

Hastings Borough Council

**Business and Planning
Act 2020**

**Pavement Licensing
Guidance and Conditions**

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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 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 Hastings Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, tables and chairs permissions are granted as pavement licences by East Sussex County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28 day consultation period.

The new temporary measure 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 café

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
- sun 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 Councils 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 online Application Form
- the Councils fee of £100. Payment will be required by debit or credit card.
- 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,
- evidence of the right to occupy the premises (e.g. the lease);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;

- (if applicable) reference of existing pavement licence 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 Councils' local conditions, and any national conditions will be satisfied.

3.2 Fees

The fee for applying for a licence under the new process are set locally, but are capped at £100.

3.3 Consultation

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

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

- Hastings Borough Council Environment & Place
- East Sussex Fire & Rescue Service
- Sussex Police
- East Sussex Highways Authority

Members of the public and others listed above can contact Hastings Borough 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 Councils' 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 (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;
- 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](#)
 - other users of the space, for example if there are high levels of pedestrian or cycle movements, and
 - the use of temporary barriers to separate the designated area from pedestrians to maintain social distancing.

Applicants must 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

Once the application is submitted the Council have 14 days from the day after the application is made (excluding public holidays) 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, and 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.

Copies of the Councils' 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. A sample of these conditions/criteria can be found at Appendix 3.

The Council generally will only permit Pavement Café's between 09:00 and 23:00hrs.

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

The Council may determine an application before the end of the determination period which is 7 days, beginning with the first day after the public consultation period, excluding public holidays.

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 30th September 2021.

All licences 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.

The decision of the authorised officer, in consultation, will be final there is no statutory appeal process against decision to refuse an application.

4. Conditions

The Councils' 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. The National 'no obstruction' conditions are shown in Appendix 3.

5. Enforcement

The Council aim 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 Councils 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.

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 Councils will give reasons where these powers are used.

APPENDIX 1

BUSINESS AND PLANNING ACT 2020

Section 2 of the Business and Planning Act 2020.

Site Notice for Application for a PAVEMENT LICENCE

I/We *(insert name of applicant)*,

do hereby give notice that on *(insert date of application)*

[I/we] have applied to Hastings Borough Council for a 'Pavement Licence' at:

(insert postal address of premises)

known as:

(insert name premises known by)

The application is for:

(brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink)

Any person wishing to make representations to this application may do so by writing, preferably by email, to:

Licensing@hastings.gov.uk

or send to Hastings Borough Council, Head of Environment & Place, Muriel Matters House, Breeds Place, Hastings, TN34 3UY

by:

(insert last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))

The application and information submitted with it can be viewed on the Council's website at:

www.hastings.gov.uk/

Signed:

Dated:

(insert date the notice was placed which must be the same date as the date of application)

APPENDIX 2

Standard Pavement Licence Conditions

1. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that Hastings Borough Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc. or any other reasonable cause. This may mean that the pavement café will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
2. Hastings Borough Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Café. This must indemnify Hastings Borough Council and East Sussex County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.
3. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
4. Hastings Borough Council and/or East Sussex County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Councils will not be responsible for its safekeeping.
5. The licence holder is not to make or cause to be made any claim Hastings Borough Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
6. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
7. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 1.5 metre clear walkway must be maintained for the use of pedestrians.
8. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Café, which should not, in normal circumstances, extend beyond the width of the premises frontage.
9. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.
10. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
11. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.
12. The operation of the area must not interfere with highway drainage arrangements.

13. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
15. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by Hastings Borough Council or the Highway Authority.
16. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the licensed area.
17. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Facility outside the hours in force for the premises itself.
18. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
19. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
20. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
21. Hastings Borough Council reserve the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

APPENDIX 3 – Mandatory Conditions

No-obstruction condition

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such 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 tables and chairs;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Provision for seating where smoking is not permitted

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

Public Health England has published [guidance for smokers and vapers during the COVID pandemic](#).

Hastings Borough Council Local Pavement Licence – Sample Conditions/Criteria

Criteria	Explanation
Minimum 1.5 metre of footway to be maintained	A clear 1.5 metres must be maintained between the T&C area and the edge of the kerb or other highway infrastructure to allow pedestrians to safely pass. Where this is not clear, it must be marked with temporary tape or paint.
No A boards	A boards or any other advertising structure must not be placed at or near the premises if T&C are provided as they are likely to be an obstruction.
Barrier is strongly recommended	It is recommended a barrier is provided between the seating area and the rest of the footway to provide partially sighted people something to assist them in passing the area safely. If not a barrier some other form of clear demarcation is required.
Chairs should not push out onto the pedestrian priority area	Seating must be positioned so that users do not push back into the area occupied by pedestrians. A clear gap should be provided between seating and any barrier around the seating area.
No seated or standing customers within 1 metre of a live carriageway.	To prevent users falling into a live carriageway no seating is permitted within 1 metre of the edge of the kerb / live carriageway. (applicable in areas where the seating is being provided with a minimum 1.5m gap between it and the establishment)
Hot food equipment to be segregated	Any equipment used to dispense / serve hot food should be segregated from pedestrians passing the establishment to avoid risk of burns.
Heating appliances	No heating appliances to be provided in these areas to avoid risk of burns
Public Liability Insurance	The minimum level of indemnity must be £5 million in respect of any one incident. However, where the seating area is adjacent to the highway £10 million cover will be required.
Visibility splays to be maintained.	At or near junctions a clear visibility splay must be maintained to allow drivers of vehicles entering or exiting the junction is not impeded.
Pedestrians to be appropriately directed if leaving the footway.	Where pedestrians are required to leave a footway to pass a pavement licence area this will at an appropriate location. i.e at a dropped kerb or where a suitable ramp has been provided at a full height kerb to ensure mobility impaired are not adversely affected. This will require highway authority approval.
Communal areas	Where the space allows, the seating should be considered for communal use between two or more establishments.
Contact details displayed	Contact details of responsible people must be on display so any issues can be appropriately referred.