



Northumberland

County Council

Pavement Licence Information Sheet

Local Services Directorate

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1 Introduction

Pavement Licences are a temporary measure brought in under the provisions of Part 1 of the Business and Planning Act 2020 to allow businesses to place removable furniture on certain highways adjacent to their premises for the purposes of selling/serving and/or consuming food and drink. As confirmed in the 2020 Act, it is expected that these measures will remain in force until 30th September 2021.

Such Licences are intended to make it easier for businesses serving food and drink (including - but not limited to - bars, restaurants and cafes) to serve and/or seat customers outdoors through temporary changes to planning procedures and alcohol licensing. These measures have been introduced by the government to assist in supporting businesses affected by the Coronavirus lockdown, given the ongoing need for social distancing.

Under the provisions of the Business and Planning Act 2020, a person whose use or proposed use of any premises in England is or includes “*relevant use*” may apply to the Council for a Pavement Licence in respect of those premises.

A Pavement Licence allows a licence-holder to put removable furniture on part of a “*relevant highway*” adjacent to the premises for either or both of the following purposes:

- (a) use of the furniture by the licence-holder to sell or serve food or drink supplied from, or in connection with relevant use of, the premises;
- (b) use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of, the premises.

A “*relevant use*” means either or both of the following:

- (a) use as a public house, wine bar or other drinking establishment;
- (b) other use for the sale of food or drink for consumption on or off the premises.

A “*relevant highway*” means a highway to which Part 7A of the Highways Act 1980 applies, and which is not over Crown land or maintained by Network Rail.

This document provides guidance on the application process and clarifies what the Council may consider to be an appropriate use of a relevant highway when it determines which applications it receives would be suitable for approval.

Applicants should also be aware of the following statutory guidance which may affect the suitability of any application made:

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

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

<https://www.gov.uk/coronavirus>

The Council has the power under these provisions to licence such activities and to ensure that they are properly regulated.

This document sets out how an application may be made, how the Council will determine it and what will be expected of any Licensee if a Pavement Licence is granted.

If an application is made but not determined by the Council within a set period, a Pavement Licence will automatically be “deemed” to have been granted by the Council but it will still be subject to the Standard Pavement Licence Conditions which have been set and, in the event of any breach, may still be revoked by the Council.

As such, obstructions of the highway, anti-social behaviour or unacceptable nuisance will not be allowed where a Pavement Licence is in force.

All Pavement Licences, whether formally granted by the Council or deemed to have been granted as described above, will be subject to the “*National Conditions*” which are prescribed by the Secretary of State and, at the time of publication of this Information Sheet, are the “*no-obstruction condition*” and the “*smoke-free seating condition*” respectively.

The Secretary of State may prescribe further National Conditions from time to time and this Information Sheet together with our Standard Pavement Licence Conditions will be updated should that happen.

The current National Conditions are set out in paragraphs 5 and 6 of the Standard Pavement Licence Conditions, which may be viewed here:

www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Business/Licences%20and%20permits/Standard-Conditions-of-Pavement-Licence-2020.pdf

and applicants should have due regard to these in considering the layout of the furniture in the area subject to the Pavement Licence.

2 Legislative framework

The Business and Planning Act 2020 affects a number of other Acts which may currently affect a business. For example, if a Pavement Licence is granted:

- It authorises the restriction, by anything done by the licensee pursuant to the Licence, of public access to the part of the relevant highway to which the licence relates;
- It constitutes deemed planning permission for anything done by the licensee pursuant to the Licence:
 - (a) which is development requiring planning permission under Part 3 of the Town and Country Planning Act 1990, and
 - (b) for which there would otherwise not be planning permission or deemed planning permission.
- Anything done by the licensee pursuant to a pavement licence is not street trading for the purposes of:
 - (a) Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (street trading), or

- (b) any other enactment under or by virtue of which street trading without a licence or other form of permission is unlawful.

For the full effects on other legislation, please refer to section 7 of the 2020 Act which may be viewed here:

<https://www.legislation.gov.uk/ukpga/2020/16/section/7/enacted>

If it is intended to serve alcohol as part of the activities permitted by the Pavement Licence, you will also need a Premises Licence under the Licensing Act 2003, or to apply to vary an existing Premises Licence to include the relevant area.

3 Size and layout of the permitted outdoor area

The size and layout of the area of the relevant highway to be used will be dependent upon the characteristics of the area adjacent to the premises such as the space available, the street furniture to be used, where it is positioned and the relevant use of the premises (as defined in the introduction to this information sheet) etc.

There are some fundamental principles to follow in considering the layout:

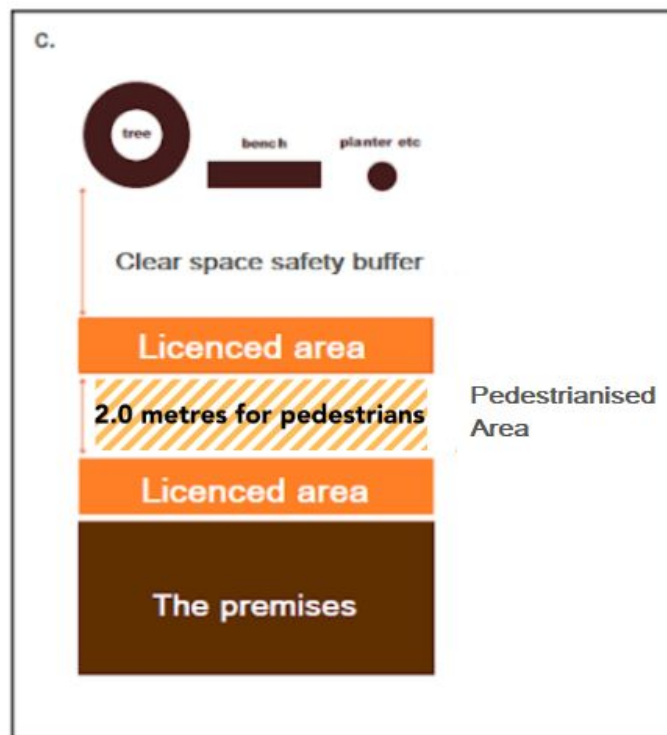
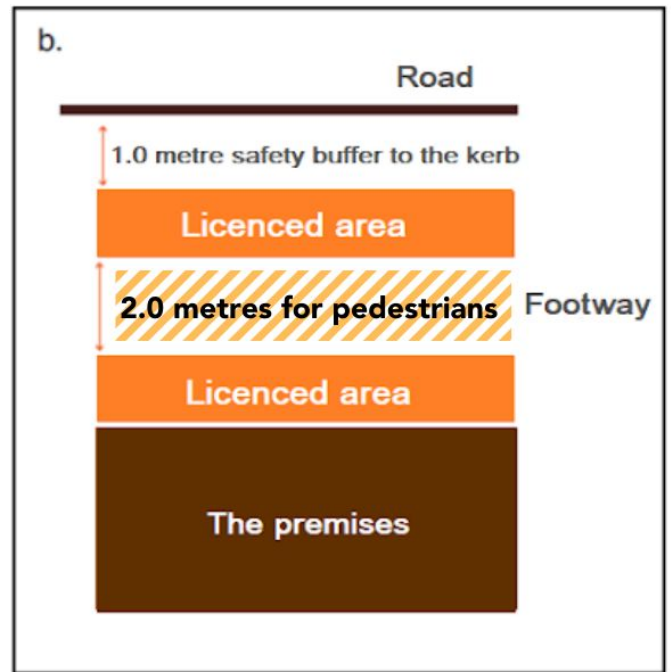
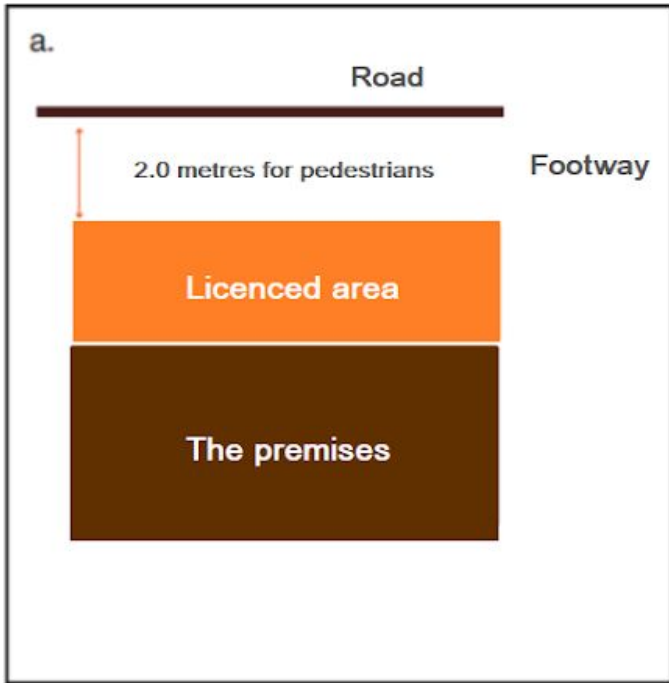
- 3.1 The area of the relevant highway to be used must be adjacent to the premises.
- 3.2 The needs of other users of the pavement should be taken into account, e.g. pedestrians, wheelchair users, street traders, servicing requirements, adjacent businesses, etc.
- 3.3 A clear pedestrian route must be maintained for those walking past the premises.

This would normally not be less than 2.0m wide. Where this is not possible, a minimum gap of 1.5 m may be considered acceptable, depending upon location and surrounding conditions.

These dimensions must be clear of existing street furniture, signs and planters etc. However, every application site will be inspected and each case will be determined on its own merits.

In any event, a minimum of **1.0m** should be left between the boundary of the area of the relevant highway which is subject to the Pavement Licence and the edge of any adjacent carriageway or vehicular route.

Please see some example layouts below (for the avoidance of any confusion, the licence areas and the orange hatched area in diagram B and C comprise one licenced area):



- 3.4 Emergency routes from adjacent buildings and your own must not be obstructed by the activities permitted under the Pavement Licence. If the emergency services object to the application for a Pavement Licence on safety grounds the Council may refuse your application.

- 3.5 Where practicable space should be left between the furniture permitted under the Licence to allow access for all, for example wheelchair users.
- 3.6 Consideration must also be given to the gradient and fall across the path upon which the furniture is to be permitted.

For accessibility and public safety reasons, a Pavement Licence will **not** usually be granted in respect of highways with a gradient exceeding 1 in 20.

- 3.7 Wherever reasonably practicable and in conjunction with such conditions that are imposed in respect of a Pavement Licence, no permanent fixtures or obstructions associated with the operation of the business shall be left in such a manner as may cause a trip or safety hazard.
- 3.8 The layout of furniture should be such that the pedestrian route is obvious, clearly defined, as straight as possible and unobstructed at all times.
- 3.9 The positioning of furniture should not discourage pedestrians from using a clear right of way along the relevant highway.
- 3.10 The Council retains the right to demand the removal of any furniture that it considers to amount to such an obstruction and which is inconsistent with the terms of the Pavement Licence.
- 3.11 Furniture should be placed so as not to obstruct drivers' sightlines, highway signs or access to fire hydrants etc.
- 3.12 Activities permitted under a Pavement Licence, including the design and appearance of the furniture used, should not adversely affect the architectural or historic character of a Listed Building or its setting in a Conservation Area.
- 3.13 If you think that the premises location may be within a Conservation Area or located at or in the vicinity of a Listed Building or if you are unsure, please contact us so that we may clarify this and advise you on how best to address this by the following method:

Email: planning@northumberland.gov.uk

- 3.14 You should carefully consider the level of lighting for the area of the relevant highway to be used.

Although the lighting may be adequate for use as a public highway, it may need supplementing to allow your proposed activities under the Pavement Licence to operate safely.

Any additional lighting equipment and supply must be identified in your application to enable its impact upon the highway to be considered.

- 3.15 Each application will be assessed and determined on its own merits.

4 Defining the boundary of the permitted outdoor area

4.1 Once the size and layout of the area subject to the Pavement Licence is duly authorised, that is the extent to which the relevant highway may be used and any alteration of that will be subject to a further application.

4.2 The Council requires that the boundary of the area subject to the Pavement Licence is clearly defined.

This may be by barrier, fence, rope, or, where these options are unsuitable for the particular location, other temporary measures such as non slip vinyl tape may be applied to define the boundaries of the licensed area.

Any such temporary measures must be to the satisfaction of the Council.

4.3 The siting of all furniture placed upon the relevant highway permitted by the Pavement Licence must be contained within the agreed boundary.

4.4 A copy of the Pavement Licence and the plan annexed to it must be kept on the premises at all times and be available for inspection upon request.

5 Furniture

5.1 "Furniture" has the meaning given to it by section 9(1) of the 2020 Act, namely:

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

No specific or standard style of furniture is prescribed by the Council, although whatever furniture is used must be appropriate to the characteristics of the area in question and of suitably good manufacturing quality and appearance.

5.2 Wherever possible, the furniture used should be fabricated from metal, wood or other good quality materials. Plastic (garden type) furniture will not usually be approved.

5.3 The design, style and colour of the furniture should take into account the needs of those pedestrians with a visual impairment.

5.4 Consideration must be given to all relevant equality information and guidance including (but not limited to) the requirements of the Disability Discrimination Act 1995, the Equality Act 2010, any associated Codes of Practice, together with the the guidance on creating a barrier-free pedestrian environment as set out in the Inclusive Mobility guidance referred to in the introduction to this Information Sheet:

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

- 5.5 The use of umbrellas must be specified in your submission as part of the design, including; location, material and colour (bright or garish colours should generally be avoided) and any umbrellas should be positioned so as to avoid causing a hazard, risk or danger to other persons.
- 5.6 Limited advertising of the premises may be permitted on umbrellas but should not be too dominant and should be sympathetic to the building and its setting. Each application will be dealt with on its merits.

6 Managing the permitted outdoor area

- 6.1 The use of the outdoor area must be compliant with the government's guidance on social-distancing for the purposes of public health given the Coronavirus pandemic:

<https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing-after-4-july>

- 6.2 Where possible, table or counter service should be available at all times within the area of relevant highway permitted by the Pavement Licence for customers using the area permitted by the Pavement Licence and customers should not be expected to enter the premises for ordering or collecting food or drink.
- 6.3 Menus for food and/or drink, where appropriate, should be available for customers at tables or counters without the need to enter the premises and all such menus must be disposable.

Menu boards may replace or supplement these where appropriate.

Such boards should be of an acceptable size and sympathetic to the overall character of the premises and area.

They must not contravene any provisions relating to Listed Buildings or Conservation Areas, nor be contrary to anything contained in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 or any replacement of those Regulations.

- 6.4 The area subject to the Pavement Licence may only be used for the service of, sale of and consumption of food and drink and no preparation or storage of food or drink should take place outside the premises in any manner which may lead to a risk of poor food hygiene or contamination.
- 6.5 Good food hygiene practices must be adhered to and the business will be subject to the same statutory food hygiene requirements and inspection regimes as apply to the remainder of the premises.
- 6.6 In the interests of hygiene and to protect the amenity of the area tables should be cleared of uneaten food, other waste etc. immediately on departure of the customer.
- 6.7 The Licensee will be responsible for the cleanliness of the relevant highway subject to the Pavement Licence at all times.

6.8 The area must be kept clean and litter free.

Care should be taken to ensure that litter is not deposited onto any adjacent areas and any windblown litter from the premises outside the boundary of the licensed area must be collected forthwith.

Suitable litter/refuse bins must be provided within the licensed area during the permitted times under the Pavement Licence and the Licensee will be responsible for the removal and collection of all waste material.

The licensed area must be swept regularly, avoiding nuisance to customers or passersby, and kept clear of all litter/refuse.

The Licensee must deal with spillages etc. as soon as they become aware of them and the relevant highway subject to the Pavement Licence must be washed down carefully at the end of each trading session.

6.9 Failure to comply with the cleaning requirements under the Pavement Licence may result in a Notice to remedy a breach of condition being served upon the Licensee.

Failure to comply with such a Notice may result in the Council carrying out the works itself and recovering the expenses involved from the Licensee and/or revoking the Pavement Licence.

7 Social responsibility

7.1 The Licensee will be responsible for the conduct of customers. Where anti-social behaviour occurs, the Pavement Licence may be revoked and this may also involve a breach of any Premises Licence that is in force.

7.2 Amplified music is not permitted under the Pavement Licence as this deals only with the sale or consumption of food and/or drink on the part of the relevant highway that is subject to the Licence.

7.3 Live music or busking would be subject to a separate licence under the Licensing Act 2003, further details of which may be found at the following link:

<https://www.northumberland.gov.uk/Business/Licences/Alcohol-entertainment.aspx>

7.4 The applicant will have to provide evidence of public liability insurance in the sum of £5,000,000 in respect of any activities carried out in pursuance of the Pavement Licence at the time that the application is made and this must remain in force throughout the Licence period for the purpose of indemnifying the Council for any claims made in that respect.

8 Application procedure

Application

8.1 The notes below explain how your application for a Pavement Licence will be dealt with, what you and the Council will each need to do, together with the enforcement and revocation provisions that relate to any such Licence granted.

In addition to these notes, the text of the 2020 Act may be viewed at this link:

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

and it is recommended that you read the statutory guidance for further information, which may be viewed here:

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

8.2 The application for a Pavement Licence must be completed online at the following link:

https://form.northumberland.gov.uk/form/auto/pavement_licence

There is no fee payable for making this application **but** you will need to provide:

- a scale plan showing the area of relevant highway in respect of which the Pavement Licence is sought and the layout of the furniture to be placed on it;
- evidence of your public liability insurance in the sum of £5,000,000 in respect of the activities to which the Pavement Licence will relate;
- A photograph of the Notice of application showing it affixed to the Premises from the start of the public consultation period; and
- Details of those services that you have engaged with prior to making the application that are located in the vicinity of the Premises and which are operated for vulnerable customers (e.g. care homes, disability organisations etc.) where individuals are at particular risk.

Publication

8.3 Once you have made your application, we shall:

- (a) Publish the same on our website together with any information or material accompanying it.
- (b) Publicise the fact that representations relating to the application may be made to us during the **public consultation period of 7 days** beginning with the day after that on which the application is made.

Notice of your application

8.4 On the same day as you submit your application, you must:

- (a) Fix a Notice of the application to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises; and
- (b) Secure that the Notice remains in place until the end of the public consultation period.

The Notice of application is available to download here for you to complete

www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Business/Pavement%20licence/Pavement-notice-of-application.docx

and when you complete it, the Notice must:

- (a) State that the application has been made and the date on which it was made;
- (b) Indicate that representations relating to it may be made to the Council during the public consultation period (and indicate when that period comes to an end);and
- (c) Contain such other information or material as the Council may require.

Public consultation period

- 8.5 Upon receipt of a valid application for a Pavement Licence there will be a public consultation period of 7 days when objections or representations may be made to the Council regarding the proposals made.
- 8.6 Once that consultation period has closed, the Council must determine your application within the next 7 days.

Determination of your application

- 8.7 Before deciding whether or not to grant a Pavement Licence following your application, the Council must:
 - (a) Take into account any representations made to us during the public consultation period; and
 - (b) Consult such other persons as we consider appropriate.
- 8.8 After the end of the public consultation period we may either grant a Pavement Licence or reject the application.
- 8.9 If granted, the Pavement Licence may be given in respect of:
 - (a) Any or all of the purposes in relation to which the application is made; and
 - (b) Some or all of the part of the relevant highway specified in the application.
- 8.10 We may grant a Pavement Licence **only if** we consider that, taking into account any conditions which we proposes to attach to the Licence, nothing done by you pursuant to the Licence would have any of the following effects:
 - (a) preventing traffic, other than vehicular traffic, from:
 - (i) Entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway);
 - (ii) Passing along the relevant highway; or

- (iii) Having normal access to premises adjoining the relevant highway;
 - (b) Preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order;
 - (c) Preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway; or
 - (d) Preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.
- 8.11 If your application is approved a Pavement Licence will be issued subject to our Standard Pavement Licence Conditions

www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Business/Licences%20and%20permits/Standard-Conditions-of-Pavement-Licence-2020.pdf

and to such further specific conditions as may be specified in the Licence

Deemed Licences

- 8.12 If we do not make a determination of your application by the end of the determination period (i.e. the period of **7 days** beginning with the first day after the public consultation period ends), the Licence for which the application was made is deemed to be granted to you.

In the event that this happens, the Deemed Licence will be automatically subject to the Council's standard Licence Conditions which may be viewed here:

www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Business/Licences%20and%20permits/Standard-Conditions-of-Pavement-Licence-2020.pdf

and shall remain in force for the period set out in the section below.

Duration of the Licence granted

- 8.13 Any Licence granted will either specify the period for which it will remain in force or, if no period is specified, it will expire automatically at the end of **30 September 2021**.
- 8.14 Where a period is specified in the Licence, this period may not be less than **3 months** but may not extend beyond **30 September 2021**.
- 8.15 Where a Deemed Licence is created, it is deemed to be granted for the period of **1 year** starting with the first day after the determination period **but** where it is still in force at the end of **30 September 2021** it shall expire automatically at that time.

9 Useful Contacts

For any queries or further information regarding an application for a Pavement Licence please contact our Customer Contact Centre:

Telephone 0345 600 6400

or visit our website at: northumberland.gov.uk/About/Contact/contacts.aspx#contactus