

Guidance Notes for Applying for a Pavement Licence

Business and Planning Act 2020

Important Information – Please read the below information before applying for a Pavement Licence:

Specified Application Form, Submission of Application Form and Fees Payable

Your Application for a Pavement Licence **must** be made using the Application Form specified by the Council;

- The Application Form must be completed in full and submitted to the Council by e-mail, (together with the requested supporting documentation), to the following e-mail address: licensing@sunderland.gov.uk;

Failure to complete your Application Form in full, or a failure to provide the requested supporting documentation will mean that your Application cannot be processed by the Council. The missing information, or documents will need to be provided before your Application can be processed;

If you have any queries about how to complete the Application Form then please email licensing@sunderland.gov.uk,

Consultation and Notice of Application Requirements

Your Application will be subject to a public consultation period of **fourteen days** beginning on the day after a valid application is received by the Council. The Application, (plus supporting documentation), will be published on the Council's website.

Representations can be submitted on your Application within the required public consultation period;

You must, on the same day that you submit your Application to the Council, fix a Notice of Application for Pavement Licence to the premises to which the Application relates. This Notice must :-

- Be readily visible to, and can be read easily by, members of the public who are not on the premises that are the subject of the Application;
- Remain in place until the end of the consultation period; and

You should ensure that you are able to provide evidence that this Notice has been

so fixed. This could be done when you submit your Application;

A template Notice of Application for a Pavement Licence is available on the Council's website.

It is recommended that before you submit your Application you, :-

- Talk to neighbouring businesses, occupiers and residents, so you can take any noise and nuisance issues into account when preparing your Application;
- Any services operated in the vicinity for vulnerable customers, for example, care homes, residents associations or disability organisations nearby where individuals may be at particular risk.
- Liaise with Officers from the Council's Highways Section to obtain advice and views on your proposed Pavement Licence from a highways perspective (if the application details differ from previous licences). This is advised because the Council's Highway Section, as the Highway Authority, will be consulted about your Application. The Highways Section can be contacted on e-mail highway.licensing@sunderland.gov.uk, and
- Consider how you can comply with National and Local Conditions regarding accessibility and smokefree areas.

If you have any other queries about your Application then please e-mail licensing@sunderland.gov.uk,

Before making a determination on your Application the Council is required to, :-

- Take into account any representations made to it during the public consultation period;
- As explained above, consult with the Highway Authority; and
- Consult such other persons as the Council considers appropriate.

The Council has decided to consult with the following in respect of each application that it receives for a Pavement Licence, namely, :-

- Northumbria Police : Licensing Coordinator Southern;
- Fire Authority
- Royal National Institute of Blind People;
- The Council's Environmental Services;
- For Applications within the Sunderland Business Improvement District : Sunderland BID; and
- Ward Councillors for the ward that the Application relates to.

Determination of Application – Determination Made and Deemed Determination :

The Council is required to determine your Application for a Pavement Licence by the end of the determination period;

If the Council does not determine, (ie. decide), your Application by the end of the determination period then the Pavement Licence which you applied for is deemed to be granted by the Council. The determination period is the period of fourteen days beginning on the first day after the end of the public consultation period;

A deemed Pavement Licence is granted for two years starting on the date after the determination period ended. If your Pavement Licence is deemed to be granted it will be subject to any Conditions which had been published by the Council on the day before your Application had been submitted;

If the Council determines your Application for a Pavement Licence by the end of the determination period the Council may : (a) grant a Pavement Licence to you in respect of any, or all of the purposes in relation to your Application and some, or all of the part of the relevant highway as specified in your Application; or (b) reject your Application and not grant a Pavement Licence;

The Council can only grant a Pavement Licence if it considers that, taking into account any Conditions subject to which it proposes to grant the Licence, nothing done by the Licence-holder(s) pursuant to the Licence would, :-

- 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; or
- Prevent any use of vehicles which is permitted by a pedestrian planning order, or which is not prohibited by a traffic order; or
- Prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway; or
- 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.

These circumstances are collectively referred to as the No-Obstruction Condition. Each Pavement Licence that is issued, (whether granted by the Council following a determination, or deemed to be granted), is issued subject to this Condition. This is a National Condition. Conditions are considered below;

Matters Taken into Account by the Council in Determining the Submitted Application:

In deciding whether, or not to issue a Pavement Licence the Council is exercising an

administrative function. In summary, when deciding individual Applications the Council is required to decide what is reasonably acceptable for the location in question, having regard to the temporary nature of the Licence.

The Council can only issue a Pavement Licence if it considers that, taking into account any Conditions which it is proposing to apply, that nothing done by the Licence-holder(s) would have an effect as specified above, ie. an obstruction would not be caused. In considering this the Council must have regard to the needs of disabled people and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State;

Applications will be considered by the Council on an individual basis, taking into account the following matters, :-

- Representations received during the public consultation period;
- Representations received from the Highway Authority as a statutory consultee;
- Representations received from other consultees that the Council considered it appropriate to consult with;

When considering the No-Obstruction Condition and whether furniture constitutes an unacceptable obstruction, (and also when considering enforcement action), the needs of disabled people will be considered. Examples of matters taken into account includes, :-

- Section 3.1 of Inclusive Mobility. This sets out a range of recommended widths that would be required, depending on the needs of particular pavement users. However, in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway;
- The need for a barrier to separate furniture from the rest of the footway, so that the visually impaired can navigate around the furniture, including colour contrast and a tap rail for long cane users. It may be appropriate to use on, or more rigid, removable objects to demarcate the area covered by the Pavement Licence. For example, the use of wooden tubs of flowers, although it is important to consider whether a particular type of barrier inhibits other street users, such as the mobility impaired : barriers may create a further obstacle in the highway;
- Any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with furniture, such as tables and chairs; and
- Where possible, furniture is non-reflective in nature and cannot be easily pushed, or blown over by the wind, thereby cause obstruction. For example, unless measures have been taken to ensure it is kept in place, the Council could refuse the use of plastic patio furniture;

What, if any, reasonable Conditions should be attached to the Pavement Licence as are necessary and proportionate to promote the legislation's objectives;

When determining Applications and considering what Conditions to apply, the following issues are to be considered, :-

- Public health and safety issues. For example, ensuring that reasonable crowd management measures are applied to the use of the area covered by the sought Pavement Licence;
- Public amenity, ie. whether the grant of the Pavement Licence might create nuisance to neighbouring occupiers by generating anti-social behaviour and litter;
- Accessibility issues. A proportionate approach should be taken to the nature of the site in relation to which an Application for Pavement Licence is made, its surroundings and its users. This will involve taking account of, :-
- Any other temporary measures in place that may be relevant to the proposal such as 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 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, such as if there are high levels of pedestrian, or cycle movements.

When considering an Application the Council will also have regard to its wider duties, which includes, :-

- The prohibitions on unlawful discrimination pursuant to Section 29 of the Equality Act 2010;
- The Public Sector Equality Duty per Section 149 of the Equality Act 2020; Human Rights Act 1998 issues;
- The need pursuant to Section 17 of the Crime and Disorder Act 1998 to have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent : (a) crime and disorder in its area, (including antisocial and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area; and (c) re-offending in its area; and
- Its duty under Section 89 of the Environmental Protection Act 1990 to keep relevant highways clear of litter and refuse;

Conditions :

If a Pavement Licence is granted it will be granted subject to those Conditions which the Council considers to be reasonable as are necessary and proportionate to promote the legislation's objectives. The Council has published Conditions to which it proposes to grant Pavement Licences. This covers National Conditions, ie. Conditions published by the Secretary of State. The Council has published general Local Conditions. The Council may also apply other Conditions that it considers to be reasonable taking into account the individual circumstances of the submitted Application, ie. Premises Specific Conditions. These could arise from matters that

have been raised during the course of the public consultation period;

In addition to the No-Obstruction Condition, there is also a Smoke-Free Seating Condition, which are both National Conditions. 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”*. The Secretary of State can issue guidance about whether *“reasonable provision for seating where smoking is not permitted”* has been made. Ways in which a Licence-holder(s) may comply with this “Smoke Free-Seating Condition” includes, :-

- Having clear “smoking areas” and “non-smoking areas” with signage displayed in accordance with Smoke-Free (Signs) Regulations 2012 in designated “smoke-free zones”;
- Ensuring that no ash trays, or similar receptacles are provided, or permitted to be left on furniture in “non-smoking areas”; and
- By providing a minimum of 2000mm distance between “smoking areas” and “non-smoking areas”, where this is possible

Duration of Pavement Licence :

If a Pavement Licence is granted, it can only be granted for such a period as specified in the granted Licence, this being a maximum of 2 years.

Interplay with Other Licensing Requirements :

The grant of a Pavement Licence only permits the placing of removable furniture on the highway in accordance with the terms of the issued Licence;

For the avoidance of any doubt, other regulatory frameworks still apply, such as the need for alcohol licences and the need for food business registration. If the premises has a licence to sell alcohol on the premises, then temporary amendments to the Licensing Act 2003 under the Business and Planning Act 2020 will generally allow the sale of alcohol for consumption off the premises without the need to apply for a variation of the licence. However, this temporary relaxation is due to cease on 31st March 2025 and it is important to note that any premises relying on this temporary relaxation must make alternative arrangements in the form of a variation of their Premises Licence. It must also be noted that the granting of a Pavement Licence does not alter permitted hours on an associated planning permission and / or a premises licences for the premises;

Enforcement and Revocation Provisions :

If you are granted a Pavement Licence and the Council considers you have breached any Condition of the Licence then the Council may, (ie. it has a discretion):-

- Revoke your Pavement Licence; or
- Serve on you a Notice requiring the taking of such steps to remedy the breach

as specified in the Notice within the stated time;

- If the breach is not remedied following the service of the Notice, the Council may, :-
 - Revoke the Notice; or
 - Take the steps itself identified in the Notice to remedy the breach and the Council can recover the costs of doing so from you; and

The Pavement Licence may also be revoked if the Council considers that, :-

- If some, or all of the part of the relevant highway to which the Licence relates has become unsuitable for any purpose in relation to which it was granted;

As a result of the Pavement Licence :

- (i) there is a risk to public health, or safety;
 - (ii) (ii) anti-social behaviour, or public nuisance is being caused, or risks being caused; or
 - (iii) (iii) the highway is being obstructed, (other than by anything done pursuant to the Licence);
- Anything material stated by you in your Application was false, or misleading; or
 - On the day that you submitted your Application to the Council you did not comply with the Notice of Application duties, as explained at Paragraph 8 above.

As an alternative to revoking a Pavement Licence the Council may seek to agree new, or modified Premises Specific Conditions that are sought to apply from an agreed date. The purpose of this approach is to try to address issues relating to the Pavement Licence, as opposed to the Council seeking to revoke the issued Licence. The Council will exercise discretion in deciding whether, or not it is appropriate to seek to agree new, or modified Premises Specific Conditions.

Appeal Rights :

With the exception of a possible Judicial Review Application, there is no statutory right of appeal against the Council's decision as to, :-

- A decision to reject an Application for a Pavement Licence;
- The purposes for which a Pavement Licence is granted;
- Those parts of the highway that are included within the granted Pavement Licence;
- The decision to serve a Notice to remedy breaches of any Conditions; or
- The decision to revoke a Pavement Licence.

Government Guidance :

Government Guidance regarding Pavement Licences (Outdoor Seating Proposal) can be found at :

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>