



# West Oxfordshire District Council Pavement Licensing Policy

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Revised September 2021

## **1. Introduction**

The Business and Planning Act 2020 (“the Act”) was passed to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The Act included urgent provisions designed to make it easier for premises in England serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

Sections 1 to 10 of the Act create a temporary regime for the issuing of “pavement licences” by appropriate local authorities. West Oxfordshire District Council (“the Council”) is the appropriate local authority for issuing pavement licences in the administrative area covered by the Council.

The process introduced a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. The aim of the legislation is to support businesses to operate safely while social distancing measures remain in place and to provide much needed income over the summer months and protect as many hospitality jobs as possible.

The temporary licensing regime was in place until 30 September 2021. The provisions were then extended to 30 September 2022 when they are due to expire in accordance with section 10 of the Act.

## **2. Scope**

### **2.1. Definition of pavement licence**

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

### **2.2. Eligible Businesses**

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

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

### **2.3. Eligible Locations**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicular access is restricted or prohibited. Highways maintained by Network Rail or over 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, heaters and other articles used in connection with the outdoor consumption of food or drink.

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

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

## **2.5. Planning Permission**

If a pavement 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 and remains in force.

## **2.6. Existing tables/chairs**

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.

Any existing permissions issued under Part 7A of the Highways Act 1980 remain 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 on the appropriate form, and accompanied by:

- A plan showing the location of the premises marked 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 of furniture to be placed 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.
- Photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied.

The applicant must also have public liability insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million before the licence can be utilised.

If a Traffic Regulation Order is required, the applicant must ensure that this permission is in place prior to applying for a Pavement Licence.

An application will not be considered complete (valid) until the application form and all required documents have all been received. The public consultation period will not commence until the day after a complete application has been made.

All expired licences will be treated as new applications. The applicant must readvertise the application for a period of 7 days. If the application is for the same layout only a copy of the public liability insurance will be required. If there is a change to the original layout, all documents will be required (e.g. plan, photographs of furniture etc.). A fee will be due in both cases.

### **3.2. Fees**

### **3.3. The fee for applying for a licence under the new process is set locally, but capped at £100. The Council has determined that the fee for applications will be £100.**

Applications are consulted upon for 7 days, starting with the day on which a valid application was received by the Council.

The Council will publish details of the application on its website at <https://publicaccess.westoxon.gov.uk/online-applications/>

The Council is required by law to consult with the Highway Authority. In addition, to ensure that there are no unacceptable detrimental effects arising from the application proposals the Council will consult with:

- West Oxfordshire District Council Planning teams
- West Oxfordshire District Council Food, Health and Safety team
- West Oxfordshire District Council Operations (Environmental Health) team
- Thames Valley Police
- Ward Members
- Town/Parish Councils

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

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 it 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 having been complied with 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 the 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 consultation (7 days starting the day after the application is submitted to the Council).

A template Site Notice is shown as [Appendix I](#).

### 3.5. Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposal:

- 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](#), and
- 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 Council, and so take any issues around noise, and nuisance into consideration as part of the proposal. Discussions with neighbours should consider any plans neighbouring businesses have also to place tables and chairs on the highway and plans for customers to queue outside.

### 3.6. Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult upon and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation.

If the Council determines the application before the end of the determination period it 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 Council does not determine the application within the 14 day period, the application will be deemed to have been granted.

If an applicant is re-applying for a pavement licence and objections are received against a ‘like-for-like’ application, if there were no concerns raised during the period of time that the previous licence was in place the application is likely to be granted. The reason for this is that there is a revocation process if required.

The following are authorised to grant or refuse applications, and to revoke a Licence which has been granted:

Decision	Authorised decision maker
Granting an application where no objections have been received during the consultation period	Business Manager, Environmental and Regulatory Services or Licensing Service Leader
Granting or refusing an application where objections have been received during the consultation period	Business Manager, Environmental and Regulatory Services or Licensing Service Leader, following consultation with the Chairman of the Miscellaneous Licensing Sub-Committee
Revoking a Licence	Business Manager, Environmental and Regulatory Services or Licensing Service Leader, following consultation with the Chairman of the Miscellaneous Licensing Sub-Committee

### 3.7. Calculation of Days

In deciding the public consultation period or the determination period, as referenced above, no account will be taken of a bank holiday, nor of Christmas Day or Good Friday. In all other instances the period shall be calendar days.

### **3.8. 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, which will be attached to all Pavement 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 Licences between 08:00 and 22:00.

Applications outside these hours will be assessed in terms of the criteria detailed above regardless of whether objections have been made or not. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

### **3.9. Licence Duration**

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period, excluding public holidays) the Council can specify the duration of the licence, subject to a minimum duration of three months.

The expectation from the Government is that Councils 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.

If a licence is 'deemed' granted because the Council 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.

### **3.10. Refusal of Applications**

If the site is deemed unsuitable for a Pavement Licence, 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 a decision to refuse an application.

A business may apply again after refusal but will have to make a new application and address the concerns raised in the original application.

## **4. Conditions**

The Council's standard conditions can be found 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, and the Council will confirm the reasons why any additional conditions have been imposed.

The Act contains two national conditions that all granted and deemed granted licences must adhere to if the Council fails to publish their own conditions, or the published conditions fail to make provision for observing the national conditions. The two conditions are:

- a no-obstruction condition
- a smoke free seating condition

The Council's published conditions make provision for these conditions, but for the sake of transparency, the national conditions are detailed in Appendix 3 to this document.

The Act also allows for the Secretary of State to produce, via Regulations, conditions for pavement licences, and to stipulate whether these conditions have effect as well as, or instead of, the conditions placed on a licence by the Council. If such conditions are created, this guidance will be amended to reflect them, and all licence holders will be notified of any changes this may create.

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

## 5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. It remains the case 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 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, 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 Council can take action to cover any costs.

The Council may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a Remediation Notice has been issued) or
2. Where:
  - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
  - the highway is being obstructed (other than by anything permitted by the licence);
  - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
  - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
  - the applicant did not comply with the requirement to affix the Notice to notify the public for the relevant period.
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 Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which is scheduled to expire on 30 September 2021<sup>2</sup>

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licences generally, relevant social distancing measures or as a result of local considerations within the West Oxfordshire District.



**BUSINESS AND PLANNING ACT 2020**

**NOTICE OF APPLICATION FOR GRANT OF A PAVEMENT LICENCE**

I / We .....(1)

Do hereby give notice that on ..... (2)

I / we have applied to West Oxfordshire District Council for a pavement licence at:

.....  
..... (3)

Known as..... (4)

The application is for:

.....  
..... (5)

Any person wishing to make representations to this application may do so by writing to [ers@westoxon.gov.uk](mailto:ers@westoxon.gov.uk) by:

..... (6)

The application and information submitted with it can be viewed at:

[www.westoxon.gov.uk](http://www.westoxon.gov.uk)

Signed .....

Date ..... (7)

## Guidance notes on completing this notice of application.

Complete the notice by putting the following information in the numbered spaces:

- (1) Name of the applicant
- (2) Date the application is made (submitted)
- (3) Postal address of the premises
- (4) Name the premises is known by
- (5) Brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink]).
- (6) Last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays)
- (7) The date the notice was placed (must be the same date as (2) above)

On the same day that the application is made, a completed copy of this notice must be fixed 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 secure that the notice remains in place until the end of the public consultation period.

**Failure to comply this requirement may lead to the revocation of any licence granted or deemed granted.**

## Standard Pavement Licence Conditions

Please note that these conditions are not an exhaustive list. Each application will be considered on its own merits and individual, specific conditions may be attached where deemed appropriate.

Where a licence is deemed granted, the applicant is deemed to be a 'licence holder' and is required to comply with all of the below conditions. In such circumstances, references to 'licensed area' should be understood to mean the area proposed for licensing within the application.

1. The licence holder must ensure that no activity undertaken by them by the placing of furniture on the highway will:
  - (a) prevent 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) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
  - (c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
  - (d) prevent 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.
2. The licence holder must ensure clear routes of access are 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 the Department for Transport's [Inclusive Mobility](#) document.
3. Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted.
4. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that West Oxfordshire District Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement café will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.

5. Tables and chairs must not be placed in position outside of the permitted times of the pavement licence. All tables and chairs and other furniture must be stored securely inside a premises away from the highway outside of these times.
6. The licence holder must ensure that furniture is positioned in such a way so as to ensure compliance with the relevant Government guidance on social distancing that is in place at any particular time and that staff can service the space in a manner that does not compromise their health and safety.
7. Unless another more restrictive condition has been attached to the licence in response to particular concerns raised during the public consultation period, the licence holder must not place any furniture on the highway in pursuance of this licence before 08:00hrs on any day and must remove all furniture placed on the highway in pursuance of this licence when the premises closes or by 22:00hrs on any day, whichever is the earliest.
8. The licence holder must at all times hold a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million.
9. The area of the highway covered by the licence must be kept clean and tidy at all times. This will include washing down the area, and removing any refuse and litter on the highway in the vicinity of the removable furniture.
10. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the licence.
11. The licence holder is not to make or cause to be made any claim against the West Oxfordshire District or Oxfordshire County Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
12. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions (see Appendix 3).
13. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.
14. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
15. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by West Oxfordshire District Council or the Highway Authority.
16. The premises must ensure that if alcohol is sold from the business that all necessary permissions under the Licensing Act 2003 are in place.
17. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
18. West Oxfordshire District Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
19. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that the conditions above are being adhered to.

## National Conditions

[All section references are to the Business and Planning Act 2020]

### No-obstruction condition

#### Section 5(5)

A “no-obstruction condition” is a condition that anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6):

#### Section 3(6)

The effects referred to in subsection (5) are-

- 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.

### Smoke-free seating condition:

#### Section 5(6)

A “smoke-free seating condition” is a condition that, where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.