

Temporary Pavement Licence Policy



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1. **Introduction**

The Council appreciates that the hospitality sector has been particularly hard hit by the restrictions put in place due to the COVID-19 pandemic.

As businesses are now starting to re-open, due to limited space and to implement the Government’s social distancing measures, many cafes, restaurants and bars may wish to use outdoor seating areas to allow customers to safely sit and eat and drink

To assist in this process, the government has issued new guidance, in the form of the Business and Planning Bill 2020.

The temporary pavement licence process introduces a streamlined consent route to allow businesses to obtain a licence to place temporary furniture, such as tables and chairs, outside cafes, bars and restaurants quickly and for a fee of no more than £100.00.

The temporary measures can be extended up to the end of September 2021, with no requirement for planning permission during this period. The measures also provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales.

Business can still choose to follow the existing process for pavement cafes, by applying for planning permission and a subsequent highway licence, should they so wish.

1. **Scope**

**2.1** Pavement Licences

A person whose use or proposed use of any premises in England is or includes relevant use may apply for a pavement licence.

A pavement licence is a licence for the licence holder to put removeable furniture on part of a relevant highway adjacent to their premises

**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 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**  Permitted Furniture

The furniture which may be used is;

* Counters or stalls for selling or serving food or drink.
* 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

Barriers must be accessible for people with sight loss to separate the licensed areas from the rest of the footway. They must incorporate a colour contrast and a tap rail for long cane users, taking care not to create obstructions that hinder accessibility for people with mobility impairments.

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

**2.4**  Exclusions

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).

1. **Application Process**

**3.1** Information Required

If businesses wish to apply for a pavement licence to have an outside seating area, or to extend one they already have (including longer opening hours), they will need to complete the application form (Appendix 1)

The application must:

* specify the premises and, the part of the relevant highway to which the application relates (a plan must be included with a red line indicating current and proposed outside seating areas);
* specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
* specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
* describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
* specify the date on which the application is made;
* contain or be accompanied by such evidence of a minimum of **£5 million** pounds public liability insurance in respect of anything to be done pursuant to the licence as the authority may require;
* state why the changes are necessary to allow your business to run effectively within the current COVID-19 social distance guidelines;
* state what measures you will put in place that will prevent harm to pedestrian and ensure highway safety, including retaining a minimum gap to allow the safe passage of all pedestrians (with emphasis on those with mobility/sight issues and people with young children) whilst enabling social distancing guidelines to be met; <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>)
* state what measures you will put in place to prevent significant harm to residential amenity (e.g. through noise and odours) of nearby homes/apartments;
* state how the outside area will be managed, including how queues will be limited on the highway, how outside noise will be limited; how the area will be kept clear of rubbish/empty glasses etc, how customers will be kept within agreed areas, etc;

We will not permit outside seating extended hours through this temporary approach if it is not considered necessary for a business to run effectively whilst implementing social distancing measures. In such cases we will direct you to a formal planning application.

Furthermore, the Council will not allow any seating area or furniture to be placed on the public highway if these will create a danger to pedestrians, regardless of the benefits to the business. Pedestrian safety will always be important. In this regard the Council may not be able to allow every request. There are some High Streets in Sefton that are not suitable to accommodate outside seating or for goods to be placed on the highway. Whilst the Council will work with businesses to find solutions and options to allow businesses to open and be viable, we must balance this with the need to protect residents.

Furthermore, the provision of outside seating areas that are close to homes can often cause a nuisance in terms of noise and the Council will not permit anything were it is considered that it will cause a significant detrimental impact to residential amenity.

Whilst it will normally be expected that a seating area will be located directly adjacent to the premises which it serves, there may be occasions that an area that is separated from the premises is more suitable. Also, an outside seating area may be proposed that extends along the pavement in front of a neighbouring business. In these cases, the Council will consider the proposal on its merits, considering the points set out above but with emphasis on how customers will be served and the potential impact on other businesses. It may be more appropriate that a separate outside seating area is served by its own temporary bar.

**3.2** Fees

To assist businesses in the re-opening of their premises, an initial 3 month licence can be granted to the applicant free of charge. This can subsequently be extended up to the end of September 2021 for a fee of £100.

**3.3** Site Notice

A person who applies 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, and
* Secure that the notice remains in place until the end of the public consultation period

Evidence of the site notice 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;
* address of the premises and name of the business;
* description of the proposed use of the furniture;
* indicate that representations relating to the application may be made to Sefton Council during the public consultation period and when that period comes to an end;
* address (which might be an email address) to which representations should be sent during the consultation period;

A template site notice is attached in Appendix 2

**4 Determination of Applications**

**4.1** Response Times

Once the information is submitted, the Council has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the Council does not determine the application within the 10 working day period, the application will be deemed to have been granted.

It should be noted that the consultation period is only deemed to have commenced once all the required information has been submitted**.**

**4.2** Representations

Members of the public can contact the council to make representations, as stated in the site notice, by contacting [network@sefton.gov.uk](mailto:network@sefton.gov.uk) The public consultation period is 5 working days, starting the day after the application is submitted (excluding public holidays).

**4.3** Assessment Criteria

The Council will consider a number of factors, when determining whether to approve the application. These include the scope for national or local conditions to make it possible to approve an application which would otherwise be unacceptable. Factors for consideration include:

* Representations made by members of the public as part of the consultation process.
* 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 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](https://www.gov.uk/government/publications/inclusive-mobility), and
  + other users of the space, for example if there are high levels of pedestrian or cycle movements.

**4.4** Application Outcomes

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.

The Council will work with businesses to grant a licence, where possible.

**4.5** Conditions

The Council’s standard conditions are attached (Appendix 3). It may be necessary to include additional conditions, which will be determined as part of the application process.

The Secretary of State has published a national condition (Appendix 4) in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020, in relation to clear routes of access, as follows:

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](https://www.gov.uk/government/publications/inclusive-mobility).

**5 Enforcement**

The aim of this policy is to help businesses during these difficult times, however, this does need to be balanced with the needs and requirements of others, including, residents and passing members of the public.

Applicants will be expected to manage their own businesses to ensure compliance with the terms and conditions of their licence.

The Council does reserve the right to enforce or revoke a licence, should the need arise. A licence may be revoked 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.

**6** Review Procedures

This policy has been produced in accordance with the Business and Planning act 2020, to cover the period up to September 2021.

The policy will be reviewed, and may be changed, should legislation be updated or revised guidance be produced regarding social distancing measures.