

Pavement Licences

Guidance Notes Application Form and Template Notice

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1 Introduction

The Levelling Up and Regeneration Act 2023 (the Act) makes permanent the provisions set out in Business and Planning Act 2020, which streamlined the process to allow businesses to secure pavement licences quickly.

On 31 March 2024, the Government commenced the pavement licensing provisions laid out in the Act. This permanent regime retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes to ensure the long-term sustainability of the model.

The purpose of the Act is to provide an easier and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

Anything that is done by a licence-holder pursuant to a pavement licence does not need a Highways Act permit; 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.

The following guidance should answer all queries and questions on how to apply for a Pavement Licence with Stafford Borough Council, please carefully read it through and complete the application form at the end of the document.

2 Permissions

Who operates the pavement licencing regime?

Stafford Borough Council is responsible for issuing “pavement licences”.

Who can apply?

Any 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.

3 Licences

Does an applicant need a premises licence under the Licensing Act 2003?

Applicants do not need a premises licence to apply for a pavement licence. All that's needed is to propose to use the premises for a use that includes sales of food or drink for consumption on or off the premises.

What is authorised on the highway?

The placement and use of removable furniture for defined purposes.

The licence authorises the placement of removable furniture on part of a relevant highway adjacent to the premises for either or both of defined purposes which are:

- (a) to sell or serve food or drink supplied from, or in connection with 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.

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licences and the need to comply with registration and hygiene requirements for food businesses, health and safety for employees and members of the public etc.

Where a licence is in force, no offence of obstructing the highway is committed, provided the use of the highway is in accordance with the licence conditions.

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

If the applicant has a licence to serve alcohol on-premises, temporary amendments to the Licensing Act 2003 contained in the Act will generally allow the sale of alcohol for consumption off the premises without needing to apply for a variation of the licence. This is in place until March 2025.

The grant of a pavement licence will not alter the permitted hours on an associated planning permission and/or a premises licence for the relevant premises. The Act does not say anything about the hours that the furniture can be out on the highway, but a pavement licence holder would not be entitled to serve food and drink using that furniture otherwise than in accordance with what the associated planning permission and / or licence permitting the food and drink already allows.

4 Furniture

What does “furniture” mean?

Furniture is defined as:

- (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, and
- (d) umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink;

This is a comprehensive definition – no other types of furniture are permitted. “Counters or stalls for selling or serving food or drink” encompass bars, and the permitted use includes the sale and service of food or drink from furniture placed on the highway under the authority of the licence.

There is no standard style for furniture, but quality and appearance are key issues. When considering applications, the Council will look closely at the quality and description of the furniture. Cheap plastic, damaged or dirty furniture is not acceptable.

This furniture is required to be removable; this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at the end of use for the day.

Furniture that is not removable and / or is not used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence.

Advertising boards (A-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.

Applications that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence. (See section 15.)

5 Highways

In respect of which highways can pavement licences be granted?

A pavement licence only grants an authorisation in relation to a “relevant highway”.

This means 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 Crown land are exempt (so a licence cannot be granted).

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under the Town and Country Planning Act 1990 is required.

If an applicant has already applied for permission to place furniture on the highway under the existing regime and their application has not yet been determined, they may proceed with that application. However, that applicant may opt to make a fresh application for a pavement licence under the new process. In these circumstances the pending application will be deemed to have been withdrawn. If the fee for the pending application has already been paid the authority will not charge a fee for the new application for a pavement licence.

6 Applications

How is an application made?

An application can be done electronically on the template provided on our website, www.staffordbc.gov.uk/pavement-licence or you can email ehlicensing@staffordbc.gov.uk

An application to the local authority must:

- contain full details of the applicant;
- specify the premises to which it relates;
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified;
- specify the part of the relevant highway to which it relates;
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown which must include the barriers surrounding the proposed area.
- specify the statutory purpose (or purposes) to which it relates.
- specify the days of the week on which, and the hours between which it is proposed to put furniture on the highway.
- describe the type of furniture to which the application relates.
- specify the date on which the application is made.
- provide a copy or photograph of the notice being displayed.
- be accompanied by evidence of public liability insurance for the area to be used in respect of anything to be done pursuant to the licence.

7 Operating Schedules

Does the applicant have to lodge an operating schedule?

No. The applicant does not have to propose conditions with the application. There is nothing equivalent to an “operating schedule” for a premises licence application under the Licensing Act 2003. It is up to the local authority to set out standard conditions and choose to add extra conditions to a pavement licence if required.

8 Application Fees

Is there an application fee?

Yes. The application and grant of a Pavement Licence is £200*, which is valid for 2 years.

If the application is refused, then the fee will be refunded minus an admin fee of £25.00.

A renewal application for existing licences is £200* and valid for 2 years.

**please note that fees are subject to annual increases, in line with the Council's fees and charges.*

9 Once application is submitted

What does the applicant have to do once the application is made?

A notice of the application must be fixed to the premises.

The applicant must post a notice of the application on the premises to which it relates, on the same day that they submit the application to the local authority. The notice should be affixed after the application is made.

The notice must be on paper easily visible and legible to the public. The applicant must ensure the notice remains in place for the public consultation period which is a period of 14 calendar days beginning with the day after the day the application is submitted to the local authority.

The Notice must contain the following:

- Name of applicant
- Date the application is made (i.e. submitted)
- Name of the local authority
- Postal address of the premises
- Name premises is known by
- Brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink)
- indicate that representations relating to the application may be made to The Licensing Department, Stafford Borough Council, Civic Centre, Riverside, Stafford, ST16 3AQ, or via email to ehlicensing@staffordbc.gov.uk, during the public consultation period and when that period comes to an end;
- the website address where the application can be reviewed www.staffordbc.gov.uk/pavement-licence
- Date the notice was placed (must be the same date as the application made)

See template provided at the end of this document.

The applicant is required to affix the notice to the premises, so it is easily visible and legible to the public. They must ensure the notice remains in place for the duration of the public consultation period (14 days). Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, i.e. care home or disability organisations nearby where individuals may be at risk.

All applicants are encouraged to talk to neighbouring businesses and occupiers *prior* to applying to the local authority and to consider issues around potential noise and nuisance as part of their proposal.

To assist applicants, Stafford Borough Council have set out the requirements for notices on their website.

customers.staffordbc.gov.uk/PavementLicenseSBC

It is sensible for applicants to record and retain evidence that they have complied with all requirements, including posting the notice at their premises.

10 Receipt of an application

What must the local authority do when it receives an application?

Stafford Borough Council will publish it and invite public representations.

Stafford Borough Council is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, this will be on their website.

Once the information is submitted, the Council has 28 days from the day after the application is made to consult on and determine the application. This consists of 14 calendar days for public consultation and then 14 calendar days to consider and determine the application.

11 Consultation Period

How long is the consultation period?

Public consultation is 14 calendar days, beginning with the day after that on which the application is made (not counting Christmas Day, Good Friday or bank holidays).

Who must local authorities consult?

The Council must consult the Highways authority; this is Staffordshire County Council. The Council must also consult other such persons as they consider appropriate.

12 Representation

Can members of the public make representations about the application?

Yes; members of the public (including residential neighbours) can contact the local authority to make representations about an application.

Local authorities must take into account any representations received from members of the public during the “public consultation” period.

13 Determinations

When does the local authority have to decide the application?

At the end of the public consultation period. The local authority may grant (wholly or in part) or reject an application at the end of the public consultation period.

How long does the local authority have to decide the application?

The Council has 14 calendar days to determine the application.

The local authority must decide the application within the “determination period”, being the period of 14 calendar days beginning with the first day after the public consultation period has ended. As with the public consultation period, no account is taken of Christmas Day, Good Friday or bank holidays in reckoning this period.

If the local authority does not decide the application within the determination period, the licence which was applied for is deemed to be granted by the authority to the applicant.

What are the local authority’s powers in determining the application?

The local authority may only grant (wholly or in part), with or without conditions, or reject.

Stafford Borough Council will consider several factors, when determining whether to approve the application. These include the scope for setting national or local conditions on the licence to make it possible to approve an application which would otherwise be unacceptable, for example:

- Proportionality - the number of tables being put out in relation to the outside size / footprint of the premises;
- public health and safety - 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 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;
- 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.
- whether there are other permanent street furniture or structures in place on the footway that already reduce access;
- 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 guidance, www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

National Conditions

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people.

Section 4.2 of the above www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians

sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm 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. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.

Any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users.

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.

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.

Can local authorities impose conditions which are not published?

Yes. When they grant a licence, the Council may impose reasonable conditions that may limit the maximum number of chairs and tables, or type of furniture, and / or times and days of operation, with justification for this.

Conditions imposed by a local authority should be proportionate and tailored to the applicant's premises or location.

14 How long will the new process be in place?

The pavement licence regime has been made permanent by commencement of the Levelling Up and Regeneration Act 2023.

15 Enforcement

In what circumstances can the Council enforce or revoke a licence?

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the local authority 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 authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

1. 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.
2. Or if there is evidence that:
 - 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.

The local authority may revoke a licence in the following circumstances:

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

2. 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
3. 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.

It is good practice for local authorities to give reasons where these powers are used.

If furniture continues to be placed on the highway, in violation of a notice served by the Council, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid.

If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

