

Borough Council of  
**King's Lynn &  
West Norfolk**



# **Objects on the Highway (Tables & Chairs) Pavement Licensing.**

Effective: 12<sup>th</sup> April 2021  
Version 2 – Draft April 2021

## Contents

<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>1</b>	<b>Introduction</b>	<b>3</b>
<b>2</b>	<b>Scope</b>	<b>3</b>
<b>3</b>	<b>Application and Determination of Pavement Licences</b>	<b>4</b>
<b>4</b>	<b>Conditions</b>	<b>9</b>
<b>5</b>	<b>Enforcement</b>	<b>9</b>
<b>6</b>	<b>Review Procedures</b>	<b>10</b>
<b>Appendix 1</b>	<b>Site Notice Template</b>	<b>11</b>
<b>Appendix 2</b>	<b>Standard Pavement Licence Conditions</b>	<b>12</b>
<b>Appendix 3</b>	<b>National Conditions</b>	<b>15</b>

## **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 2022 (subject to parliament approval).

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from The Borough Council of King's Lynn & West Norfolk 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 Norfolk 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 10-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, ice cream parlours and venues where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

## 2.3 Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

## 2.4 Type of furniture permitted

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers and other articles used in connection with the outdoor consumption of food or drink.

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

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

## 2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

# 3. Application and Determination of Pavement Licences

## 3.1 Submission of the Application

An application for a Pavement Licence must be made to the Council, via <https://secure.mipermit.com/parkingoperations/Application/ProductForeword.aspx?PermitType=OT> **HER** with the following required to be submitted with the application:

- a completed Application Form
- the required fee of £75, paid by credit or debit card on the above link as part of application
- 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,
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- 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 Council's 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. The Council has determined that the fee for applications will be £75.

### 3.3 Consultation

Applications are consulted upon for 10 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 <https://www.west-norfolk.gov.uk/>

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

- Highways Authority

Members of the public and others listed above can contact the Council to make representations, by contacting:

Operations Manager Town centres & Events  
 BCKLWN  
 Kings Court  
 Chapel Street  
 Kings Lynn  
 Norfolk  
 PE30 1EX

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

### 3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of the site notice requirement must be supplied to the Council.

The Site Notice must:

- state that the application has been made and the date on which it was made;

- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the public consultation (5 working 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, <https://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility>
  - businesses applying for a pavement licence will also need to have regard for their own duties under the Equality Act 2010, such as their duty under s.29 of the act not to discriminate
    - Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke free' zones in accordance with Smoke-free regulations 2012. Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible. No ash trays or similar receptacles to be provided or permitted to be left where smoke-free seating is identified. Further, businesses must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority and so take any issues around noise, and nuisance into consideration as part of the proposal.

### **3.6 Determination**

Once the application is submitted the Council has 10 working days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 5 working days for public consultation, and then 5 working 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 10 working day period, the application will be deemed to have been granted.

### **3.7 Approval of Applications**

The Council may approve applications meeting the criteria contained within these guidelines.

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

A copy of the Council's standard conditions, which will be attached to all Pavement Café Licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement Café's between 09:00 and 22:00.

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 5 working days, beginning with the first day after the public consultation period, excluding public holidays) they may specify the duration of the licence, subject to a minimum duration of 3 months.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2022 (subject to parliament approval).

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 for a year.

A licence granted or deemed to be granted will not be valid beyond 30 September 2022 (subject to parliament approval).

### **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.

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



#### **4. Conditions**

The Council's standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

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

However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National 'no obstruction conditions is shown in Appendix 3.

If, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

A licence granted or deemed to be granted will not be valid beyond 30 September 2022 (subject to parliament approval).

#### **5. Enforcement**

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a Consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
  - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together, or where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
  - the highway is being obstructed (other than by anything permitted by the licence);
  - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;

- it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
  - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

## **6. Review Procedures**

This practice covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This practice will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Café's generally, relevant social distancing measures or as a result of local considerations within the Borough Council of Kings Lynn & West Norfolk.

**Site Notice Template for display by an applicant for a Pavement Licence.**

**Section 2 Subsection 5 of the Business and Planning Act 2020.**

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] have applied to The Borough Council of Kings Lynn & West Norfolk for a 'Pavement Licence' at:

*(postal address of premises)*

known as

*(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 email or in writing, preferably by email, to:

Operations Manager Town centres & Events  
BCKLWN  
Kings Court  
Chapel Street  
Kings Lynn  
Norfolk  
PE30 1EX

[towncentremanager@west-norfolk.gov.uk](mailto:towncentremanager@west-norfolk.gov.uk)

by: *(last date for representations being the date 5 working 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:

<https://www.west-norfolk.gov.uk/>

Signed .....

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

## Business and Planning Act 2020

### STANDARD LICENCE CONDITIONS

#### TABLES AND CHAIRS ON THE HIGHWAY

The following conditions will be applied to every licence granted under the above Act:

1. This licence is granted in accordance with compliance with the advice given in the guidance notes issued at the time of application
2. The tables and chairs placed on the highway after the granting of a licence must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval of the Licensing Authority.
3. The amenities must be removed from the public highway at the end of the permitted period each day. (To be used in all cases, except where consent for picnic tables is granted).
4. All tables and chairs authorised by the licence must be removed by midnight on the day the licence expires unless a renewal licence has been applied for and granted. Renewals must be applied for at least 3 weeks prior to expiry to allow sufficient time for the application to be considered.
5. Failure to pay the licence fee and return the signed licence by midnight on the day the previous licence expires will render the licensee in breach of the Standard License conditions and subject to enforcement.
6. The Licensee shall maintain a public liability insurance policy up to the value of £5 million pounds against any liability, loss or damage, claim or proceeding whatsoever arising under Statute or Common law in respect of the placing and maintaining of the tables and chairs on the highway or their removal there from.
7. The Licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times. Under your duty of care you must ensure that any waste produced is handled safely and in accordance with the law. You must keep all waste safe, prevent it from escaping from your control and ensure that it is only handled or dealt with by persons that are authorised to deal with it.
8. The Licence may be suspended where necessary to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence. A reasonable period of notice will be given to the licensee where possible. The Highway Authority will not be liable for any loss of earnings arising out of the suspension of a licence.
9. Any umbrellas permitted must not protrude beyond the designated boundary of the licensed area. They shall be kept in good condition so as not to detract from the appearance of the street. You are advised that enclosed structures (including gazebos) and the like will not be permitted within the proposed boundary of the licensed area.
10. In areas of significant footfall (to be determined by the Licensing Authority), when in use, the pavement café area will need to be enclosed, to demarcate the licensed area and contain the tables and chairs, thus making it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians.

11. The placing of speakers or any other equipment for the amplification of music within the licensed area is strictly prohibited unless authorised by a premises licence issued under the Licensing Act 2003. Any such authorised music must not cause a nuisance or annoyance to others.

12. Any sales of alcohol within the licensed area must be authorised by a premises licence issued under the Licensing Act 2003.

13. Any material alteration to the Means of Escape, which affects people using the Means of Escape, inside or in the immediate vicinity outside the premises must be recorded in the premises' Fire Risk Assessment as a significant finding. Control measures should be put in place to reduce risk within the area as well as recording them. A review of the hazards and risks should be ongoing throughout the period the premises are in use.

14. This Licence covers the use of amenities by customers for consuming food or refreshment which have been purchased from the licenced establishment. This Licence does not permit the use of the amenities for any other purposes at any time.

15. No additional charge shall be made to customers for the use of the tables and chairs within the licensed area.

16. The licensee may only use the land for the placing of tables and chairs in the course of his business only during the hours permitted by the licence and only within the defined area applied for.

17. No tables and chairs or barriers may be placed in the area until a licence has been granted.

18. No other items may be placed on the highway within the licensed area other than that approved in accordance with the application and the licence when granted. If the premises has a licensed tables and chairs area, then any Advertising Board must be contained within the agreed seating area and not outside the area.

19. This licence will not be renewed automatically. Compliance with the terms of conditions of any previous licence will be taken into account at any application for renewal. The Licensing Authority reserves the right to refuse renewal applications where appropriate.

20. The licensee is responsible for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the activity (if requested to do so by the Highway Authority). The permanent surface reinstatement shall be carried out to the satisfaction of the Highway Authority.

21. The license is issued to the applicant only and is not transferable.

22. These conditions may be varied where appropriate to reflect any changes in local circumstances.

23. The footway must not be obstructed by patrons standing between tables, chairs and the kerb, or by the personal possessions of patrons.

24. Any fee is for the administration and grant of the licence. No refunds will be made in the event of a surrender of the licence before expiry. There is no automatic right to appeal against refusal of consent.

25. The Highway Authority may withdraw this consent at any time upon giving the licensee seven days' notice in writing. Upon withdrawal of the consent the licensee shall remove the amenities from the public highway and, in default, the Highway Authority may remove the amenities and recover from the licensee its cost in so doing. Enforcement Measures Periodic inspections of pavement cafés will be made by the Council to ensure compliance with the Pavement Café practice and Guidance Breach of Conditions

26. Where a breach of a license condition is noted, the operator of the pavement café will be served with both verbal and written notice of the offence(s) being committed. The operator will be given 7 days to comply.

27. Where the Licensing Authority serves a notice on the licensee requiring him/her to remedy any breach of the terms of this consent, and the licensee fails to comply with the notice, the Licensing Authority may itself take the steps required by the notice and recover from the licensee any expenses incurred.

28. A further inspection will be made of the pavement café 7 days after the notice is served. If remedial action has not been taken then a Notice of Contravention will be issued further outlining the nature of the offence(s) and informing the operator that they are to remedy the breach or remove the pavement café from the highway within a period of 7 days from the date the notice is served.

After the 7 day notice has expired, a further inspection will be made and if it is found the breach has not been remedied then the pavement café furniture will be removed by the Council or the Police and the licence revoked.

29. If the pavement café continues to operate once the licence has been revoked then any objects/furniture occupying the highway will be removed from the without further notice.

### **Unauthorised Pavement Cafés (a café without a valid licence)**

30. Where an unauthorised pavement café is found to be operating without the correct permissions, the operator will be served with both verbal and written notice of the requirement to remove the pavement café by the Highway Authority from the highway within 7 days.

31. After the 7-day notice has expired, a further inspection will be made and any objects/furniture occupying the highway will be removed from the highway without further notice.

32. An inventory detailing the confiscated items will be made and a receipt issued to the licence holder/operator. Items removed by the Highway Authority will be subject to a release fee. This fee will be reviewed annually. If the items are not collected within 21 days of the date of seizure the Highway Authority will dispose of them.

33. Persistent variances from the conditions will result in the licence being revoked. No part of the fee shall be refunded should the licence be revoked

April 2021

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

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 <https://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility>.