

Business and Planning Act 2020 Temporary Pavement Café Procedure

Introduction

The Council has adopted a Pavement Café policy to help promote vibrant and diverse areas of the town for people to enjoy.

Many businesses have had to cease trading for a significant period of time and others have had to modify their operations. The Business and Planning Act 2020 introduces a number of urgent measures to help businesses selling food and drink to recover and temporarily eases some of the legislative requirements in relation to planning and licensing. Social distancing guidelines remain in place.

The measures are designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence” for the placement of furniture such as tables and chairs on the public highway outside their premises. Permission is not required for private land not on the highway.

To support local businesses, and in line with the Government position, the Council has introduced a temporary pavement café procedure. This will help businesses to use outdoor space, which forms part of the public highway, provided that the area is available and suitable for them to do so.

Summary of the procedure

National Position

The Government has set out guidance on the temporary pavement café process:-

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

A copy of the Business and Planning Act 2020 is available at:-

<https://www.legislation.gov.uk/ukpga/2020/16/enacted>

Regard should be given to the legislation and Government Guidance.

Use of the Public Highway

It is a standard condition that clear routes of access along the highway must be 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. A minimum footway width will be included as a condition of the licence (Condition 6).

The Fire Service would expect that no street furniture would obstruct emergency exits or cause any trip hazard for persons evacuating in an emergency. In addition, the Responsible Person would be required to update their Fire Risk Assessment.

The Council will look to proactively engage with businesses around the use of the public highway. It is important that we also use the public highway to enable people to move safely around, whilst respecting social distancing. We will endeavour to work with businesses to help them to identify suitable areas of the public highway, where this is possible.

Enquiries can be sent to: licensing@allerdale.gov.uk

Who can apply?

A business which uses (or proposes to use) premises for the sale of food or drink for consumption can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

I have an existing Licence, can I alter or extend it?

Existing licences will be dealt with by Cumbria County Council (CCC) although a separate licence application can be made to Allerdale Borough Council (ABC) under the temporary legislation if required. You may proceed with an existing application with CCC or make a new application using the new process. If you apply to ABC prior to an application to CCC being determined, the undetermined application is treated as withdrawn.

What if my property falls within a Public Space Protection Order?

If your premises falls within a Public Space Protection Order (PSPO) you must make your application to Cumbria County Council. The following link will take you to the current PSPO (previously Designated Public Places Order (DPPO)), the maps attached to which illustrate where the Order covers:

<https://www.allerdale.gov.uk/en/community-advice-safety/community-safety/beer-consumption-public-places/>

Security

When determining the application security implications, particularly the risk to large groups of people will be considered. Please see section 5.3 of the guidance for further advice.

How to apply

Businesses will be able to apply for a temporary pavement café licence. This should be submitted only via the website at <https://bit.ly/pavelicence>

Businesses will be asked to confirm their agreement to the conditions of the licence in the online application form. Evidence of public liability insurance must also be provided and a suitable site plan. This must show the location of the premises making the application and the proposed area to be covered by the licence in relation to the highway outlined in red. If it is not to scale, measurements must be clearly shown. Evidence of the right to occupy the premises will be required together with photos or brochures showing the proposed type of furniture and information on the siting of it within the area applied for. The business must also be registered as a food business.

The applicant is required to affix a notice to the premises on the day the application is submitted to the local authority. It must be easily visible and readable by members of the public who are not on the premises. The applicant must ensure the notice remains in place for the public consultation period which is the period of 7 days beginning with the day after the day the application is submitted to the authority. When counting 'working days' public holidays are not included. Applicants are encouraged to keep evidence of this. A draft notice is available on our website.

Do I need to amend my alcohol licence?

The government has set out guidance on new temporary off sales permissions:

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill/alcohol-licensing-guidance-on-new-temporary-off-sales-permissions>

If the applicant has a licence to sell alcohol for consumption on the premises, temporary amendments to the Licensing Act 2003 will allow an automatic extension to the terms of most premises licences to allow the sale of alcohol for consumption off the premises without needing to apply for a variation of their licence. The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for the consumption on the premises, subject to a cut off time of 11pm or the closure time of an existing outside area, whichever is the earlier. Measures will also temporarily suspend existing licence conditions where they are inconsistent with the new off-sales permission.

Some premises will be excluded from the new off-sales permission. Organisations with a club premises certificate will not benefit from these provisions. Neither will premises who in the three years preceding 22 July 2020:

- Have had an application for an off-sales permission refused; or
- had their off-sales permission excluded at review; or
- had a variation application seeking to exclude off-sales accepted.

Determining the application

Once the application is submitted the Council has 7 days from the day after the application is made (excluding public holidays) to consult, and a further 7 days starting the day after the public consultation period to determine the application taking into account any representations.

The following bodies will be consulted by the Council as part of the application procedure:

- Cumbria County Council Highways Department
- Police
- Fire Service
- North West Ambulance Service
- Environmental Health Department

We aim to determine all applications within this period. However, if the application has not been determined within the timescale, the application will be deemed to have been granted.

The designated officer 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
- reject the application (there is no right of appeal for a temporary licence).

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. A licence is deemed to be granted if the determination period is not complied with.

A licence granted will not be valid beyond 30 September 2021. If deemed granted it will be for one year with effect from the day after the determination period. Please see condition 36.

Anything done by the licence holder pursuant to a pavement licence is not street trading for the purposes of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982.

Respecting residents

We are keen to support businesses to recover but it's important that we respect residential amenity and that nearby residents are not unduly disturbed by the use of TPCLs. The business in seeking a TPCL is therefore required to agree to the TPCL conditions, which include steps to protect residential amenity; including: hours restrictions, no vertical drinking, defined areas, the need to remove tables and chairs at the end of the trading period and the need to keep areas free of litter.

We will respond to any complaints received and liaise with the business to address any undue disturbance.

How can members of the public make representations about the application?

Members of the public can make representations to:

licensing@allerdale.gov.uk

We will consider relevant representations during the consultation period, which is the period of seven days starting the day after the application is submitted (excluding public holidays). The application will be determined on its relative merits having regard to the relevant representations.

We will publish the application and the deadline for representations on our website.

Enforcement

If a condition imposed on a licence is breached, the Council may revoke the licence or serve a notice specifying the steps required to be taken to remedy the breach within a specific

timescale. Failure to comply with the notice may result in the Council either revoking the notice or taking the steps required in the notice itself and recovering the costs of doing so from the licence holder.

The Council may also revoke a licence if it considers as a result of the licence:

- There is a risk to public health or safety;
- Anti-social behaviour or public nuisance is being caused or risks being caused; or
- The highway is being obstructed.

The licence may also be revoked if:

- Anything material stated by the licence-holder in the application was false or misleading; or
- The licence-holder did not affix the notice for the relevant period

The Council also reserves the right to revoke the licence where some or all of the relevant part of the highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed granted.

CONDITIONS

NATIONAL CONDITIONS

The Secretary of State publishes these conditions in exercise of his powers under Section 5(5) and 5(6) of the Business and Planning Act 2020.

The Act sets out two conditions which apply to pavement licences which are granted or deemed 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 issued by Cumbria County Council.

No-obstruction condition:

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) of the Business and Planning Act 2020.

Section 4.1 of the guidance will be taken into account when determining applications to consider whether the requirements of the no-obstruction condition are being met, in particular the following:

Condition relating to clear routes of access

It is a condition that clear routes of access along the highway must be 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 Section 3.1 of Inclusive Mobility. The minimum footway width required by the Council is outlined in Condition 6 below.

Smoke-free seating condition:

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.

LOCAL CONDITIONS

Use of the area

1. This Licence is personal to the licence holder.
2. Any equipment, furniture, structure or object shall be of good quality and design as may be approved by the Council and kept in good repair and condition.
3. The licence holder shall make no fixtures to or excavations of any kind or damage the surface of the highway which shall be left entirely undisturbed.
4. The designated area must be used solely for the purpose identified in the application.
5. The licence holder will be responsible for ensuring that the designated area is set out and managed in a way that maintains appropriate levels of social distancing during Covid-19 restrictions as defined by Government Guidance.
6. A minimum 2m width of unobstructed footway must remain available to passing pedestrians (taking into account street furniture, street lights etc.) In areas of high foot fall more than 2m of unobstructed highway may be required to allow for social distancing of pedestrian traffic.
7. All customers using the pavement café will be required to be seated.
8. It will be the responsibility of the licence holder to keep the licensed area clean and free of litter, during licensed/operational hours. Commercial waste from the licence holder's operations must not be disposed of in the litterbins provided by the Council or in the litterbins provided by the licence holder in the licensed area.
9. Tables are to be cleared as soon as possible after customers have left, to avoid blown litter and any litter on the highway in the immediate vicinity of the designated area arising from the consumption of refreshments must be removed as soon as possible.
10. Licence holders will be required to remove any umbrella or parasol if it obscures CCTV coverage and interferes with the detection and prevention of crime and disorder.
11. The licence holder shall ensure that the pavement café area is properly supervised by a member of staff at all times the pavement café is open.

12. Alcoholic drinks must be served in polycarbonate or shatterproof glasses where available.
13. No alcohol shall be sold or consumed on the designated area unless in compliance with any Licence issued by the Licensing Authority and in accordance with any local byelaws and Public Space Protection Orders.
14. No amplified music is allowed in the pavement café area.
15. Use of the Pavement Café area must cease by 22.00hrs.
16. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis.
17. Applicants shall maintain a smoke free environment in accordance with the National smoke-free condition.
18. Tables and chairs shall not be affixed to the highway.
19. Furniture should be safely removed at the end of the specified trading period and be stored away from public areas in such a location where it is safe, secure and unable to be accessed by members of the public.
20. The area should be demarked by suitable barriers that protect the safety of pedestrians and users. A tapping rail (of at least 150mm depth) fixed at a height no more than 200mm above ground level shall be provided.
21. Where repair, maintenance or alteration of the pavement/highway is to be undertaken, the Council will endeavour to give the licence holder notice unless it is urgently required as a Covid 19 control measure. The Council will not be liable for any loss of earnings whilst repair/maintenance is carried out. The licence holder must allow the Council reasonable access for such works.
22. The licence holder will be responsible for any damage, including stainage, to the highway. The licence holder must as soon as reasonably practicable wash down or remove any stains from spills of food or liquid.
23. The licence holder shall be responsible for any rates, taxes and other outgoings which may be payable in respect of the use of the designated area.
24. Any menu stand/advertisement board must be used only for the advertisement of menus and must be placed within the designated area.
25. No equipment, furniture, structure or object may be placed on the route for emergency vehicles, which must be kept clear at all times.

Compliance and Enforcement

26. The Council reserves the right to issue a notice or revoke the licence in the event of a breach of condition, or when it deems that the area is no longer suitable (or the other

reasons under “Enforcement”). The granting of a temporary licence does not convey any ongoing legal entitlement to use the highway.

27. The Council shall be entitled to suspend the temporary licence on the occurrence of a special event, as a Covid 19 control measure, or any other circumstance, which the Council considers to necessitate a temporary suspension.
28. No more than 10 seats may be provided unless adequate welfare facilities are provided in line with District/Borough Council

Legal

29. The licence holder shall indemnify the Council against all actions, proceedings, claims, demands and liability which may at any time be taken, made or incurred in consequence of the use or presence of the chairs and tables and other objects.
30. The licence holder shall make no claim or charge against the Council in the event of the equipment, furniture, structure or object being lost, stolen or damaged in any way from whatever cause.
31. The licence does not authorise any unlawful interference with the convenience of persons using the highway or affects the rights of owners of the premises adjoining the highway or the rights of the Utility Companies. You must give access to emergency services.
32. The subletting of the permission granted by the licence is prohibited.
33. Licence holders are required to obtain public liability insurance covering the business for up to £5,000,000 at all times the pavement café is operational. It is the responsibility of the licence holder to forward up to date copies of insurance certificates as and when they expire. Failure to comply with this condition could result in the revocation of the Licence.
34. The grant of a pavement café licence shall not be deemed to give any approval or consent which may be needed under any byelaw, enactment or regulation other than cafes under section 115c of Part VIIA of the Highways Act 1980. For the avoidance of doubt this includes the requirement to seek and obtain planning permissions and/or advertisement consent.
35. The Council reserves the right to alter the layout of the facility to accord with any amendments imposed by the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005).
36. This Licence shall expire on 30 September 2021 unless the licence is deemed granted. If it is deemed granted, the licence duration will be one year, starting with the first day after the determination period. The determination period is the period of seven days beginning with the first day after the public consultation period. The public consultation period is the period of seven days beginning with the day after that on which the application is made.

A licence will not be granted unless the applicant agrees to all of the above conditions.

Application Form

All applications must be made via the website, based upon the following format. Please note that paper applications will not be accepted.

Applications can be made at <https://bit.ly/pavelicence>