



## PAVEMENT LICENSING POLICY

### 1.0 Introduction

The coronavirus (COVID-19) pandemic has affected the hospitality industry significantly, causing many to cease trading for several months and/or diversify the nature of their business.

On 25 June 2020, the Government announced an urgent relaxation to planning and licensing laws to assist the hospitality industry with recovering from the COVID-19 lockdown. The Business and Planning Act 2020 introduces a temporary fast-track process for these businesses to obtain permission, in the form of a 'pavement licence', from Winchester City Council for the placement of furniture on the pavement outside their premises. This will enable them to maximise their capacity whilst adhering to social distancing. The Business and Planning Act 2020 received Royal Assent on 22 July 2020.

Currently, tables and chairs permissions are granted as Tables and Chairs Permits by Winchester City Council, with consent from Hampshire's Highways Authority, under Part 7A of the Highways Act 1980. The process includes a 28 day consultation period and a fee of £225.

The temporary measures under the Business and Planning Act 2020 place a cap on the application fee for businesses, and introduces a new consultation period of 10 working days. This ensures that businesses can obtain licences in a timely and cost effective manner, aiding their financial recovery.

### 2.0 Scope

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.

#### 2.1 Eligible businesses

Businesses that can apply for a licence include:-

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) including but not limited to cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours; and Public houses, wine bars, and other drinking establishments,

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.

## 2.2 Eligible locations

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

Applications for locations which are not adjacent (i.e. adjoining or next to) the premises to which the application relates will not normally be considered. However, the Council may use its discretion to consider applications of this nature where it is appropriate.

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

The furniture must be removable (i.e. not permanently fixed to the ground or any other structure), and can be easily stored somewhere other than the highway outside of licensable hours.

The style and type of furniture must be approved by the City Council. It will be considered whether the furniture is 'in keeping' with the local area.

Please note that Advanced Warning Signs (A boards and other free standing signs) are not considered 'furniture' under the Business and Planning Act 2020, and therefore cannot be considered under this regime. Applicants intending to install Advanced Warning Signs outside their premises may be subject to enforcement action under the Highways Act 1980.

The use of removable barriers (e.g. solid or rope barriers) to mark the boundary of the area used for furniture is highly encouraged by the City Council. Details of any barriers must be included on the application alongside details of furniture and other articles used in connection with the outdoor consumption of food or drink.

## 2.4 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**

#### **3.1 Submission of the application**

An application for a Pavement Licence must be made to the Council (in an electronic format that the Council approves), and the following will be required to be submitted with the application:

- a completed application form
- the required fee of £100, paid by electronic means
- a plan of the proposed area to be used for the furniture, including measurements of the premises, the width and depth of the area to be used, and the width of the highway. The proposed licensable area must be clearly shown with a red line or border. Plans do not need to be to scale, provided that the measurements are clear.
- photos or brochures showing the proposed type and style of furniture (optional).
- Proof of the applicant's right to occupy the premises to which the application relates (e.g a copy of the lease).
- proof of written consent from all owners and occupiers (including residents) of premises adjoining the highway on which the furniture is proposed to be placed. These persons are known as 'frontagers.' If the frontager is a company, then consent must be provided by an authorised officer of that company who should confirm that they are duly authorised to give consent. Where the applicant has received no response from a frontager in relation to their proposal, they must provide evidence to the Council that they have made efforts to obtain consent and/or engage with frontagers on the proposal.

Omission of any of the above documents will invalidate the application.

It is recommended that applicants also submit photographs of any existing damage to the relevant areas of the highway. This may be used in evidence should the Highways Authority seek to recover costs for the repair of damage caused by the use of removable furniture.

#### **3.2 Fees**

The fee for applying for a Pavement Licence under the Business and Planning Act 2020 is set locally, but is capped at £100. The Council has determined that the fee for applications will be £100.

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 or refused, or if a licence is surrendered or revoked before expiration.

### 3.3 Notice of intention

An applicant for a Pavement Licence must on the day the application is made, fix a 'notice of intention' to the premises so that the notice is readily visible to, and can be readily easily by, members of the public who are not on the premises. The notice must be in a format prescribed by the Council. Variations of this format will not be accepted and will invalidate the application.

The notice must be secured and suitably weatherproofed so that it remains in place until the end of the public consultation period. Evidence of compliance with the requirement to display the notice must be supplied to the Council upon request.

The notice must:

- state the date on which the application was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and the name of the business;
- describe the proposed use of the furniture;
- state the days and times applied for;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to and end;
- state details of the Council's website and where the application and any accompanying material can be viewed during the consultation period
- state the postal address and email address to which representations should be sent during the consultation period; and
- state the end date of the consultation period (7 days, not including bank holidays, starting with the day after the application is submitted to the Council).

A template notice is shown in Appendix 1.

### 4.0 Consultation

Applications are consulted upon for 7 days (not including bank holidays), starting on the day after the day on which a valid application was made to the Council.

The Council will publish details of the application and supporting information on its website at <https://www.winchester.gov.uk/licensing/tables-chairs>

The Council is required by law to consult with the Highways Authority. If the Highways Authority does not respond to the application within the consultation period then the Council may still consider the application.

The Council will also notify relevant Ward Councillors, Parish Council(s) and Hampshire Constabulary's South East Counter Terrorism Unit of the application for information.

Members of the public can contact the Council to make representations in respect of the application. These must be received in writing either to

[licensing@winchester.gov.uk](mailto:licensing@winchester.gov.uk) or Licensing Manager, City Offices, Colebrook Street, Winchester SO23 9LJ to arrive before the end of the consultation period.

The Council must take into account representations received during the public consultation period and consider these when determining the application. Representations received outside of the public consultation period will not be considered in the determination of the application.

## 5.0 Determination

The following matters will be taking into account by the Council in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that users of the furniture are able to comply with the latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted;
- public amenity – will the use of the licence create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise 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, 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 any other permanent street furniture or structures in place on the footway that already reduce access (i.e. benches, bollards and hostile vehicle mitigation barriers);
  - the impact on access and egress to the premises;
  - the impact on 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 the [Department for Transport's Inclusive Mobility guidance](#), and;
  - other users of the space, for example, if there are high levels of pedestrian or cycle traffic.
- whether the proposed activities would have one or more of the following effects;
  - 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
  - preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
  - preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

- 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.

Applicants are strongly advised to speak with neighbouring businesses and occupiers (whether considered frontagers or not) prior to applying to the Council for a Pavement Licence and take any issues around health and safety, nuisance and access into consideration as part of the proposal.

### 5.1 Determination period

Once a valid application is submitted to the Council, it has 14 days (not including bank holidays) from the day after the application is made to consult on and determine the application. This consists of 7 days for public consultation, and then a further 7 to consider and determine the application after the consultation period has ended.

If the Council determines the application before the end of the determination period, the Council 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,
- refuse the application.

If the local authority does not determine the application within the 7 day determination period, the application will be deemed to have been granted subject to any published local and national conditions.

### 5.2 Approval of applications

The Council may approve applications meeting the criteria specified within this Policy.

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 furniture is permitted on the highway and the location of the furniture corresponding to the application. A site plan will be attached to the licence.

A copy of the Council's standard conditions will be attached to all Pavement Licences. These are listed in Appendix 2. Additional conditions may be attached to individual licences if the Council considers it appropriate.

The Council will generally only permit furniture to be placed on the highway no later than the terminal hour for the sale of food / drink at the premises to which the application relates. Applications outside of these hours will be assessed in terms of criteria detailed in section 5 of this Policy. The Council retains the right to specify permitted hours for furniture to be placed on the Highway in accordance with the premises' trading hours and/or any relevant road closures or temporary traffic orders.

### 5.3 Licence duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning on the day after the end of the public consultation period), the duration of the licence will be specified, 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 licences for a period of 12 months.

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 period of 12 months.

The Business and Planning Act 2020 is in effect until 30 September 2021. A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

### 5.4 Refusal of applications

The Council may refuse an application if:

- it considers the proposals unsuitable as a result of their consideration of the points in section 5 of this Policy;
- the Highways Authority refuses to give consent to the proposal;
- it receives representations which cannot be mitigated by imposing conditions

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

## 6.0 Conditions

The Council's standard conditions are set out in 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, the locally set condition takes precedence over the national condition to the extent that it is inconsistent with it.

The national 'no obstruction' condition and the national 'smoke-free seating' condition apply to all licences. The national 'no obstruction' condition is shown in Appendix 3.

## 7.0 Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that any 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 Pavement Licence does not confer the licence holder immunity in regard to other legislation that may apply, e.g. public liability, health and safety at work, food Hygiene and safety, alcohol and entertainment licensing, and social distancing controls. Applicants must ensure all such permissions etc. are in place prior to operating under a Pavement Licence.

If a condition imposed on a licence either by the Council or via a national condition is breached then the Council will be able to issue a notice requiring the breach to be remedied within a time scale specified by the Council. If the notice is not complied with, the Council may revoke the licence or take the required steps itself and recover the costs of doing so from the licence holder.

The authority may revoke a licence in the following circumstances:

- For breach of condition (whether or not a remediation notice has been issued) or where:
  - there are risks to public health or safety – for example by encouraging users of the furniture to breach government guidance on social distancing by placing furniture 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 of the furniture is increasing the amount of noise generated or litter not being cleaned up;
  - it comes to the light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling food within the licensable area, 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 of intention’ to notify the public of the application for the relevant period.
- Where all or 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.

## **8.0 Review**

This policy covers the temporary permissions for the administration of Pavement Licences under the Business and Planning Act 2020, which are scheduled to expire on 30 September 2021.

The Policy will be reviewed should changes occur in the relevant legislation or guidance that affect the administration of Pavement Licences, or as a result of local considerations or policies within the Winchester District.





Service Lead for Public Protection

Licensing Department  
Public Protection  
Winchester City Council  
City Offices  
Colebrook Street  
Winchester  
SO23 9LJ

Tel: 01962 848 188

Email: [licensing@winchester.gov.uk](mailto:licensing@winchester.gov.uk)

Web: [www.winchester.gov.uk/licensing](http://www.winchester.gov.uk/licensing)

## Appendix 1 – Notice of Intention (Template)



### **BUSINESS AND PLANNING ACT 2020**

### **NOTICE OF INTENTION TO USE FURNITURE ON THE HIGHWAY UNDER A 'PAVEMENT LICENCE'**

I / We, *(name of applicant/s)*:

HEREBY GIVE NOTICE that an application has been made on **DD/MM/YYYY** to Winchester City Council for the consideration of permission to place furniture on the highway for the following purposes:

**Service of food / service of drinks / service of food and drinks  
Consumption of food / Consumption of drinks / Consumption of food  
and drinks**

*\*Delete as applicable*

Name and address of premises where furniture is to be located, including names of any streets or areas to be used that are not directly outside the premises:

Description of furniture to be used:

The furniture is proposed to be in place on the highway on the following days / times:

**E.G. MONDAY TO SATURDAY 11:00 - 17:00**

Any person who wishes to submit representations in connection with this application should send their representations in writing to [licensing@winchester.gov.uk](mailto:licensing@winchester.gov.uk), to arrive within 7 days (not including bank holidays) of the date of this notice. Representations will be taken into consideration in the determination of the application.

Full details of the application are available to view on the City Council's website: <https://www.winchester.gov.uk/licensing/tables-chairs>

**THIS NOTICE MUST BE DISPLAYED CLEARLY VISIBLE FROM OUTSIDE THE PREMISES**

## Appendix 2 – Conditions

1. Outside of the hours mentioned in the Licence, the removable furniture must be removed and stored safely outside the area and in any event not on the highway.
2. The removable furniture shall be immediately removed upon request by the City Council, Police or Highways Authority if the area is required in whole or in part for repairs to be undertaken **or for any other reason**. In the case of planned maintenance work the City Council or Highways Authority shall endeavour to give reasonable notice to the Licensee. In the event of emergency repairs no notice may be given. Maintenance works/repairs included work undertaken by statutory undertakers as well as surface repairs.
3. In the event that any removable furniture is found outside the area, notification will be given by the Council to replace them within the area within one hour.

The Licensee will receive a remediation notice from the City Council both via email and delivered to the premises. The notice will outline the reasons why it is believed that the Licensee has breached condition(s) of the Licence, and will be given 7 days to remedy the breach. In the event that the breach is not remedied within this time period, the City Council may take steps to remove the furniture and/or consider revocation of the Licence.

In the event that the furniture is removed by the City Council and the Licensee wishes to reclaim them, prior to their return the Licensee shall;

- i) Contact the Licensing Department to request the return of confiscated furniture,
- ii) Make payment, electronically, of a £100 fee to the Licensing Department
- iii) Contact the Special Maintenance Team on 01962 848 574 to arrange collection of the furniture from the location that the Special Maintenance Team has designated for storage.

If furniture remains unclaimed after 14 days, the Council will dispose of the furniture as it sees fit.

4. No nuisance is to be caused, by the placing of the removable furniture on the highway, to users of the adjoining pedestrianised area.
5. Emergency routes to and from the premises and adjacent buildings must not be obstructed by the use of removable furniture at these premises.
6. The Licensee shall ensure that the use of removable furniture conforms to latest guidance issued by government on social distancing.

7. The Licensee must ensure that the permitted area is regularly monitored to manage crowds and ensure that customers are not creating a public nuisance.
8. The Licensee shall not be permitted to place Advance Warning Signs (A-boards and other free-standing signage) within the designated area.
9. The Licensee shall be responsible for keeping the area in a clean and tidy condition at all times.
10. The Licensee must make reasonable provision for seating where smoking is not permitted, and have regard to the [Government's guidance](#) in doing so.
11. The Licensee shall be responsible for any damage caused to the paved surface of the area through any act, or, omission during the period of the Licence and any damage is to be made good entirely at the Licensee's expense.
12. The Licensee shall ensure that valid Public Liability Insurance, indemnifying the Council against any claim arising from the operation of the Licence (minimum £5,000,000 cover), is maintained throughout the period of the Licence.
13. This Licence is not transferable between Licensees or premises.

### **Appendix 3 – National Conditions**

The Secretary of State publishes this condition in exercise of his powers under [Section 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](#).

Guidance on the effect of this condition

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.