

Lancaster City Council

Pavement Licensing Policy

Business and Planning Act 2020

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| Author | Licensing Manager |
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1. Introduction

The Business and Planning Act 2020 (“the Act”) was passed to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The Act included urgent provisions designed to make it easier for premises in England serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

Sections 1 to 10 of the Act created a temporary regime for the issuing of “pavement licences” by appropriate local authorities. Lancaster City Council (“the Council”) is the appropriate local authority for issuing pavement licences in the administrative area covered by the Council. The process introduced a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway.

The aim of the legislation was to support businesses to operate safely while social distancing measures remained in place and to provide much needed income over the summer months and protect as many hospitality jobs as possible.

The Levelling Up and Regeneration Act 2023 now makes permanent the provisions set out in the Act and all applications received after 31 March 2024 will be administered under the new regime.

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 sell food and or drink and place removable furniture over certain highways adjacent to the premises in relation to which the application was made.

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 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.
- Ancillary items such as hand sanitising stations required to ensure that the area is covid secure

The furniture is required to be removable, and must be capable of being easily moved, and stored away in a secure safe manner when not in use.

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.

2.6 Existing tables/chairs

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.

Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

Any existing tables/chairs that have been placed on the highway without permission under Part 7A of the Highways Act 1980 will require licensing under this regime.

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 completed application form:

- A plan showing the location of the premises marked 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 of furniture to be placed 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.
- Photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied.

- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- evidence 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 £2 million.

An application will not be considered complete (valid) until the application form, and all required documents have all been received. The public consultation period will not commence until the day after a complete application has been made.

All expired licences will be treated as new applications. If a licence holder applies for a renewal before the expiration of the existing licence, this will be treated as a renewal. The applicant must advertise the application for a period of 14 days. If the application is for the same layout only a copy of the public liability insurance will be required. If there is a change to the original layout, all documents will be required (e.g. plan, photographs of furniture etc.). A fee will be due in both cases.

3.2 Fees

The Council has determined that the fee for new applications will be £500.

The Council has determined that the fee for renewal applications will be £350.

3.3 Consultation

Applications are consulted upon for 14 days, starting with the day on which a valid application was made to the Council.

The Council will publish details of the application on its website at www.lancaster.gov.uk.

The Council is required by law to consult with the Highways Authority ie Lancashire County Council. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- Lancaster/ Morecambe Town Centre Management/ Business Improvement Manager, Carnforth Chamber of Commerce as appropriate
- Lancaster City Council Environmental Health Service (including Noise pollution and Food and Safety Teams)
- Lancaster City Council Planning Department
- Lancashire Fire & Rescue Service
- Lancashire Police
- Lancaster City Council Environmental Services (refuse/street cleaning)

Representations from the above parties or members of the public should be provided to Lancaster City Council's licensing team by emailing licensing@lancaster.gov.uk. The email should be headed Pavement licence representation followed by the name of the premises.

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

The application will be determined in accordance with the relevant sections of the Council's scheme of delegation outlined at **Appendix 4**

3.4 Site Notice

The applicant must, on the day the pavement licence application is made, fix a notice of the application 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.

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 having been complied with 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 the name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the consultation (14 days starting the day after the valid application is submitted to the Council).

A Site Notice template 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;
- 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 4.2 of

Inclusive Mobility [Inclusive mobility: making transport accessible for passengers and pedestrians - GOV.UK](#)

- the cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up of furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people, 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 Council, and to take any issues around noise, and nuisance into consideration as part of the proposal. Discussions with neighbours should consider any plans neighbouring businesses have also to place tables and chairs on the highway and plans for customers to queue outside.

3.6 Determination

Once the valid application is submitted the Council has 28 days from the day after the application is made (excluding public holidays) to consult upon and determine the application. This consists of 14 days for public consultation, and then 14 days to consider and determine the application after the consultation end date.

If the Council determines the application before the end of the determination period it can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

If the Council does not determine the application within the 14-day determination period, the application will be deemed to have been granted.

Where a valid application has been made and relevant representations are received the application will be determined by the Licensing Sub Committee.

3.7 Approval of Applications

On approving the application, the Council will issue a Pavement Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours of operation and appearance and location of the furniture corresponding to the application.

The Council generally will only permit Pavement Licences between 09:00 and 22:00 hours

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

3.8 Licence Duration

If the Council determines an application before the end of the determination period (which is 14 days, beginning with the first day after the public consultation period, excluding public

holidays) the Council can specify the duration of the licence, subject to a minimum duration of three months.

The expectation from the Government is that Councils will grant licences for 24 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 a two-year period.

If a licence is 'deemed' granted because the Council does not make a decision on an application before the end of the determination period, then the licence will be valid for two years starting on the first day after the determination period.

3.9 Refusal of Applications

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

There is no statutory appeal process against a decision to refuse an application.

A business may apply again after refusal but will have to make a new application and address the concerns raised in the original application.

4. Conditions

The Council's standard conditions can be found 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, and the Council will confirm the reasons why any additional conditions have been imposed.

The Act contains two national conditions that all granted and deemed granted licences must adhere to if the Council fails to publish their own conditions, or the published conditions fail to make provision for observing the national conditions.

The two conditions are:

- a no-obstruction condition
- a smoke-free seating condition

The Act also allows for the Secretary of State to produce, via Regulations, conditions for pavement licences, and to stipulate whether these conditions have effect as well as, or instead of, the conditions placed on a licence by the Council. If such conditions are created, this guidance will be amended to reflect them, and all licence holders will be notified of any changes this may create.

Where a Council sets a local condition that covers the same matter as set out in national conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. It remains the case 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 licence 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 and Alcohol and Entertainment Licensing. An applicant must ensure such permissions 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 Council can take action to cover any costs.

The Council can give notice to businesses that have placed furniture on the relevant highway without the required licence. If furniture continues to be placed on the highway, in contravention of the notice, the Council 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 three months of the notice being served, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

The Council can amend a licence in certain circumstances with the licence holder's consent.

The Council 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 – layout changes, including misuse of barriers.
 - 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.
4. Any requests for revocation will be raised by the Officer and determined in consultation with the Chair of the Licensing Sub-Committee and Licensing Manager.

6. Review Procedures

This Policy covers the Permission for Pavement Licences under the Business and Planning Act 2020. It will be reviewed every 5 years or updated to reflect changes to legislation as and when required.

BUSINESS AND PLANNING ACT 2020
Notice of Application submitted to
LANCASTER CITY COUNCIL
In respect of a Pavement Licence for

NAME OF PREMISES]
[FULL ADDRESS OF PREMISES]

NOTICE IS HEREBY GIVEN that in accordance with Business and Planning Act 2020 (*applicant name*) has made an application to Lancaster City Council on (*insert date*) for a Pavement Licence

The application is in respect of
(Description of the highway area to be utilised e.g area extending X meters from the frontage of the premises address)

And is seeking permission to utilise a Pavement Licence to facilitate
(description of the activities to be carried on)

The proposed hours of operation are as follows
(please insert days and timings)

A copy of the proposal and accompanying plan are available for inspection on the Councils website at [Licensing applications received - Lancaster City Council](#)

Any person wishing to make representations to the Council regarding this application may do so by emailing licensing@lancaster.gov.uk. The email should be headed Pavement licence representation (*insert premises name*). Alternatively, in writing to the Licensing Manager, Lancaster Town Hall, Dalton Square, Lancaster LA1 1PJ **to be received no later than 14 days from the date of this notice.**

Signed Name in Print
Dated this th day of 20XX

(The date of the notice must be stated as the day after the application was made)

Pavement Licences

Standard licence conditions

Please note that these conditions are not an exhaustive list.

Each application will be considered on its own merits and individual, specific conditions may be attached where deemed appropriate.

Where a licence is deemed granted, the applicant is deemed to be a 'licence holder' and is required to comply with all of the below conditions. In such circumstances, references to 'licensed area' should be understood to mean the area proposed for licensing within the application.

- The Licence will have effect for 2 years unless otherwise agreed.
- The issue of a License does not give or imply any permission to sell intoxicating liquor in the street. A separate premises licence will be required.
- The Licence shall be displayed in the window of the premises to which it relates.
- The use of the Licensed Area shall cease before 22.00 hours each day and shall not commence prior to 09.00.
- The Licensed Area shall be vacated immediately if requested by the Council, Lancashire County Council as Highway Authority, Lancashire Constabulary or other emergency service, statutory undertaker etc. without any liability for compensation, refund of application fee, or damage arising.
- An area of 1 metre around the Licensed Area must be regularly cleansed and floor debris and other waste immediately removed to the satisfaction of the Council's Chief Officer – Public Realm. The Council reserve the right to request the clearing of the licensed area if required for special one-off events for public safety.
- The Licence shall be rendered invalid, should the Licensee cease to own the premises or cease employment.
- The licence holder must at all times hold a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £2 million.
- Upon expiry or revocation of the permission the Licensee shall remove any structures from the highway and reinstate the highway to its former state and condition and in default thereof, the Council will be empowered to carry out such work of reinstatement and recover the expense in so doing from the Licensee.

- The licence holder must ensure that no activity undertaken by them by the placing of furniture on the highway will: prevent traffic, other than vehicular traffic, from:
 - 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),
 - passing along the relevant highway or having normal access to premises adjoining the relevant highway.
 - Prevent any use of vehicles which is permitted by a pedestrian planning order, or which is not prohibited by a traffic order,
 - Prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - 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.
- The licence holder must ensure clear routes of access are maintained, taking into Account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in the Department for Transport's Inclusive Mobility document. Inclusive mobility: making transport accessible for passengers and pedestrians - GOV.UK (www.gov.uk)
- Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted.
- Only furniture associated with the operation of the pavement licence and authorised as part of application plan shall be placed within the Licensed Area.
- Tables, chairs and umbrellas shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.
- No canopy or umbrella shall be lower than two metres in height and shall be adequately secured.
- All street cafe furniture, including barriers shall be removed and safely securely and stored at the end of trading each day, or at the end of the approved trading hours as defined by the Licence, whichever is the earliest.
- Suitable safe storage for street café furniture shall be identified by the applicant at the time of application for a licence.
- There must be adequate provision made for the collection and containment of litter and, the Licensee must provide suitable litter bins.
- The Licensee will ensure that the designated area is maintained in a clean and tidy condition. The Licensee shall also take appropriate precautions to prevent the immediate highway from becoming littered as a result of trading activities.
- The Licensee shall at all times when the pavement cafe is in operation make available

for customers toilets and hand-washing facilities, to wheelchair accessible standards where it is practicable and reasonable to do so.

- The Licensee will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or other persons.
- No speakers or playing of music shall be permitted.
- No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.
- No tables and chairs (street furniture) to be placed so as to cause an obstruction or nuisance to any Charter Market stall holder.
N.B. This may mean that a Pavement Licence cannot be used whilst the market is taking place.
- Where alcohol is permitted to be served or consumed in the licensed area glass receptacles including bottles cannot be used. Polycarbonate or similar material receptacles should be used.
- All patrons consuming intoxicating liquor must be seated at a table within the licensed area, there will be no vertical drinking.
- The pavement licence holder must ensure that the management team of the business to which the pavement license is attached, register and successfully complete the nationally recognised counter terrorism training product referred to as ACT Awareness E-Learning within 10 days of the notification of the grant of the Pavement License OR can demonstrate that the ACT Awareness E-Learning product Page 44 has successfully been completed within the preceding 12 months and that all staff employed by OR at the premises complete the ACT Awareness E-Learning within a reasonable period not exceeding 3 months from the notification of the grant of the Pavement License. (Act Awareness E-Learning certificates are provided on successful on-line completion.

National Licence Conditions

National Conditions [All section references are to the Business and Planning Act 2020]

Smoke-free seating condition

Section 5(6)

A “smoke-free seating condition” is a condition that, where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.

No-obstruction condition

Section 5(5)

A “no-obstruction condition” is a condition that anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6):

Section 3(6)

The effects referred to in subsection (5) are:

- 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.

| Function | | Decision Delegated to |
|--|---|--|
| Determination of Pavement Licence | Where, during the public consultation period, no representations have been received. | Licensing Manager (ref part 2 Section 7) |
| | Where, during the public consultation period, representations have been received. | Licensing Sub Committee (ref part 2 Section 5) |
| Revocation of a Licence | | Licensing Manager in consultation with Chair of Licensing Sub Committee. (ref part 2 Section 7) |

Ref – Councils Constitution