

Pavement Licensing Policy

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Version 1 – Interim Policy

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1. Introduction

The Covid-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

As the economy starts to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.

The Business and Planning Act makes it easier for premises serving food and drink such as bars, restaurants and pubs, as lockdown restrictions are lifted but social distancing guidelines remain in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the Isle of Wight Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, tables and chairs permissions are granted as Street Furniture Permits by the Isle of Wight Council, under the Highways Authority, under Section 115E of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28-day consultation period.

The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day/10 working day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery.

2. Scope

2.1 Definition of pavement licence

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

2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

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).

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 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 and the visual impact of the furniture may be taken into account.

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:

- the required fee of £100, paid by credit or debit card by calling (01983) 823159;
- a plan showing the location of the premises so the application site can be clearly identified;
- a plan clearly showing the proposed area covered by the licence in relation to the highway, preferably to the scale of 1:100 or 1:50, showing the area requiring permission, the proposed location of the tables and chairs and/or any other objects;
- photos or brochures showing the proposed type of furniture;
- A site-specific risk assessment to include all considerations and control measures to be implemented in relation to Covid-19;
- Proof of public liability insurance, to the minimum value of £5 million;
- Landowner's permission if the land is not owned by the Isle of Wight Council;

- Be accompanied by any other information or material as the local authority may require

3.2 Fees

The fee for applications is £100. The fee must be paid when the application is made.

3.3 Consultation

Applications are consulted upon for 7 days, starting on the day after the day on which the application is made.

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

The Council is required by law to consult with the Highways Authority. In addition, the following organisations/people will be notified by the Council and will be able to provide representations to all applications.

- Local Elected Member;
- The relevant Parish or Town Council
- Fire Authority
- Hampshire Constabulary;
- Planning Authority;
- Environmental Health;
- Licensing Authority;
- IWC PFI Contracts Team;
- Island Roads;
- Parking Services;
- Isle of Wight Amenity Land Hire/Parks and Esplanades

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

3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that 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 kept and be available to be supplied to the Council if requested.

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 and is available via a link from the Licensing Webpage titled Street Furniture Permits & Pavement Licences.

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 as set out in Section 3.1 of [Inclusive Mobility](#), and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the 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 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 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.

3.7 Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

If approved the Council will issue a Pavement licence with conditions attached.

A copy of the Council's standard conditions will be attached to all Pavement licences. These are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

In most instances the Council will not grant Pavement licences at times and in locations where vehicle restrictions are in place, after the time that those restrictions are lifted.

3.8 Licence Duration

An applicant may specify the duration of the licence requested subject to a minimum of 3 months. The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2021.

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.

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

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 and 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 conditions is shown in Appendix 3.

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 Consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied and the 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 notice has been issued) or
2. Where:
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

6. Review Procedures

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes be made to relevant legislation.

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

[Part 1] 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 the Isle of Wight 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 serving of food and drink))

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

Licensing Department
Jubilee Stores
The Quay
Newport
Isle of Wight
PO30 2EH

licensing@iow.gov.uk by: *(last date for representations being the date 5 working 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:

<https://publicaccess.iow.gov.uk/online-applications>

Dated *(date the notice was placed which must be the same date as the date of application)*

Standard Pavement Licence Conditions

EXISTING STREET FURNITURE (PAVEMENT LICENCE) CONDITIONS

GENERAL

1. Placing objects on the highway must be carried out in accordance with the terms and conditions of this licence.
2. A copy of this licence must be kept onsite by the holder and available immediately for inspection by an authorised officer of the Council, or a Police Officer.
3. The licence holder must at all times maintain a valid Third Party Public Liability Insurance Policy to the satisfaction of the Council and must produce a valid certificate of such insurance at any time upon request by an authorised officer of the Council.
4. The licence holder must notify the Licensing Department immediately of any convictions or proceedings arising out of the use or enjoyment of the consent.
5. The consent holder must not assign, sublet or part with his interest or possession under this licence or any part thereof, but may surrender it to the Council at any time.
6. The licence holder is responsible for all costs associated with this licence.
7. The licence holder must observe and comply with any directions in relation to the use of the street or public place by a duly authorised officer of the Council.
8. The licence holder must notify the Licensing Department and obtain further approval for any proposed replacement or alternative furniture.

SITE

9. The licence holder must ensure that at least 1.5m of highway for pedestrian access is maintained.
10. The licence holder must remove all street furniture from the designated area at the end of the hours stated on the licence.
11. The licence holder must remove the objects from the public highway immediately if requested to do so by the Council, its agents, contractors or licensees (including Island Roads) or by a Police Officer. The licence holder must not reposition the objects on the public highway until notified that they may do so. Under such circumstances the Council must not be liable to pay any compensation to the licence holder.
12. The licence holder must not in any way interfere with the surface of the public highway.
13. The licence holder must keep the designated area in a clean and tidy condition during use and ensure it is clean and tidy at the end of each period of use.
14. The licence holder must ensure that any spillages are promptly removed from the highway and restore the affected area of highway to a clean and safe condition. The Council will recharge the licence holder the full cost of any remedial work to remove any residual staining of the highway outside his or her premises, including the replacement of the paving stones if necessary, by pavement stones of an equivalent quality and to an equivalent standard.
15. Access must be maintained at all times for emergency vehicles (min 3.3m) and any temporary structures providing shelter/shade i.e. canopies, large parasols etc. that

might prevent access for emergency vehicles, must be easily retractable/removable. All fire hydrants, fire exits and escapes from neighbouring buildings must be kept clear and free from obstruction at all times.

REVOCAION OR SURRENDER OF LICENCE

16. This licence may be revoked by the Council at any time and the Council will not in any circumstances whatsoever be liable to pay any compensation to the holder in respect of such revocation.
17. The holder must return this licence to the Isle of Wight Council immediately on revocation or surrender of the licence.

LEGAL PROVISIONS

18. Nothing contained in these conditions will relieve the licence holder or his employees or agents from any legal duty or liability and the licence holder indemnifies the Council in respect of all claims, actions, demands or costs arising from this licence.
19. The Council may vary the conditions attached to the licence at any time.
20. The licence is issued to the applicant only and is not transferable.

NOTES TO THE CONDITIONS

It should be noted that this licence does not imply any approval from any other authority (such as Highways or Business Rates) and does not override parking regulations.

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:

Condition relating to clear routes of access:

1. 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](#).

[Inclusive Mobility](#) states:

A clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints

1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted width should be 6 metres (see also Section 8.3). If there are local restrictions or obstacles causing this sort of reduction in width they should be grouped in a logical and regular pattern to assist visually impaired people.)

2. The Licence holder must make all reasonable provisions for a non-smoking area for customers, with clear signage illustrating this area. Licence holders should provide a minimum 2M distance between any non-smoking and smoking area.