

Business and Planning Act 2020
Malvern Hills District Council
Policy Statement on Pavement Licences

1.0 Background

- 1.1 The Business and Planning Act 2020 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.
- 1.2 Sections 1 to 10 of the Act create a temporary regime for the issuing of “pavement licences” by appropriate local authorities. Malvern Hills District Council is the appropriate local authority for issuing pavement licences in the administrative area covered by the Council.
- 1.3 This new process introduces 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. The aim is to provide much needed income over the summer months and protect as many hospitality jobs as possible.
- 1.4 The temporary licensing regime is due to be in place until 30 September 2024 when these provisions are due to expire in accordance with section 10 of the Act.

2.0 Pavement Licence

- 2.1 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 Licences can only be granted in respect of highways to which Part 7A of the Highways Act 1980 applies. In general terms, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).
- 2.3 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.
- 2.4 A licence permits the business to use removable 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.
- 2.5 Furniture in this context means:
- (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;
- 2.6 The Council would expect the type of furniture to be ‘in keeping’ with the local area.

3.0 Secretary of State's Guidance

3.1 In accordance with the requirements of section 8 of the Business and Planning Act 2020, the Council will have regard to any guidance issued under that section by the Secretary of State when dealing with the pavement licensing provisions contained in the Act.

4.0 Interaction with Part 7A of the Highways Act 1980

4.1 Part 7A of the Highways Act 1980 already provides a mechanism for local authorities to grant businesses permission to place objects or structures on the highway for any of the following:

- (i) for a purpose which will result in the production of income;
- (ii) for the purpose of providing a centre for advice or information; or
- (iii) for the purpose of advertising.

4.2 In Malvern Hills District Council's area, permissions to put tables and chairs on the highway under Part 7A of the Highways Act 1980 are dealt with by Worcestershire County Council.

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

4.4 Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

4.5 Those wishing to put removable furniture on the highway can apply for either a pavement licence under the Business and Planning Act 2020 or for permission under Part 7A of the Highways Act 1980.

5.0 Planning Permission

5.1 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.

6.0 Submission of Applications

6.1 Applications must be made on the Council's standard application form and must be submitted electronically to enquiries@worcsregservices.gov.uk along with the required supporting documentation and evidence that the required application fee has been paid.

6.2 The completed application must be accompanied by the following:

- A plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- A plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items of furniture that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.

- A copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million,
- Photos or brochures showing the proposed type of furniture (including the means of enclosure such as barriers) and information on potential siting of it within the area applied.
- Evidence of consent from neighbouring frontager(s) to use footway space outside their property (if applicable).

6.3 The Council has determined that the fee for making an application for a pavement licence is £100. The application fee is non-refundable in the event that the application is refused or withdrawn or if any licence granted is subsequently surrendered or revoked.

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

7.0 Applicant's Duty to Give Notice of Application

7.1 The Act requires an applicant for a pavement licence to

- (a) On the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises, and
- (b) Secure that the notice remains in place until the end of the public consultation period which means the period of 7 days beginning with the day after that on which the application is made.

7.2 A template notice for use by applicants can be found at Annex A to this policy statement and can also be downloaded from

www.worcsregservices.gov.uk/licensing/pavement-licences.aspx

8.0 Consultation on Applications by the Council

8.1 Before determining an application, Malvern Hills District Council will consult with the following bodies:

- Worcestershire County Council (The Highway Authority)
- West Mercia Police
- Hereford and Worcester Fire and Rescue Service
- The Council's Economic Development Team
- Relevant Ward Member(s) of Malvern Hills District Council

8.2 Details of applications received and the relevant public consultation periods for each application will also be published at:

www.worcsregservices.gov.uk/licensing/pavement-licences.aspx

9.0 Determination of Applications

- 9.1 Malvern Hills District Council supports the aims of the Act and wants to help promote economic recovery and growth in its area and will therefore seek to grant applications for licences where possible.
- 9.2 However this aim has to be balanced with the need to ensure the issuing of pavement licences does not put public health or safety at risk, does not lead to antisocial behaviour or public nuisance and ensures that the public, particularly those with disabilities such as sight impairment are unhampered when walking along streets.
- 9.3 The Council will consider all of the relevant circumstances in determining applications and will treat each case on its merits.
- 9.4 The Council will not grant a licence when doing so would lead to 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.
- 9.5 When considering whether furniture put on a relevant highway by a licence holder pursuant to a pavement licence has or would have the effect referred to in paragraph (a) above, the Council will have regard in particular to the needs of disabled people, and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.
- 9.6 This list is not exhaustive, and the Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to antisocial behaviour or public nuisance or unreasonably hamper pedestrian's ability to move freely.
- 9.7 The Council will consider any objections or comments received in respect of the application during the public consultation period, whether made by the bodies consulted or any other person, before the application is determined.
- 9.8 Given the important role it undertakes in maintaining the safety of users of the highway, it is extremely unlikely that a licence will be granted where objections to an application are received from the highway authority, but in all cases the thoughts of all consultees will be considered.

9.9 Having considered any objections or comments received in respect of the application, the Council may:

- (a) Grant a licence subject to the standard conditions
- (b) Grant a licence subject to the standard conditions and any other reasonable conditions that are considered appropriate in the circumstances of the case
- (c) Refuse the application

10.0 Licences Deemed Granted

10.1 The Council aims to determine all applications within the determination period provided by the Act. That means that applications will be granted or refused within the period of 7 days beginning with the first day after the public consultation period.

10.2 If the Council does not make a determination by the end of the determination period, section 3 (8) of the Act provides that the licence for which the application was made is deemed to be granted by the Council to the applicant.

11.0 Licence Conditions

11.1 All pavement licences whether granted or deemed granted, will be subject to the Council's published standard conditions, which can be seen at Annex B to this policy statement.

11.2 All pavement licences whether granted or deemed granted, will also be subject to the statutory conditions provided for under section 5(4) of the Business and Planning Act 2020. The statutory conditions are shown at Annex C to this policy statement.

11.3 In addition to the standard conditions and statutory conditions, further reasonable conditions may be attached to individual licences as the Council considers appropriate in the circumstances of the case having regard to any comments or objections received during the public consultation period. The need for further conditions beyond the standard conditions will be considered on a case by case basis.

12.0 Duration of Licences

12.1 All licences granted by the Council will be valid for a period of 6 months or until 30 September 2024, whichever is the shorter, and will then expire.

12.2 Any licence deemed granted under section 3 (8) of the Act will be valid for a period of 12 months or until 30 September 2024, whichever is the shorter, and will then expire.

13.0 Enforcement and Revocation of Licences

13.1 The Council will always seek to rectify any issues arising as a consequence of the activities authorised by a pavement licence by engaging in informal discussions with the licence holder in the first instance.

13.2 However if this informal approach does not resolve the issues in a satisfactory way, then formal action can be taken as detailed below.

- 13.3 If the Council considers that a licence-holder has breached any condition of the licence, the authority may—
- (a) revoke the licence, or
 - (b) serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.
- 13.4 If a licence-holder on whom an enforcement notice is served fails to comply with the notice, the Council may—
- (a) revoke the notice, or
 - (b) take the steps itself and recover the costs of doing so from the licence holder.
- 13.5 The Council may also revoke the licence if it considers that—
- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
 - (b) as a result of the licence—
 - (i) there is a risk to public health or safety, or
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused,
 - (iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
 - (c) anything material stated by the licence-holder in their application was false or misleading, or
 - (d) the licence-holder did not comply with the duty to advertise their application.
- 13.6 All enforcement activity will be undertaken in line with the principles set out in the Regulator's Code.

14.0 Rights of Appeal

- 14.1 The Business and Planning Act 2020 does not provide any statutory right of appeal against a decision to refuse or revoke a pavement licence. Nor is there a statutory right of appeal against any enforcement notice served on a licence holder.
- 14.2 However, clear and justifiable reasons will always be provided if a licence is refused or revoked, or if an enforcement notice is served on a licence holder.

15.0 Hazards or Obstructions of the Highway

15.1 Notwithstanding the grant or deemed grant of a licence, the highway authority reserves the right to remove items that present a hazard or obstruction to highway users.

16.0 Review of this Policy

16.1 This policy covers the temporary provisions for the issuing of pavement licences under the Business and Planning Act which are scheduled to expire on 30 September 2024.

16.2 This policy may be reviewed from time to time should changes occur in relevant legislation, relevant social distancing measures or as a result of local considerations in the area.

ANNEX A

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 Malvern Hills 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 enquiries@worcsregservices.gov.uk by:

..... (6)

The application and information submitted with it can be viewed at:
www.worcsregservices.gov.uk/licensing/pavement-licences.aspx

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.
- (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.

ANNEX B – STANDARD CONDITIONS FOR PAVEMENT LICENCES

1. The licence must only be used for the purpose of placing removable furniture 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 licence holder's business premises.
2. Furniture may only be placed within the area of the highway identified on the plan that accompanied the application for the licence.
3. 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 regularly for cleaning and other purposes, in a manner that does not compromise their health and safety.
4. Furniture used on the highway is required to pose no risk to any users, to be durable and safe, and to be separated from the remaining footway by a means of enclosure such as barriers.
5. Clear routes of access along the footway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances suggested by guidance. A useable footway width of 1.8m should be maintained between area of the pavement licence, and any trafficked carriageway.
6. The licence holder shall not make excavations or indentations of any description whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
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 observe and comply with any direction made by a Police Officer, Fire and Rescue Officer, or authorised officer of the local authority in relation to the use of the highway, including any direction to remove furniture from the highway.
9. 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.
10. 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.
11. 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.
12. The licence holder must not allow customers using the area to engage in anti-social or disorderly behaviour.
13. 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.

ANNEX C – STATUTORY CONDITIONS FOR PAVEMENT LICENCES

1. 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). These effects 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.

2. 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.