



MID SUSSEX DISTRICT COUNCIL

PAVEMENT LICENSING POLICY

COMMENCES **TBC**

Mid Sussex District Council

Pavement Licensing Information, Guidelines and Application Process

1. Introduction

The Business and Planning Act 2020 provides a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway. This provides much needed income for businesses and protects as many hospitality jobs as possible, particularly during times of increasing living costs.

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. The Levelling Up and Regeneration Act 2023 made permanent the provisions set out in the Business and Planning Act 2020.

Licences that are deemed to have been granted will remain in place for such period as the local authority may specify in the licence, with a maximum limit of two years. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

The public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to the authority.

If the local authority does not determine the application before the end of the determination period (which is 14 days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for two years and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

2. Scope

2.1 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 including 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.

Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible. These businesses may still apply for permission to place furniture on the pavement under the Highways Act 1980.

2.2 Eligible Locations

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

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

2.3 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.

2.4 Type of furniture permitted

Furniture which may be placed on the pavement includes:

- 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, heaters, and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable and related to the serving, sale and consumption of food or drink. In principle, this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at night. The Council would also expect the type of furniture to be 'in keeping' with the local area.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

An application to the authority must include:

- 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 proposed duration of the licence;
- evidence of the right to occupy the premises e.g., the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- in the case of a renewal application the reference of any existing pavement licence;
- evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and or other appropriate measures);
- any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' national condition;
- specify the premises and, the part of the relevant highway to which the application relates;

- specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence-holder to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made; and
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require.

All applications will be made electronically through the online forms.

3.2 Fees

The fee for applying for a licence under the new process is set locally. Application fees are available on the Mid Sussex District Council website.

Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.

The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused, or if a licence is surrendered or revoked before expiration.

3.3 Consultation

Applications are consulted upon for 14 days (excluding public holidays), starting with the day after 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.midsussex.gov.uk/business-licensing/latest-licensing-applications/>

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are no detrimental effects from the application the Council will consult with the Police and other parties that may be appropriate to the application.

Members of the public and others listed above can contact the 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

On the day the application is made, an applicant for a pavement licence must 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 compliance with the site notice requirement must be supplied to the Council.

<https://www.midsussex.gov.uk/media/5080/pavement-site-notice-template.pdf>

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
- state the end date of the consultation (14 days starting the day after the application is submitted to the authority (excluding public holidays)).

3.5 Consideration of Application

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

When setting local conditions and determining applications, we will consider:

- Public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted.
- Public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour or litter.
- 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 considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people.
- 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 fixed structures in place on the footway that already reduce access.
- Other users of the space, for example if there are high levels of pedestrian or cycle movements.
- 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 of access and egress to the premises.
- 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 Department for Transport Inclusive Mobility guidance.
- 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 take any issues around noise, and nuisance into consideration as part of the proposal.

3.6 Determination

Once the information is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar 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,
- impose conditions on any licence granted, or
- refuse the application.

If the local authority does not determine the application within the 28-day period, the application will be deemed to have been granted subject to any published local or national conditions.

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 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 attached to all Pavement Licences is detailed in Section 4. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

Generally, the Council will only permit Pavement licences between 09:00 and 22:00.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council 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 14 days, beginning with the first day after the end of the public consultation period, excluding public holidays) the duration of the licence will be specified, subject to a duration of 2 years unless there are specific circumstances requiring a shorter duration.

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 2 years.

3.9 Refusal of Applications

If the site is deemed unsuitable for a Pavement licence, or if relevant representations are made which cannot be mitigated by imposing conditions, then the application may be refused.

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

3.10 Renewal Applications

Businesses who have a licence under the previous regime and are seeking a new licence will be treated as a renewal application if it is made by the licence-holder and it is in respect of the same premises and it is on the same terms as the previous licence.

In this case only evidence of the current Public Liability Insurance will be required.

4. Conditions

A list of the Council's standard local conditions are published at:

<https://www.midsussex.gov.uk/media/5079/pavement-licence-draft-conditions.pdf>

In some cases, extra measures may be required. This will be determined when assessing any application, on a case-by-case basis.

4.1 National Conditions

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted: a no-obstruction condition and a smoke-free seating condition.

4.2 Meeting the needs of disabled people

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, the authority will consider the following matters when determining applications, setting conditions, and when considering whether enforcement action is required:

- Section 3.2 of Inclusive Mobility - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.
- 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, as these are not necessary for the consumption of food, 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. Advertising boards are not included in the definition

of furniture within the pavement licensing regime, therefore, should not be used as a barrier.

- 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 or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded with tables and chairs.
- The cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people.
- 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 authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not and foster or encourage good relations between people who share a protected characteristic and those who don't.

4.3 Reasonable 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.

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.

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation.

Obtaining a Pavement Licence 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 and applicants must ensure all such permissions, etc. are in place prior to operating.

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the local authority may amend the licence with the consent of the licence-holder, revoke the licence, or itself take steps to remedy the breach and take action to recover any costs of so doing.

The authority will regularly review licences and enforce any breaches.

The authority may revoke or amend the licence with the consent of the licence holder in the following circumstances:

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised.
2. If there is evidence that:
 - There are risks to public health or safety – for example 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).
 - This use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway.
 - The use is causing, or risks causing, 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.

The authority may revoke a licence in the following circumstances:

1. For a breach of condition, whether a remediation notice has been issued or not.
2. 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.
3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

5.1 When can furniture be removed?

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

6. Review Procedures

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally or as a result of local considerations within the Council.