

**Report to** Licensing committee

05 August 2020

**Report of** Environmental Health and Public Protection Manager

**Subject** Pavement Licensing Policy

**Item**

**5**

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**Purpose**

For members to consider adoption of a policy in relation to Pavement Licences.

**Recommendation**

That members adopt the Pavement Licensing Policy attached at Appendix A

**Corporate and service priorities**

The report helps to meet the corporate priorities of Great neighbourhoods, housing and environment and inclusive economy

**Financial implications**

Implementation costs of the policy will be met from existing budgets

**Ward/s:** All Wards

**Cabinet member:** Councillor Maguire - Safe and sustainable city environment

**Contact officers**

Tony Shearman, public protection manager

01603 989567

**Background documents**

None

## Report

1. Under the current coronavirus restrictions, in order to operate viably, food and drink hospitality premises are having to utilise as much outside space as possible. For many that do not have the benefit of their own outside areas, the only option is to consider use of the adjacent highway areas. Use of the public highway for business purposes in this manner requires a licence from the local authority.
2. These licences, commonly referred to as 'Tables and Chairs Licences', have traditionally been issued under the Highways Act 1980. However this can be a lengthy and costly application process, with a statutory 28 day consultation period, followed by a further wait if there are objections and a committee hearing is required to determine the application.
3. In order to assist businesses in obtaining an authority to utilise the highway in this manner, government have introduced a streamlined and cheaper process to obtain a licence, under the new Business and Planning Act 2020. These licences are referred to as 'Pavement Licences', are only available on a temporary basis and only to businesses providing food or drink for consumption on or off the premises.
4. The main points of this new application process/licence are as follows:-
  - a. Consultation period reduced to only 7 days
  - b. Application must be determined within 7 days following the consultation period.
  - c. If not determined within this 14 day period from the application being made, then the licence is deemed automatically granted.
  - d. Local authority can publish standard conditions that will apply to all licences.
  - e. Secretary of State may set further nationally applied conditions.
  - f. Application fee is capped at maximum of £100.
  - g. Power to revoke licences.
  - h. Licences must expire on or before 30 September 2021, with no facility to renew.
5. The furniture that may be authorised by the licence must be removable and is as follows:-
  - 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. and umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
6. A draft policy has been produced for adoption and is attached at Appendix A. Paragraph 3.3 sets out the consultation requirements, paragraphs 3.5 and 3.6 sets out the matters that may be considered in determining the application and the possible outcomes.

7. Appendix 2 of the policy lists the proposed standard conditions to be applied to all licences.
8. The draft policy indicates that Pavement Licences may only normally be considered appropriate between the hours of 0800-2300.
9. The determination period for the licence is only 7 days, which equates to only 5 working days, or less if there is a bank holiday. If the matter is not determined within that time then the licence would be automatically granted as applied for. If this were to happen then there would have been no scrutiny of the application.
10. This short timeframe means that the traditionally accepted method of referring contested matters to a relevant committee or sub-committee is not possible, as the committee report would need to be written, published and relevant parties informed at least a week before the hearing.
11. Therefore in order to determine the applications within the relevant timescale and still allow robust scrutiny of the application, delegated authorities are suggested as set out in section 6. of the draft policy, and summarised below:-
  - a. Where there are no representations, or concerns identified related to matters set out in para. 3.5 of the policy, these will be determined by the Licensing advisors.
  - b. Where there are representations or concerns identified in para. 3.5, these will be determined by the Licensing team leader or manager, but only in consultation with the Licensing committee chair or vice chair persons.
12. Due to the short timescales in implementing this new legislation and the necessity to be able to offer these application opportunities to businesses as soon as possible, there has been no public consultation on the content of this draft policy.
13. There is no requirement within the legislation to adopt a formal policy or to have a scheme of delegations, as every application would be automatically deemed granted after 14 days.
14. However, for the standard conditions to be applied to any licences deemed granted, then these are required to be agreed and published before the application is made.
15. The government has issued guidance which gives greater detail and is available here <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>





# Pavement Licensing Policy

Effective: 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, on 25 June 2020 the Government 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 Norwich City 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, tables and chairs licences are granted as by Norwich City Council. The fee is normally £467, but due to a desire to support businesses at this difficult time this is currently halved to £233 until the end of 2020 and upon receipt of an application there is a time consuming 28 day consultation period.

The new temporary legislation 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 to 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, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

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

## 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 done 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
- the required fee of £100
- 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 proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- where the proposed licenced area falls wholly or partly in front of another premises, written agreement from the owner/occupier of the premises must be provided;
- photos or brochures showing the proposed type of furniture and information on potential



siting of it within the area applied;

- (if applicable) reference of an existing tables and chairs licence application 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 Council has determined that the fee for applications will be £100

### 3.3 Consultation

Applications are consulted upon for 7 days, starting with the day after which a valid application was made to the Council.

The Council will publish details of the application on its website at [www.norwich.gov.uk](http://www.norwich.gov.uk).

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 other relevant groups of bodies, the full list is here:-

- Norfolk County Council Highways
- Norfolk Constabulary
- Norwich City Council Public Protection Team
- Norwich City Council Food and Safety Team
- Norwich Access Group

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.

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
1. 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 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;
- crime and disorder – will the proposed use have an impact on the likelihood of crime and/or disorder occurring;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site 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;
  - 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](#), 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

When considering applications, the Authority will have regard to:

- the Act
- any supporting regulations
- guidance issued by the Home Office
- this Statement of Licensing Policy
- any objections made
- the Human Rights Act 1998

- the Equality Act 2010
- any other relevant legislation or guidance

This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act.

When determining applications, the Authority will take account of any comments or representations made by:

- Norfolk County Council Highways
- Norfolk Constabulary
- Norwich City Council Public Protection Service
- Norwich City Council Food and Safety Team
- Norwich Access Group
- Any other relevant authority

The Authority reserves the right to consult any other body that it considers appropriate.

In taking licensing decisions the Authority will be mindful of the public sector equality duty under the Equality Act 2010. Decisions will be taken with due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Once the application is submitted the Council has 14 days from the day after the application is made 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,
- impose conditions, or
- refuse the application.

If the local authority does not determine the application within the 14 day 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 Pavement Café Licence 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 Pavement Café Licences 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 will only generally permit Pavement Licences between 0800 and 2300 hours

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) they can specify the duration of the licence, subject to a minimum duration of 3 months.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications for the maximum term, which is until 30 September 2021.

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 until 30 September 2021.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

### 3.9 Refusal of Applications

If the site is deemed unsuitable for a Pavement Café, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

## **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 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.

## **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 users to breach government guidance on social distancing by placing tables and chairs too close together;
  - 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 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; 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. Delegation of authority**

### **6.1 Determination of an application**

Once the 7 day consultation period has passed, provided that there are no relevant representations or concerns related to the matters detailed in paragraph 3.5 above, the application will be determined by an officer holding the position of Public protection licensing advisor.

Where there are relevant representations received, and/or there concerns identified as detailed in paragraph 3.5 above, the application will be determined by an officer holding the position or either the Public protection (licensing) team leader or Public protection manager, having first consulted with the Licensing committee chair or vice chair persons.

### **6.2 Licence Enforcement**

Where relevant circumstances apply as detailed in paragraph 5 above, and the serving of a remediation notice is considered the appropriate course of action, the authority to issue the notice shall be delegated to officers holding the position of Public protection officer.

Where relevant circumstances apply as detailed in paragraph 5 above, and revocation of the licence is considered the appropriate course of action, the authority to revoke the licence shall be delegated to officers holding any of the following positions, having first consulted with the Licensing committee chair or vice chair persons:-

Public protection (licensing) team leader  
Public protection (enforcement) team leader  
Public protection manager

## **7. Policy 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 Pavement Licences generally, relevant social distancing measures or as a result of local considerations within the City Council District.



**NORWICH**  
City Council

## **Notice of application for a Pavement Licence Business and Planning Act 2020**

I \_\_\_\_\_ (*name of applicant*)

do hereby give notice that on \_\_\_\_\_ (*date*)

I have applied to Norwich City Council for a 'Pavement Licence' at:

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\_\_\_\_ (*premises name, address & site location*)

Please provide a brief description of application [*e.g. outdoor seating to the front of the premises for serving of food and drink*]):

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Details of the application can be viewed online at [www.norwich.gov.uk](http://www.norwich.gov.uk)

Any person wishing to make representations to this application may do so in writing to  
[licensing@norwich.gov.uk](mailto:licensing@norwich.gov.uk) or Licensing, Norwich City Council, City Hall, St Peters Street,  
Norwich NR2 1NH by: \_\_\_\_\_ (*end date of 7 day consultation period*)

Signed \_\_\_\_\_

Dated \_\_\_\_\_



## Pavement Licence – Norwich City Council conditions

These are in addition to the national conditions that apply to all granted pavement licences (no obstruction, smoke free area)

The council may revoke this licence pursuant to the powers contained in section 6 of the Business and Planning Act 2020.

- 1 The licence holder shall indemnify the Council against any claim whatsoever, in respect of injury, damage or loss arising out of the grant of this permission other than injury, damage or loss which is attributable to the negligence of the Council.
- 2 The licence holder shall ensure that public liability insurance cover to the value of £5 million is in effect to cover the Pavement Licence and maintained for the duration of the licence period
- 3 The objects or structures shall be placed only on the licensed area and on no other part of the public highway.
- 4 The objects or structures shall be used only for the purposes stated above and only in connection with the premises and will be maintained in a tidy condition.
- 5 The objects or structures shall be immediately removed from the public highway upon the direction of an authorised officer or police constable in uniform.
- 6 The objects or structures shall be removed from the public highway forthwith to enable the passage of any emergency service vehicles or any vehicle engaged on the repair or maintenance of the public highway or apparatus within the public highway or any other vehicle authorised by the Council to proceed on the public highway.
- 7 Permission for the furniture and other objects is granted from **(time of day/month of year)** to **(time of day/month of year)** (subject to early or temporary termination under clause 13).
- 8 No amplified music or live music shall take place on the licensed area.
- 9 The objects and structures permitted by this licence, shall be removed from the licensed area each day outside of the licence period and stored securely.
- 10 The licence holder shall ensure that the licensed area is mainly enclosed by a barrier that is in keeping with the visual appearance of the area, not less than 800mm high and with no more than 150mm between the base rail and the ground, or other design as previously agreed in writing by the Council. Neither the barrier nor other furniture should carry strident advertising that goes beyond the purpose of discreetly identifying that the pavement cafe is associated with a particular business.



- 11 The licence holder undertakes to ensure that the licensed area is closely monitored and kept clean and tidy at all times.
- 12 The licence holder shall ensure that the footway or any other areas outside the licensed area must not be obstructed by patrons standing, or by the personal possessions of patrons.
- 13 No alteration to the highway surface shall be permitted to be carried out by the licence holder in implementing this licence
- 14 The Council may, by service of a notice in writing on the licence holder withdraw the licence temporarily:-
  - (a) in an emergency or in the event that the Council considers the exercise of the licence causes a substantial and unreasonable obstruction of the right of the public to pass or re-pass on the public highway,
  - (b) if the Council considers it to be necessary in connection with the exercise of any of its functions or the functions of any statutory undertaker or public utility,
  - (c) for any other reasonable cause.
- 15 Objects and structures must be sufficiently spaced to enable the social distancing requirements applicable at the relevant time.
- 16 The cost of rectifying any damage to the highway surface or to street furniture caused by any activity connected with the Pavement Licence will be recharged to the licence holder.
- 17 The licence is issued to the applicant only and is not transferable.
- 18 Where the licensed area extends beyond the frontage of the application premises, and requires consent from a third party, the licence, in as much as it relates to the area requiring the consent of the third party only, will remain in force only whilst the consent remains valid.
- 19 For licensed areas used for the consumption of food or drink, the licence holder shall make reasonable provision for seating where smoking is not permitted.
- 20 The licence holder shall take all reasonable steps to ensure that any furniture, items or persons associated with the use of the licence do not have the effect of:-
  - (a) preventing traffic, other than vehicular traffic, from—
    - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
    - (ii) passing along the relevant highway, or
    - (iii) having normal access to premises adjoining the relevant highway,

- (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.