clean and clear of all debris and litter during the licensed hours. The provision of suitable litter bins or ashtrays must be made available.
20. Any furniture used in the licensable area must be removed at the end of the licensable hours.
21. Any furniture used is safe, including but not limited to:
 - a. all tables and chairs are in good repair and stable;
 - b. any parasol and umbrella are fully secured to prevent them being dislodged;
 - c. the area to be used is defined and protected in the manner prescribed by the Council with regards to material, colour and dimensions.
22. Any damage to Council property caused as a result of the licence holder's activity will be repaired by the Council with all costs recharged to the business in question.
23. The licence holder must ensure adherence to any direction from the Council on livery, advertisements and logos.
24. A copy of the licence must be displayed in a prominent position as near as reasonably possible to the licensed area ideally on the door or window of the premises.
25. The licence holder agrees that the licence may be suspended if the Council is required to make the licensed area available for any event, works, or issues of public safety or any other reason it requires the area for.
26. Any heaters and/or electric lighting must be installed by a competent person and conform to IP65 for outdoor use.
27. The hours of trading must be as determined on the licence.
28. The licence holder must remove all or part of the tables and chairs for an identified period at the request of an authorised officer of the Council or a police constable.
29. All items placed on the highway must be free-standing. No drilling or excavation of the highway must be licensed.
30. The business must assist with any reasonable request, including inspection, from an authorised officer of the Council or police at any time when the business is open.
31. Licence holders must make reasonable provision for outside seating where smoking is not permitted.
32. All customers must be seated, with no vertical drinking.
33. The Council may withdraw this licence at any time for any other reason than those stated above.

Appendix B – Template Notice of Application

NOTICE

for display by an applicant for a Pavement Licence.

[ClauseS 2] of the Business and Planning Act 2020.

I/We *(name of applicant)*,

do hereby give notice that on *(date the application is made/submitted)*

[I/we] have applied to City of Wolverhampton Council for a ‘Pavement Licence’ at: *(postal address of premises)*

known as *(name premises is 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 to: Licensing@wolverhampton.gov.uk

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding Christmas Day, Good Friday and bank holidays)*

The application and information submitted with it can be viewed on the Council’s website: <https://consultation.wolverhampton.gov.uk/>

Signed

Dated *(date the notice was placed (must be the same date as date above)*