

Pavement Licensing Policy

The Business and Planning Act 2020



Effective: 2024 - Version 1

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1. Introduction

On 25 June 2020, as part of the Covid-19 Pandemic response, the Government introduced the Business and Planning Act 2020.

Part of the Act introduced a temporary process for businesses to obtain permission for the placement of furniture such as tables and chairs on the pavement outside their premises, as a cheaper and faster alternative to obtaining such permission under part VII Highways Act 1980.

The measures included in the Act also modified provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. These aspects of the Business and Planning Act 2020 were introduced as a temporary measure to boost the economy, with provisions originally lasting until the end of September 2021.

Following several extensions to this pandemic recovery legislation, the Government in the Levelling Up and Regeneration Act 2023 opted to modify and make permanent the pavement licensing measures in the Business and Planning Act 2020, and these changes commenced on 31 March 2024.

The changes introduced by the Levelling Up and Regeneration Act 2023 included an end to the ability to use part VII Highways Act 1980 for anything that can be done with a Business and Planning Act Pavement Licence, an increase in the consultation and determination periods for applications, an increase in the fee cap, an increase in the length of time licences can be granted for, and the introduction of a new enforcement power.

This minor update aims to make the minimum necessary changes to the policy to maintain compliance with the new legislation, and for example, does not seek to change the fees charged or the standard conditions.

A more detailed policy review will follow in the coming weeks, so this policy should be regarded as temporary.

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 (alcohol or non alcohol) 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 vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

If an application would also require additional permissions, such as a Temporary Traffic Regulation Order, these permissions MUST be sought separately.

Where the criteria for a Pavement Licence have been met i.e. relevant premises, relevant use, a licence must be applied for. (see Part 5 – Enforcement)

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.

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

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

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 and Determination of Pavement Licences

3.1 Submission of the Application

An application for a Pavement Licence must be made to the Council, and the following will be required to be submitted with the application:

- a completed Application Form submitted electronically and sent to licensing@southribble.gov.uk.
- the required fee, paid by credit or debit card
- 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 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.
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- evidence of the right to occupy the premises (e.g. the lease);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference to any existing pavement licence currently under consideration by the local authority;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- 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,
- a declaration as to the truth of the contents of the application and accompanying documents and an acknowledgement that the pavement licence is liable to revocation if the application contains false or misleading statements and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

3.2 Fees

The Council has determined that the fee for applications will be £500 for new applications and renewals £350.

This fee is non-refundable in the event of refusal, surrender or revocation. Applicants are advised not to submit any application unless they can satisfy all the requirements and have included all required documentation.

3.3 Consultation

Applications are consulted upon for 14 days, starting with the day on which a valid application was made to the Council.

The Council will publish details of the application on its website at www.southribble.gov.uk.

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- South Ribble Council Town Centre Management
- South Ribble Council Environmental Health Service (including Environmental Control and Food and Safety Teams)
- South Ribble Council Planning Department
- Lancashire Fire & Rescue Service
- Lancashire Police

Members of the public and others listed above can contact the Council to make representations.

The Council must consider representations received during the public consultation period and consider these when determining the application.

The period in which the licence must be determined is fourteen days, commencing the day after the public consultation ends.

If the local authority does not make a determination by the end of the determination period, the licence for which the application was made is deemed to be granted by the authority to the applicant.

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 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 the site notice requirement 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 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 (5 working days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix 1.

3.5 Site Assessment

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

- 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. 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 local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

3.6 Determination

Once the application is submitted the Council has twenty-eight days from the day after the application is made (excluding public holidays) to consult on and determine the application.

This consists of fourteen days for public consultation, and then fourteen 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, and impose conditions, or
- refuse the application.

If the local authority does not determine the application by the end of the twenty eight-day period, the application will be deemed to have been granted.

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. These terms will also be regarded as conditions of licence.

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 09:00 and 21:00.

Applications outside these hours will be assessed individually, in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

Premises already licensed under the Licensing Act 2003, may apply for a Pavement Licence which reflects the hours permitted for their outside areas on their LA03 licence. This must be specified on the application.

3.8 Licence Duration

If the Council determines an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the public consultation period, excluding public holidays) they may can specify the duration of the licence, subject to a minimum duration of 3 months.

The expectation from the Government is that local authorities will grant licences for 24 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.

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 year.

Existing pavement licences granted before 31 March 2024, under the Business and Planning Act 2020, prior to the commencement date, will remain valid until the expiration date on the licence, given to them by the licensing authority (September 2024). Once this has expired, businesses will need to apply for a new licence.

Any pavement licence that was granted under the Business and Planning Act 2020 before the commencement date with no limit on its duration, or that was deemed to be granted will expire 2 years from the commencement date.

There is no provision in the Act to transfer a Pavement Licence.

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 conditions then the application may be refused.

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

4. Conditions

The Council's standard conditions are set out 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.

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

However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National 'no obstruction' condition is shown in Appendix 3.

There may be circumstances where the Pavement Licence may be suspended or revoked to support a special event taking place (Condition 1 of the Licence).

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains 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 an application would also require additional permissions, such as a Temporary Traffic Regulation Order, these permissions MUST be sought separately.

There may be additional costs for such permissions. Issuance of a Pavement Licence does NOT supersede any requirement for such permission, and its validity would be conditional on the securing of such permission.

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 authority can take action to cover any costs.

The authority 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 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; or

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 of the application or secure that the notice remains in place until the end of the public consultation 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.

Failure to comply with the requirements with regard to Pavement Licences may result in offences under the Highways Act 1980.

Failure to secure the appropriate permissions would also mean all of the relevant planning and street trading considerations would apply.

5.1 Enforcement - Removal Of Furniture

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 Licence's generally, relevant social distancing measures or as a result of local considerations within the South Ribble Borough.

The Business and Planning Act 2020

Application for a Pavement Licence

[NAME OF PREMISES]
[FULL ADDRESS OF PREMISES]

TAKE NOTICE, **[applicant name]**, has made an application on **[DATE]**, pursuant to Section 2 of The Business and Planning Act 2020 for a Pavement Licence to be granted in respect of the premises detailed above.

[Days and times during which it is proposed to place street furniture on the highway]

A copy of the application can be viewed at the Civic Centre, West Paddock, Leyland, PR25 1DH, or online at www.southribble.gov.uk

Any person who wishes to make representations in relation to this application must do so in writing to Licensing, Civic Centre, West Paddock, Leyland, PR25 1DH, info@southribble.gov.uk or by the online portal. Representations must be made within the public consultation period which ends **[DATE which is 14 days after the day on which the application is made]**.

Standard Pavement Licence Conditions

1. Being the licence holder of a Pavement Licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that South Ribble 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 licence 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.
2. South Ribble Council requires evidence that the licence holder have Public Liability Insurance for the operation of the Pavement Licence. This must indemnify South Ribble Council and Lancashire County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.
3. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
4. South Ribble Council and/or Lancashire County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.
5. The licence holder is not to make or cause to be made any claim South Ribble Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
6. The licensed area must not be used to accommodate customers standing to consume food and drink.
7. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
8. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
9. Emergency routes to the premises and adjacent buildings must not be obstructed by the pavement furniture, which should not, in normal circumstances, extend beyond the width of the premises frontage.
10. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.

11. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
12. 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.
13. The operation of the area must not interfere with highway drainage arrangements.
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, Lancashire County Council and evidence of such agreement produced to Chorley Council by the licence holder on demand.
15. All detritus (food and drink remnants, spillages, bottles, cans, wrappers, cigarette ends etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the designated area benefitting from the pavement licence, for a distance of up to 10 metres from the boundary of the designated area benefitting from the pavement licence. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
16. 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 South Ribble Council or the Highway Authority.
17. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within licensed area.
18. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within the designated area benefitting from the pavement licence outside the hours in force for the premises itself.
19. The licence must be displayed on the premises with a plan of the agreed layout in clear view.
20. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
21. Without prejudice to the obligation contained in Condition 3 The licence holder must cease to place remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.

22. There must be adequate provision made for the collection and containment of litter and, where directed, the Licensee must provide suitable litter bins.
23. The Licensee will ensure that the designated area is maintained in a clean and tidy condition. The Licensee shall also take appropriate precautions to prevent the immediate highway from becoming littered as a result of trading activities.
24. The Licensee shall at all times when the pavement cafe is in operation make available for customers toilets and hand washing facilities, to wheelchair accessible standards where it is practicable and reasonable to do so.
25. The Licensee will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or tenants of adjoining premises.
26. No speakers or playing of music shall be permitted.
27. No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.
28. South Ribble Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

National Conditions

31. No obstruction condition

Nothing must be done by the licence-holder to:

- prevent traffic, other than vehicular traffic, from—
 - 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)
 - passing along the relevant highway
 - 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.

Particular regard must be had 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. See Section 3 Inclusive Mobility

32. Smoke-free seating condition Where the furniture to be put on the highway consists of seating by use of persons for the purpose of consuming food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted.

Appendix 4

Function		Decision Delegated to
Grant of Pavement Licence	Where, during the public consultation period, no representations have been received.	Licensing Officers.
	Where, during the public consultation period, representations have been received.	Licensing Manager with Chair/Vice Chair of Licensing/Portfolio holder
Revocation of Pavement Licence	In line with section 5 of the Policy above	Licensing Manager with Chair/Vice Chair of Licensing/Portfolio holder
Remedial Notices	Breach of condition (case by case basis)	Licensing Officers