

Pavement Licensing Policy

Business and Planning Act 2020

Effective: (date)

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1. Introduction

The Business and Planning Act 2020 (the Act) introduces new provisions to allow premises serving food and drink, such as bars, restaurants and pubs, to seat and serve customers outdoors on the public highway through temporary changes to planning procedures and alcohol licensing.

In bringing forward this legislation the Government set out the purpose of the new process for pavement licences:

“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. This will support them to operate safely while social distancing measures remain in place. This will provide much needed income over the summer months and protect as many hospitality jobs as possible.”

The Act introduces a temporary fast-track process for businesses to obtain permission, in the form of a “pavement licence”, from Wyre Council (the Council) to place furniture such as tables and chairs on the pavement outside their premises to create additional customer capacity whilst adhering to social distancing guidelines.

Any business which uses or proposes to use their premises for the sale of food or drink, for consumption on or off the premises may apply for a pavement licence.

Application fees for the new pavement licences are capped and the process involves a considerably shortened determination period, when compared to the current process for pavement café licences issued under part 7A of the Highways Act 1980 (the Highways Act), ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery.

The measures included in the Act also modify provisions in the Licensing Act 2003 by giving venues who normally operate under a licence to serve alcohol for consumption ‘on’ the premises, to be automatically permitted to make ‘off’ sales until 23:00hrs, with some limited exceptions. This entitlement will end on 30 September 2021, unless the Government extend that date further through legislation.

Whilst the Council wishes to support business and encourage pavement cafes, it is important that they are located and managed in such a way as to ensure that they do not obstruct the highway or create problems for pedestrians and residents.

Wyre Council is particularly concerned that disabled people, including those with physical, sensory or mental impairment and families with pushchairs, prams and young children should still be able to access our high streets and be afforded safe passage along footways and pedestrianised areas.

In general, all parts of the highway adjacent to the applicant’s premises may be considered for a pavement licence except:

- Any carriageway or 'shared use surface'
- Any highway verge
- Where width of the pavement or existing street furniture makes it impractical.

2. Legal Framework

Businesses or individuals who place tables and chairs etc. on the highway without legal authority, such as a pavement licence issued under the Business and Planning Act 2020, or a licence issued under Part 7A of the Highways Act, may be subject to enforcement action.

The Highways Act 1980 provides for the following relevant offences:

- Section 137, if a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway.
- Section 148, if, without lawful authority or excuse, a person deposits anything whatsoever on a highway to the interruption of any user of the highway.

Both offences are punishable on summary conviction by a maximum fine of £1,000.

Granting a licence to operate a pavement cafe does not imply an exclusive right to the area. The Council reserves the right to gain access to the cafe area for cleaning, repairing and maintaining the highway or street furniture. Other statutory organisations may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the licence temporarily if, for any reason, it becomes necessary.

3. Scope

3.1 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 prescribed purposes.

3.2 Eligible Businesses

A business which uses, or proposes to use, premises for the sale of food or drink for consumption on or off their premises, may apply for a licence.

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 the consumption of food or drink supplied from, or in connection with the use of the premises.

3.3 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 for these).

3.4 Type of furniture permitted

The furniture which may be used is:

- Counters or stalls for selling or serving food
- Tables, counters or shelves on which food and drink can be placed
- Chairs, benches or other forms of seating; and
- Umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable and is able to be moved easily, and stored away when the premises is closed.

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

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.

5. Application Process

5.1 Submission of the Application

Wyre Council requires applications for pavement licence within the Borough to be submitted on the Council's application form and sent electronically to licensing@wyre.gov.uk. In order to be a valid the application must include the following:

- a completed application form
- a satisfactory Covid-19 risk assessment
- the fee
- a plan showing the location of the premises indicated with a red line, so the site can be clearly identified
- a detailed site plan, clearly showing the proposed area to be 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 you 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 such as litter bins, lampposts street furniture or trees.
- the proposed days of the week and the times of day between which, it is proposed to put furniture on the highway
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied
- the proposed duration of the licence;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and a copy 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.

5.2 Fees

The fee for a licence under these provisions is £100.

5.3 Consultation

The Council must undertake a public consultation lasting 7 days, beginning the day after a valid application is submitted (excluding Christmas Day, Good Friday and bank holidays).

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

The Council is required by law to consult with Lancashire County Council as the relevant Highway Authority.

In addition, to ensure that the implications of the application are fully considered, the Council will consult with:

- Lancashire Constabulary
- The Council's Environmental Health Service
- Local Councillor(s)

Members of the public and nominated consultees may make representations to the Council about the application.

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

5.4 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 visible to, and can be easily read by members of the public. 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 period, being 7 days, starting the day after the application is submitted to the authority, excluding Christmas Day, Good Friday and bank holidays.

A template notice is provided at Appendix 1.

6. Determination of applications

6.1 Relevant factors

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

- Public health - for example, ensuring that reasonable provision has been made for smoke-free seating and ensuring that the proposed use accords with the latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- Public safety - emergency exit routes, including those of adjacent buildings, must not be obstructed by the pavement cafe and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.
- Public amenity - will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and

- Accessibility - adopting 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 structures or permanent street furniture 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.

As with any other public function, in determining an application, a local authority must also have regard to its wider duties, including:

- the prohibitions on unlawful discrimination etc. in s.29 of the Equality Act 2010;
- the Public Sector Equality Duty contained in s.149 of the Equality Act 2020;
- the prohibition on acting in a way which is incompatible with right under ECHR by virtue of s.6 of the Human Rights Act 1998;
- the need pursuant to s.17 of the Crime and Disorder Act 1998 to have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent (a) crime and disorder in its area (including antisocial and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area and (c) re-offending in its area;
- Its duty under s.89 of the Environmental Protection Act 1990 to keep relevant highways clear of litter and refuse.

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 their proposal.

6.2 Timescale

At the end of the public consultation period, the Council must determine the application within 7 days, starting the day after the public consultation period ends (excluding Christmas Day, Good Friday and bank holidays).

If the Council determines the application within this 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 prescribed period, the application will be deemed to have been granted with standard conditions.

6.3 Approval of Applications

On approving the application, the Council will issue a Pavement Licence subject to specified terms and conditions, including the days and hours when tables and chairs are permitted to be on the highway.

Wyre pavement licences will normally only be granted between the hours of 09:00hrs to 21:00hrs.

Applications from pavement licenses outside these hours will considered on their own merits on a case by case basis. The Council also retains the right to specify permitted hours that are less than those above, where it considers it appropriate to do so.

All furniture must be removed from the highway outside the permitted hours, unless a valid premises licence authorising the sale of alcohol issued under the Licensing Act 2003, is in place.

In this case, furniture may remain in situ until the premises close, but the area may not be used for the service or consumption of food or drink after the terminal hour on the pavement licence.

6.4 Conditions

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, or the standard conditions varied, if the Council considers it appropriate in the circumstances of any particular case.

6.5 National Conditions

The Government have introduced 2 mandatory conditions, a no-obstruction condition and a smoke-free seating condition which are set out in Appendix 3.

Wyre Council considers that 'reasonable provision for smoke-free seating' is that smoking will not be permitted on at least half of the total number of tables provided.

6.6 Licence Duration

Where the Council determines an application during the determination period they may specify the duration of the licence, subject to a minimum duration of 3 months.

If a licence is 'deemed' granted because the authority did not make a decision on the application before the end of the determination period, the licence will be valid for a year.

Any licence granted or deemed granted will not be valid beyond 30 September 2021.

7. 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, the application will be refused.

Licences will not normally be granted in the following circumstances;

- A significant effect on road safety would arise either from the siting of the tables and chairs, or from customers visiting or leaving the licensed area
- The site obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use
- There is a conflict with Traffic Orders, such as waiting restrictions
- The area to be licensed interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities
- There would be a significant loss of amenity due to noise, rubbish, potential for the harbourage of vermin, odour or fumes
- The tables and chairs obstruct the safe passage of users of the footway or carriageway
- The existing toilet and washing facilities are inadequate

- The Council is not satisfied that applicants have made reasonable provision for smoke-free seating within the licensed area.
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage of all tables and chairs off the highway without impeding any access or egress from the premises.

In considering the above matters, the standard guidance will be that a licence will only be issued if an unimpeded pedestrian route can be maintained at all times. The route shall ensure that all pedestrians and particularly those with a disability can maintain their normal path wherever feasible. All applications will be considered on their own merits.

There is no statutory appeal process against decision to refuse, or add conditions to an application, but the applicant may make a complaint through the Council's corporate complaints procedure where they are unhappy with the way their application has been dealt with.

8. Enforcement

Any unauthorised obstruction of the Highway remains an offence under the Highways Act 1980 and may be dealt with by the Highway Authority or the Police.

Obtaining a pavement licence does not confer the holder immunity in regard to other legislation that may apply, e.g. public liability, health & safety at work, noise nuisance, food hygiene and safety, alcohol and entertainment licensing and applicants must ensure that they fully comply with all legislation.

If a condition imposed on a licence either by the Council or via a National Condition is breached, the Council may revoke the licence.

Alternatively, it may issue a notice requiring the breach to be remedied. If the breach is not remedied the Council may take steps to remedy the breach and recover any costs from the licensee.

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 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 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 a 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.

4. Decisions relating to enforcement will be made in accordance with the principals in Council's Licensing Unit Enforcement Policy.

9. Review Procedures

This Policy covers the temporary permission for pavement licences under the Business and Planning Act 2020 which are scheduled to expire on 30 September 2021.

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

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Site Notice Template for display by an applicant for a Pavement Licence.

Section 2(5) of the Business and Planning Act 2020.

I/We *(name of applicant)*, do hereby give notice that on *(date of application)*

I/We have applied to Wyre Council for a 'Pavement Licence' at:

(postal address of premises)

known as *(name premises known by)*

The application is for:

(brief description of application (e.g. outdoor seating to the front of the premises for customers to eat and drink, and the days and times that the applicant proposes to use the highway for this purpose)

Any person wishing to make representations to this application may do so by writing, preferably by email, to:

Wyre Council Licensing Unit
Civic Centre
Breck Road
Poulton le Fylde
FY6 7PU
licensing@wyre.gov.uk

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*

The application and information submitted with it can be viewed on the Council's website at: www.wyre.gov.uk

Signed

Dated

These standard conditions apply to all Wyre pavement licences issued or deemed granted under the Business and Planning Act 2020.

Each application will be considered on its own merits and additional or amended conditions may be attached to a licence where Wyre Council considers it appropriate to do so.

General

1. The Licence will remain in force for 4 months, unless surrendered or revoked earlier.
2. The issue of a Licence does not give, or imply any permission to supply intoxicating liquor in the street.
3. The Licence is none transferable and shall be rendered invalid should the licensee cease trading at the premises.
4. The Licence shall be prominently displayed in the window of the premises to which it relates.
5. The use of the licensed area for the supply or consumption of food and drink is only permitted between 09:00 hours and 21:00 hours each day.
6. Any Licence issued in respect of land where an approved outdoor market takes place, will automatically exclude the normal operational hours for the market.
7. The licensee must 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. For the avoidance of doubt, this includes maintaining social distancing within the trading area as determined by the Covid-19 risk assessment.
8. The licensed area shall be vacated immediately if requested by the Council, Lancashire Constabulary or other emergency service, statutory undertaker etc. for any reasonable cause, without any liability for compensation, refund of application fee, or damage arising.
9. The Council reserve the right to request the clearing of the licensed area if required for the purposes of public safety.
10. The licensee shall indemnify the Council throughout the licensed period and shall supply a policy of insurance indemnifying himself and the Council against any injury or damage to any person or property and against any claim liability expense or damage arising by reason or in consequence of the permission granted. The policy shall provide cover of not less than £5,000,000 in respect of any one accident or series of accidents arising from one incident unlimited during the period of the insurance.
11. The licensee is not to make or cause to be made any claim against the Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
12. Upon expiry or revocation of the permission, the licensee must remove any structures from the highway and reinstate the highway to its former state and condition and in

default thereof, the Council will be empowered to carry out such work of reinstatement and recover the expense in so doing from the licensee.

13. For streets with footways and carriageways, a minimum unobstructed footpath width of 2000mm must be provided for safe and convenient pedestrian movement. This distance being, measured from the edge of the licensed area to any permanent street furniture (such as lamp posts, bollards, parking meters etc.). Where there is a heavy pedestrian flow additional footpath space may be required.
14. For pedestrianised streets, a minimum width of 2400mm or one third of the total width of the public highway, whichever is the greater, must remain free and unobstructed to facilitate pedestrian movement. This figure may be increased where there is a heavy pedestrian flow.
15. A clear direct pathway of at least 1200mm wide shall be maintained to allow entry and exit from building.
16. Only the licensed area as set out in the application shall be used for trading.
17. At least half of the tables provided in the licensed area must be designated as 'non-smoking' areas, with 'no smoking' signage displayed, to clearly identify the smoke-free area.
18. No ash trays or similar receptacles are to be provided or permitted to be left on furniture where smoke-free seating is identified.
19. Licence holders should provide a minimum 2000mm distance between non-smoking and smoking areas, wherever possible.
20. A well designed and constructed physical barrier or roped area of approximately 800mm metres in height is required to designate the licensed area and to guide persons with sight disability around the use. Such barriers must not be permanently fixed to the ground.
21. Only those tables, chairs, etc. indicated in the application may be placed within the licensed area. No other items other than receptacles shall be placed within this area.
22. Tables and chairs shall be durable and suitable for outside use. All furniture shall be maintained to a good standard.
23. Tables, chairs, umbrellas etc. shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.
24. No canopy or umbrella shall be lower than 2100 mm in height and shall be adequately secured.
25. All furniture, including barriers shall be removed and stored at the end of the approved trading hours as defined by the Licence.
26. Suitable secure storage for furniture shall be identified by the applicant at the time of application for a licence.

27. There must be adequate provision made for the collection and containment of litter and, if directed, the licensee must provide suitable litter bins.
28. The licensee will ensure that the designated area is maintained throughout the permitted hours in a clean and tidy condition and that all waste food is removed and disposed of promptly.
29. The Licensee shall take appropriate precautions to prevent the immediate highway from becoming littered as a result of trading activities, and will be responsible for the clearing of all litter within 5000 mm of the edge of the licensed area throughout the permitted hours and at the close of the permitted hours.
30. The licensee shall at all times when the pavement licence 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.
31. No speakers or playing of music shall be permitted within the licensed area.
32. 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.
33. 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 from the relevant Highway Authority. 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 the relevant Highway Authority

Alcohol licenses only

34. Where intoxicating liquor is permitted to be served or consumed in the licensed area, polycarbonate or plastic glasses must be used at all times.

National Conditions

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

1. 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

- I. 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.
- II. 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.

2. Condition relating to smoke-free seating:

- I. 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.
- II. In considering for any purposes of this group of sections whether a licence holder has made reasonable provision for seating where smoking is not permitted, a local authority must have regard to guidance issued by the Secretary of State.