



**Isle of Wight
Council**

STREET FURNITURE & PAVEMENT LICENSING LICENSING POLICY

**Highways Act 1980 (Section 115E)
Business and Planning Act (BPA) 2020 as amended by the
Levelling Up and Regeneration Act 2023**

Document Information

Title:	Street Furniture Licensing Policy
Status:	Approved
Current Version:	Approved
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Sponsor:	Strategic Director of Community Services
Consultation:	Completed
Approved by: Approval Date:	Full Council July 2025
Review Frequency:	5 Years
Next Review:	July 2030

Version History

Version	Date	Description
1	April 24	Both Acts
2	June 24	Recommendation by Licensing Committee
3	November 24	Approval by Licensing Committee Jan 25
4	January 25	Approved by Licensing Committee
5	July 25	Full Council for Approval
6	July 25	Approved by Full Council

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1 Aim of the Policy

- 1.1 Street furniture, well-chosen and appropriately sited can enhance and complement their location. Carefully considered street furniture and materials can help strengthen character, improve the quality of the streetscape, and provide people with the things they need to enjoy the area they are situated in. Without careful consideration, street furniture can have the opposite effect.
- 1.2 Isle of Wight Council supports and encourages the effective use of street furniture and recognises that their provision can make a positive contribution to the street scene by providing facilities for people who visit, work, or live on the island aiding the local economy and maximising the use of public space.
- 1.3 This policy is intended to help businesses understand where the placing of objects or structures on the highway might be permitted. However, the Council will require that any amenity permissions are maintained to a high standard and that robust enforcement action will be taken to ensure that obstruction to the highway is kept to a minimum.

2 Introduction

- 2.1 This policy will become effective on 1st August 2025 and will remain in place for 5 years.
- 2.2 All legislative amendments and other minor changes to this Policy will be made without the need for a further consultation.
- 2.3 Major changes to this Policy will be subjected to a twenty-eight-day consultation period. Any representations will be determined by the Licensing Committee.
- 2.4 This document sets out the Isle of Wight Council's policy regarding the process for granting permission to a person to allow them to place and use objects or structures on, in or over a highway as authorised by
 - Section 115E of the Highways Act 1980, and
 - Business and Planning Act (BPA) 2020 as amended by the Levelling Up and Regeneration Act 2023
- 2.5 Applicants from alcohol licensed premises should note that they may need to seek a variation (under section 34 of the Licensing Act 2003) to their premises licence to include the area in which the facility is to be placed.
- 2.6 The granting of permission under both Acts does not relieve the applicant of the requirement to comply with all other legislation including legislation relating to licensing, planning, street trading, food safety and health and safety.
- 2.7 This policy does not relate to the placing of litter bins, advertising banners, skips, scaffolding, hoardings, or other structures, building materials, cranes on the highway or A boards under 1.5 meters in height.
- 2.8 Any object which is used to offer an article for sale which does not require street trading consent will still require permission under this policy.
- 2.9 In considering this guidance the Council will be mindful that each case must be considered on its own merits and, where the circumstances demand, the licensing authority may depart from this policy. Any deviation will be approved by the Service Manager and a written copy of this decision recorded and kept.

3 Legislation

Highways Act 1980

- 3.1 Businesses that do not use their premises for the sale of food or drink, must apply for a Highways Amenity Permission under Section 115E of the Highways Act 1980
- 3.2 Permission may be issued for any period up to 1 year.
- 3.3 Both pieces of legislation provide the power to impose conditions on permits/licences, including conditions requiring the payment to the Council of reasonable charges.
- 3.4 Permission will not be required if the objects or structures are being placed on the applicant's land and that land is not a part of a highway.

The Levelling Up and Regeneration Act 2023

- 3.5 The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020.
- 3.6 Permissions under this act allow an applicant 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.
- 3.7 A licence under this legislation can be issued for any period up to 2 years.

4 Definitions

- 4.1 The following definitions will provide clarification for the purposes of this policy.

The Highways Act

- 4.2 This refers to the Highways Act 1980 (or any subsequent legislation).

The Levelling Up Act

- 4.3 The Levelling Up and Regeneration Act 2023

Business and Planning Act

- 4.4 Business and Planning Act (BPA) 2020

Both Acts

- 4.5 This refers to both the Business and Planning Act (BPA) 2020 and the Highways Act 1980.

Pavement Licensing

- 4.6 Applications made under the Business and Planning Act (BPA) 2020 as amended by the Levelling Up and Regeneration Act 2023

Street Furniture

- 4.7 Applications made under Highways Act 1980.

The Policy

- 4.8 This refers to Isle of Wight Council's Street Furniture and Pavement Licensing Policy.

The Council

- 4.9 This means the Isle of Wight Council.

Licensing Sub Committee

- 4.10 A committee consisting of 3 elected members selected from the Full Licensing Committee.

Permission/Licence/Consent

- 4.11 The written document issued by the Council, granting permission to a person to use objects or structures on, in or over a highway.

Licence Holder

- 4.12 The individual, business or organisation to which a permission has been issued to.

Highway

- 4.13 For the purposes of Highway Amenity Permissions, the areas covered by this Policy are defined under Part VII 115A of the Highways Act 1980, being:
- a highway in relation to which a pedestrian planning order is in force.
 - a bridleway.

- a footpath (including a walkway as defined in section 35(2).
- a footway.
- a subway constructed under section 69.
- a footbridge constructed under section 70.
- a highway of a description not mentioned in any of the preceding.
- paragraphs of this definition whose use by vehicular traffic is prohibited.

Carriageway

- 4.14 A part of the Highway laid out for the use by motor vehicles (including Cycle lanes and lay-bys, but excluding Footways, Cycle ways, Cycle paths and paved verges).

A-Boards

- 4.15 A free-standing removable object used to advertise or promote a business, service or activity or used in conjunction with that business, service, or activity. *(Only A boards over 1.5 metres high require permission under this policy. Permission can only be granted under the Highway Act 1980. If less than 1.5 metres in height, authority may still need to be obtained from Island Roads). –*

Object

- 4.16 An object includes:
- Tables.
 - Chairs.
 - Benches.
 - Parasols.
 - Patio heaters.
 - Barriers/enclosures.
 - A boards which are above 1.5 metres high.
 - Planters if forming a part of removable items. Permanent planters not covered by this process.
 - Any other object which may cause an obstruction on the highway including any object used to offer articles for sale.

Applications

- 4.17 To obtain permission to place objects on the highway outside premises where food and drink are not offered for sale or consumed please refer to sections 7 – 11 of this Policy.

To obtain permission to place furniture or objects on the highway for the purpose of the sale and consumption of food or drink supplied from, or in connection with the use of the premises please refer to sections 12 – 18 of this policy.

Street Furniture Applications

- 4.18 Made Under the Highways Act 1980

5 Street Furniture Permits

Legal Considerations

- 5.1 The area for any permission must be a highway as defined by Part 7A of the Highways Act 1980 being:
- A highway in relation to which a pedestrian planning order is in force.
 - A bridleway.
 - A footpath (including a walkway as defined in Section 35(2) of the Act.
 - A footway.
 - A subway constructed under Section 69 of the Act
 - A footbridge constructed under Section 70 of the Act

- A highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- To a local Act walkway.

- 5.2 The Council may grant permission to place objects or structures on the highway. These objects or structures are termed “amenities” and although no strict statutory definition is given, could include such things as, but not limited to:
- Tables, chairs, and parasols. (if not being used for the sale or consumption of food and drink).
 - Flowers and plants being offered for sale outside a shop premises.
 - Beach paraphernalia or postcard and other gift display racks
 - Clothes rails
 - Planters if forming a part of removable items. Permanent planters not covered by this process.
 - Barriers, screens or enclosures to contain tables, chairs and/or outside designated smoking areas etc.
 - “A” Boards or other advertising boards (over 1.5 metres high).
 - Enclosures/barriers.
- 5.3 It is important to note that any person who, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway commits an offence(s) contrary to section 137 of the Act.

Public Safety Considerations

- 5.4 Whether the relevant activity represents or is likely to present a substantial risk to the public by obstructing the highway or any other right of way.
- 5.5 Any other matter presenting a risk to the public, nearby businesses, property or residential premises.
- 5.6 Whether the relevant activity presents, or is likely to present, a substantial risk of nuisance to the public from litter, noise or odour, particularly in residential areas.
- 5.7 Whether the relevant activity presents, or is likely to present, an increased risk of crime and/or disorder.

Design Considerations

- 5.8 Consideration will be given to the design and livery of any proposed tables and chairs or other object as to whether it is in-keeping with the amenity, environment, and character of the area.
- 5.9 Any text and/or livery may require advertisement and/or planning consent from the Planning Department.
- 5.10 Before any amenity use on the highway is proposed or granted, the following issues will need to be considered.

Space

- 5.11 The size of the area will depend on the type of usage and the actual space available. Each case will be determined on its own merits with the overriding principle being that public safety is paramount. There must always be sufficient room for pedestrians and others to safely use the footpath.
- 5.12 A minimum clearance width of between 1.8 and 2 metres must be maintained between the outer edge of any amenity and the edge of any vehicular trafficked edged or other defined

carriageway. This is to allow safe movement for pedestrians, wheelchairs, mobility scooters, prams and visually or physically impaired people.

- 5.13 For pedestrian and/or shared service areas, any amenity must be sited to provide sufficient width (using the above clearance guidelines if applicable) for all users to pass freely. Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are several permanent obstructions such as trees or other street furniture. The extent of the amenity area must be clearly defined.
- 5.14 The proposed position of the object:
- Cannot reduce the pedestrian walkway to less than 1.5 metres.
 - Must maintain a distance between the closest edge of the object to the road/pavement edge of at least 0.45 meters.
 - Must not include any part of the carriageway, and
 - Cannot be within the visibility splay of a junction.
- 5.15 Access to fire hydrants must also be maintained.

Means of Enclosure

- 5.16 Any premises that provide seating for customers on the highway will be required to place barriers around or at either end of the seating. The reason for this requirement is to create a defined separation between pedestrians and the patrons of the licensed area.
- 5.17 Other uses for such enclosures may also include presenting areas for patrons who wish to smoke or to control queues of customers waiting to gain access to the premises. Barriers or similar structures must have solid horizontal bars/elements at appropriate height(s) above ground level so as to be detectable by a stick ("tapping rail").
- 5.18 Barriers must be a contrasting colour to any furniture and/or pavement to aid visual identification. The height of any barrier must not exceed 1.5 metres unless otherwise authorised by the Council. The means of enclosure must be removed from the highway when outside of the times authorised by the permission. The design of any barrier(s) should complement the character of the surrounding area and the Council may require the enclosure to be of a specific design to maintain continuity along the street frontage. Any text and/or livery may require advertisement and/or planning consent from the Planning Department.
- 5.19 Applicants must seek approval from the licensing authority for any proposed barriers at the time of application. If premises provide unsuitable barriers, they will be required to remove them and replace them with appropriate ones.
- 5.20 Where any permission is granted to allow patrons to smoke outside, that amenity area will need to be closely managed by the licence holder to ensure that patrons using the area do not overspill or exceed the recognised area. Containers for smoking litter will need to be provided.

Environmental Implications and Other Considerations

- 5.21 The amenity area must be always kept clean and litter free. Evidence of a scheduled cleaning record shall be provided upon request.
- 5.22 Applicants will need to address and control any potential nuisance(s) caused by their patrons. It is vitally important that the needs of other persons are fully considered. This includes neighbours, nearby residents, passers-by, emergency services, deliveries, utility companies requiring access to manholes, gas and water mains, access to hydrants by the fire service together with refuse collections. Market and event vehicles must also be considered.

Health & Safety

- 5.23 It is the responsibility of the applicant/amenity holder to ensure that any equipment complies with all relevant legislation and statutory requirements whether this be food hygiene, health & safety, food safety and alcohol sales requirements where applicable.
- 5.24 Holders will be responsible for securing insurance cover and for indemnifying the Council against public liability claims from members of the public arising from the provision of any amenity on the highway. Any damage to Council property caused because of the provision of the amenity, will be repaired by the Council with all costs recharged to the business in question.
- 5.25 All risk assessments produced for the activities associated with the business are the responsibility of the licence holder. The relevant authorities, when considering any application will not assess the suitability of the risk assessments supplied. They are required by the authorities to gain an understanding of the activities being undertaken.
- 5.26 If the authority approves the application, this should not be taken to mean that the risk assessments have been approved, or that this in any way suggests that they are suitable and sufficient.

6 Application Process

New Applications

- 6.1 Applications will not be accepted where:
- The proposed position of the object reduces the pedestrian walkway to less than 1.5 metres (dependant on location, this may be greater).
 - The distance between the closest edge of the object to the road/pavement edge is to be less than 0.45 metres.
 - The proposed position of the object includes any part of the carriageway.
 - Any part of the object would be within the visibility splay of a junction.
- 6.2 However, consideration may be given in circumstances where the proposed object position does not meet these requirements, but the carriageway is subject to a Prohibition of Vehicles (pedestrianised area).
- 6.3 The application must be received by the Council at least two months and not more than six months prior to the date on which the applicant wishes to commence utilising the permission or an existing permission is due to expire.
- 6.4 Applications must be submitted using the prescribed form to the Licensing Department and must be accompanied by the following:
- 25% of the application fee.
 - A plan, showing the location of the premises shown by a red line, so the application site can be clearly identified, and showing the proposed area covered by the licence in relation to the highway, if not to scale with measurements clearly shown.
 - For A-boards or any other object application, a photograph and the exact size of the proposed object(s).
 - Proof of the applicant's public liability insurance. The minimum value insured shall be £10 million.
 - Confirmation from the Council's Development Control Department detailing whether planning permission is required.
 - Written permission from the landowner if the land is not owned by the Council; (permission to use Council land may or may not be granted during the consultation).
 - A site-specific risk assessment.

- 6.5 An A4 notice must be placed in a conspicuous position at or as near as possible to the site to which the application relates within 5 working days after the date the application is submitted to the licensing authority
- 6.6 The Licensing Authority will arrange for the notice to be fixed.
- 6.7 The notice will be printed on yellow coloured paper headed New Street Permission Application. The text will be at least font size 16 and will provide the following information:
- Applicants name.
 - The proposed location(s) of the table and chairs and/or other objects.
 - The days and times they will be in place.
 - Start and end date of consultation period during which representations regarding the application may be made to the Council.
 - Details of where any representations should be sent.
- 6.8 The Council will also serve a copy of the notice on the owner or occupier of premises which appear to be materially affected.
- 6.9 The Council will not grant the permission to which the notice relates until it has taken into consideration all representations made in connection with the proposed permission received within the period specified in the notice.

Variations

- 6.10 There are no provisions to allow for a variation of an existing permission, Any variation will need to be made by way of a new application.

Renewals

- 6.11 If a licence holder wishes to renew their permission, they must do so by following the process outlined in the above paragraphs.
- 6.12 Any application must be received no later than 2 months before the existing permission expires. Failure to do so may result in a period where permission isn't in place.

7 Fees & Charges

- 7.1 The Council will set a fee for the grant of a permission following receipt of an application.
- 7.2 In addition to the above fee, an adopted highway occupation charge will also be levied if relevant objects are placed on highway owned and/or maintained by the Council.
- 7.3 If the application is approved, the remaining balance of the application fee and the highway maintenance charge (if applicable) will be due before the permission is issued.
- 7.4 If the application is not successful, the 25% deposit or any other fees received will be returned to the applicant.
- 7.5 The Licensing Department will publish fees and charges for the following:
- The grant of an application.
 - Highway maintenance charge.
- 7.6 The adopted highway occupation charge will be per year but will be charged pro rata depending on the period that the application relates to. No other fees will be charged pro rata.
- 7.7 A minimum of 25% of the application fee will be paid on application.

- 7.8 If the application is not granted, all fees received by the Council will be returned to the applicant.
- 7.9 The remaining balance of the application fee and any adopted highway occupation charge must be paid in full before the Highway Amenity Permission is issued.
- 7.10 Whilst an application will still be required, and the consultation and determination process followed as detailed below, the Council may waive any fee due from a charity or charity shop for carrying out their activities, provided the area of land that they wish to utilise does not exceed 1 x 1m.

8 Consultation

- 8.1 To enable the Council to determine whether permission should be granted, it will carry out a consultation on each application.
- 8.2 The consultation period is 28 days and will commence the first working day after the publication of the notice.
- 8.3 Applications will be made available to view online at the Council's website for the duration of the consultation period.
- 8.4 The following organisations will be notified by the Council and will be able to provide representations to all applications:
- Local Elected Member.
 - The relevant Parish, Town or Community Council.
 - Fire Authority.
 - Hampshire & Isle of Wight Constabulary.
 - Planning Authority.
 - Environmental Health.
 - Licensing Authority.
 - Isle of Wight Council Highways Team.
 - Island Roads.
 - Parking Services.
 - Isle of Wight Amenity Land Hire//Parks and Esplanades.
- 8.5 In addition, the Council will also consider any representation received from any other individual, organisation or business.
- 8.6 Representations can be received regarding any issue, however when determining the application, the Council will give particular attention to the following areas:
- Prevention of Crime and Disorder
 - Prevention of Nuisance
 - Visual Impact
 - Public safety including Accessibility.
- 8.7 Representations must be made in writing and must include the following:
- The name and address of the person or organisation making the representation.
 - The premises to which the representation relates.
 - The reason and justification for making the representation.
- 8.8 The Licensing Department will not consider representations that are believed to be frivolous, vexatious, or which relate to moral grounds.

- 8.9 A vexatious representation is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.
- 8.10 A frivolous representation is generally taken to be one that is lacking in seriousness.
- 8.11 However, all representations made to the Council in connection with the proposal within the period specified in the notice will be considered.
- 8.12 The licensing authority will give the appropriate amount of weight to each representation. The weighting will be based on the evidence supplied as well as the experience and professional knowledge of the person or organisation making the representation.

9 Determination

- 9.1 Applications will be determined within 20 working days, following the last working day of the consultation period stated in the notice, unless a longer period is agreed by all parties.
- 9.2 Permission can only be granted once the Council has consulted with neighbouring premises with an interest.
- 9.3 When considering an application, the Council may take into account:
- Any adverse impact arising from the placing of an object; and
 - Whether appropriate measures have been agreed and implemented by the applicant to mitigate any adverse impacts.
- 9.4 If there are no valid representations received, the application will be granted without the need for a hearing.
- 9.5 If valid representations are received during the consultation period and cannot be resolved by an officer between the applicant and the person making the representation, the application will be determined by the Licensing Sub-Committee at a hearing.
- 9.6 If approved, a Highway Amenity Permission will be issued detailing the duration of the licence, the area where the objects can be placed and any conditions the Council consider reasonably necessary and subject to any other conditions the Council thinks fit.
- 9.7 The objects will not be permitted to be placed on, under or above the highway until all relevant fees and charges have been paid and the written permission has been issued to the applicant. The object can only then be placed in accordance with the permission.
- 9.8 Where the Council refuse to grant Highway Amenity Permission, it shall provide in writing a statement of the reasons for its decision within seven days of the hearing.
- 9.9 All decisions will be recorded in accordance with the Openness of Local Government Bodies Regulations 2014.

10 Conditions

- 10.1 The Council is permitted to attach conditions and restrictions to any permission they issue which they deem to be reasonably necessary.

11 Enforcement

- 11.1 If a licence holder fails to comply with the conditions contained in their permission, the Council may serve a notice on them requiring them to take steps to remedy the non-compliance within a specified time.
- 11.2 If the licence-holder fails to do so, the Council may:
- Amend the licence, with the consent of the licence-holder,
 - Revoke the licence, or
 - Take steps itself to remedy the breach including arranging for the items to be removed.
- 11.3 The Council can recover any costs of undertaking any of the above.
- 11.4 If objects are placed on the highway without prior permission enforcement action may be taken, which could ultimately result in the Licensing Authority making arrangements for the removal of the object.
- 11.5 If items are removed by the Council and the expenses are not settled within 3 months after serving a notice of demand for the expenses, all items will be destroyed.
- 11.6 Before any enforcement action is taken, the owner of the object will be given ample opportunity to apply to obtain permission. If the objects position is deemed dangerous, the owner will be asked to remove it and if they fail to do so the Council will arrange for it to be removed. Any costs incurred will be recharged.
- 11.7 If an object is removed by the Council when permission has not been granted the object will be retained and any costs recovered as per paragraph 11.5 above.

12 Pavement Licences

- 12.1 Under the Business and Planning Act (BPA) 2020 as amended by the Levelling Up and Regeneration Act 2023.
- 12.2 To obtain permission to place furniture or objects on the highway for the purpose of the sale and consumption of food or drink supplied from, or in connection with the use of the premises.

Legal considerations

- 12.3 The area for any permission must be a highway as defined by Part 7A of the Highways Act 1980 being:
- A highway in relation to which a pedestrian planning order is in force.
 - A bridleway.
 - A footpath (including a walkway as defined in Section 35(2) of the Act.
 - A footway.
 - A subway constructed under Section 69 of the Act
 - A footbridge constructed under Section 70 of the Act
 - A highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
 - To a local Act walkway.
- 12.4 The Levelling Up and Regeneration Act makes permanent the pavement licensing regime under the Business and Planning Act 2020.

- 12.5 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.
- 12.6 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.
- 12.7 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.
- 12.8 The furniture which may be placed on the pavement include:
- 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.
- 12.9 It is important to note that any person who, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway commits an offence(s) contrary to section 137 of the Act.

Public Safety Considerations

- 12.10 Whether the relevant activity represents, or is likely to present substantial risk to the public by obstructing the highway or any other right of way.
- 12.11 Any other matter presenting a risk to the public, nearby businesses, property or residential premises.
- 12.12 Whether the relevant activity presents, or is likely to present, a substantial risk of nuisance to the public from litter, noise or odour, particularly in residential areas.
- 12.13 Whether the relevant activity presents, or is likely to present, an increased risk of crime and/or disorder.

Design Considerations

- 12.14 Consideration will be given to the design and livery of any proposed tables and chairs or other object as to whether it is in-keeping with the amenity, environment, and character of the area.
- 12.15 Any text and/or livery may require advertisement and/or planning consent from the Planning Department.
- 12.16 Before any amenity use on the highway is proposed or granted, the following issues will need to be considered.

Space

- 12.17 The size of the area will depend on the type of usage and the actual space available. Each case will be determined on its own merits with the overriding principle being that public safety is paramount. There must always be sufficient room for pedestrians and others to safely use the footpath.
- 12.18 A minimum clearance width of between 1.8 and 2 metres must be maintained between the outer edge of any amenity and the edge of any vehicular trafficked edged or other defined

carriageway. This is to allow safe movement for pedestrians, wheelchairs, mobility scooters, prams and visually or physically impaired people.

- 12.19 For pedestrian and/or shared service areas, any amenity must be sited to provide sufficient width (using the above clearance guidelines if applicable) for all users to pass freely. Additional width may be required in areas where there is a high volume of pedestrian traffic or where there are several permanent obstructions such as trees or other street furniture. The extent of the amenity area must be clearly defined.
- 12.20 Generally, the proposed position of the object:
- Cannot reduce the pedestrian walkway to less than 1.5 meters (dependant on location, this may be greater i.e., Pedestrianised areas).
 - Must maintain a distance between the closest edge of the object to the road/pavement edge of at least 0.45 meters.
 - Must not include any part of the carriageway and cannot be within the visibility splay of a junction.
- 12.21 Access to fire hydrants must also be maintained.

Means of Enclosure

- 12.22 Any premises that provide seating for customers on the highway will be expected in most circumstances to place barriers around or at either end of the seating. The reason for this is to create a defined separation between pedestrians and the patrons of the licensed area.
- 12.23 Other uses for such enclosures may also include presenting areas for patrons who wish to smoke. Barriers or similar structures must have solid horizontal bars/elements at appropriate height(s) above ground level so as to be detectable by a stick ("tapping rail").
- 12.24 Barriers must be a contrasting colour to any furniture and/or pavement to aid visual identification. The height of any barrier must not exceed 1.5 metres unless otherwise authorised by the Council. The means of enclosure must be removed from the highway when outside of the times authorised by the permission. The design of any barrier(s) should complement the character of the surrounding area and the Council may require the enclosure to be of a specific design to maintain continuity along the street frontage. Any text and/or livery may require advertisement and/or planning consent from the Planning Department.
- 12.25 Applicants must seek approval from the licensing authority for any proposed barriers. If premises provide unsuitable barriers, they will be required to remove them and replace them with appropriate ones.
- 12.26 Where any permission is granted to allow patrons to smoke outside, that amenity area will need to be closely managed by the licence holder to ensure that patrons using the area do not overspill or exceed the recognised area. Containers for smoking litter will need to be provided.

Furniture Design

- 12.27 Tables and chairs should be of a high quality and robust. They should be separate and of a design to allow use by disabled or wheelchair users and their design, materials and colour should complement the area they are used in. Care must be taken in ensuring that the feet or resting points of tables and chairs do not create pressure points which could damage the road or footpath surface. (Repairs to such surfaces will be at the permit holder's expense).
- 12.28 Planters must be light enough to be removed daily but stable enough to resist movement due to extreme weather conditions and must not be allowed to become litter receptacles. They should not extend beyond the amenity area or stain the paving or road surface. Ideally, they should be well maintained with a vibrant array of bedding plants or flowers. They should be of

a contrasting colour to the surrounding area, so they do not become a tripping hazard to people with a visual impairment.

- 12.29 Parasols must not extend beyond the amenity area and their lowest point should be 2 metres from the ground. They must be secured at the base so as not to blow over or away in winds and as with tables and chairs, must be robust and high quality.
- 12.30 If patio heaters of any sort are proposed, the application must be accompanied by a full description of the type of heater together with a detailed risk assessment to include energy efficiency and an environmental impact statement. It is the responsibility of the applicant to notify his/her insurers of the use of such equipment and for approval to be sought in accordance with the terms of the policy of public liability insurance.

Environmental Implications and Other Considerations

- 12.31 The amenity area must be always kept clean and litter free. Evidence of a scheduled cleaning record shall be provided upon request. Persons must also ensure that litter straying into neighbouring areas is removed. Ashtrays or similar receptacles must be provided in amenity areas where smoking takes place.
- 12.32 Consideration should be given to the division of amenity areas, where space permits, into smoking and non-smoking sections, with each section clearly marked.
- 12.33 External public address systems will not be permitted. The playing of live or recorded music may also be subject to statutory control and you should make your own enquiries accordingly.
- 12.34 Applicants will need to address and control any potential nuisance(s) caused by their patrons. Inappropriate behaviour may lead to a formal notice being given to require an improvement. It is vitally important that the needs of other persons are fully considered. This includes neighbours, nearby residents, passers-by, emergency services, deliveries, utility companies requiring access to manholes, gas and water mains, access to hydrants by the fire service together with refuse collections. Market and event vehicles must also be considered.

Health & Safety

- 12.35 It is the responsibility of the applicant/amenity holder to ensure that any equipment complies with all relevant legislation and statutory requirements whether this be food hygiene, health & safety, food safety and alcohol sales requirements where applicable.
- 12.36 Holders will be responsible for securing insurance cover and for indemnifying the Council against public liability claims from members of the public arising from the provision of any amenity on the highway. Any damage to Council property caused because of the provision of the amenity, will be repaired by the Council with all costs recharged to the business in question.
- 12.37 All risk assessments produced for the activities associated with the business are the responsibility of the licence holder. The relevant authorities, when considering any application will not assess the suitability of the risk assessments supplied. They are required by the authorities to gain an understanding of the activities being undertaken.
- 12.38 If the authority approves the application, this should not be taken to mean that the risk assessments have been approved, or that this in any way suggests that they are suitable and sufficient.

13 Application Process

New Applications

- 13.1 Applications will not be accepted where:
- The proposed position of the object reduces the pedestrian walkway to less than 1.5 meters (dependant on location, this may be greater).
 - The distance between the closest edge of the object to the road/pavement edge is to be less than 0.45 meters.
 - The proposed position of the object includes any part of the carriageway.
 - Any part of the object would be within the visibility splay of a junction.
- 13.2 However, consideration may be given in circumstances where the proposed object position does not meet these requirements, but the carriageway is subject to a Prohibition of Vehicles (pedestrianised area).
- 13.3 The application must be received by the Council at least 28 days before the applicant wishes to commence utilising the permission or an existing permission is due to expire.
- 13.4 Applications must be submitted using the prescribed form to the Licensing Department and must be accompanied by the following:
- 25% of the application fee.
 - A plan, showing the location of the premises shown by a red line, so the application site can be clearly identified, and showing the proposed area covered by the licence in relation to the highway, if not to scale, the measurements of the area must be clearly shown.
 - A photograph of the proposed furniture
 - Proof of the applicant's public liability insurance. The minimum value insured shall be £10 million.
 - Confirmation from the Council's Development Control Department detailing whether planning permission is required.
 - Written permission from the landowner if the land is not owned by the Council; (permission to use Council land may or may not be granted during the consultation).
 - A site-specific risk assessment.
 - Evidence of the right to occupy the premises e.g. evidence that the applicant has met the requirement to give notice of the application (for example photograph).
 - Any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' or 'smoke free seating' national condition.
- 13.5 The applicant is required to place an A4 notice in a conspicuous position at or as near as possible to the site to which the application relates on the day the application is submitted to the licensing authority.
- 13.6 The notice will be printed on yellow coloured paper headed Pavement Licence Application. The text will be at least font size 16 and will provide the following information:
- Applicants name.
 - The proposed location(s) of the table and chairs and/or other objects.
 - The days and times they will be in place.
 - Start and end date of consultation period during which representations regarding the application may be made to the Council.
 - Details of where any representations should be sent.

- 13.7 The applicant is 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.
- 13.8 The Council will not grant a licence until it has taken into consideration all representations made in connection with the application received within the period specified in the notice.

Variations

- 13.9 There are no provisions to allow for a variation of an existing permission. Any variation will need to be made by way of a new application.

Renewals

- 13.10 If a licence holder wishes to renew their permission, they must do so by following the process outlined in the above paragraphs.
- 13.11 An application must be received no later than 28 days before the existing permission expires. Failure to do so may result in a period where permission isn't in place.

14 Fees & Charges

- 14.1 The Council will set a fee for the grant of a permission following receipt of an application.
- 14.2 In addition to the above fee a highway maintenance charge will also be levied if the tables and chairs or any object is placed on highway owned and/or maintained by the Council.
- 14.3 The Licensing Department will publish fees and charges for the following:
- The grant of an application.
 - Renewal Fee
 - A one and two year fee.
 - Highway maintenance charge.
- 14.4 The highway maintenance charge will be per year but will be charged pro rata depending on the period that the application relates to. No other fees will be charged pro rata.
- 14.5 A minimum of 25% of the application fee will be paid on application.
- 14.6 The remaining balance of the application fee and any highway maintenance charge must be paid in full before permission is issued.
- 14.7 If the application is unsuccessful the deposit will not be refunded.

15 Consultation

- 15.1 To enable the Council to determine whether a licence should be granted, it will carry out a consultation on each application.
- 15.2 The consultation period is 14 days and will commence the first working day after the publication of the notice.
- 15.3 Applications will be made available to view online at the Council's website for the duration of the consultation period.

- 15.4 The following organisations will be notified by the Council and will be able to provide representations to all applications:
- Local Elected Member.
 - The relevant Parish, Town or Community Council.
 - Fire Authority.
 - Hampshire & Isle of Wight Constabulary.
 - Planning Authority.
 - Environmental Health.
 - Licensing Authority.
 - Isle of Wight Council Highways Team.
 - Island Roads.
 - Parking Services.
 - Isle of Wight Amenity Highway maintenance/Parks and Esplanades.
- 15.5 In addition, the Council will also consider any representation received from any other individual, organisation or business.
- 15.6 Representations can be received regarding any issue, however when determining the application, the Council will give particular attention to the following areas:
- Prevention of Crime and Disorder
 - Prevention of Nuisance
 - Visual Impact
 - Public safety including Accessibility.
- 15.7 Representations must be made in writing and must include the following:
- The name and address of the person or organisation making the representation.
 - The premises to which the representation relates.
 - The reason and justification for making the representation.
- 15.8 The Licensing Department will not consider representations that are believed to be frivolous, vexatious, or which relate to moral grounds.
- 15.9 A vexatious representation is generally taken to be one which is repetitive, without foundation or made for some other reason such as malice.
- 15.10 A frivolous representation is generally taken to be one that is lacking in seriousness.
- 15.11 However, all representations made to the Council in connection with the proposal within the period specified in the notice will be considered.
- 15.12 The licensing authority will give the appropriate amount of weight to each representation. The weighting will be based on the evidence supplied as well as the experience and professional knowledge of the person or organisation making the representation.

16 Determination

- 16.1 Once the information is submitted to the Council, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.
- 16.2 Applications will be determined within 14 working days following the last working day of the consultation period stated in the notice, unless a longer period is agreed by all parties.

- 16.3 If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.
- 16.4 When considering an application, the Council may take into account:
- Any adverse impact arising from the placing of an object; and
 - Whether appropriate measures have been agreed and implemented by the applicant to mitigate any adverse impacts.
- 16.5 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.
- To the extent that conditions imposed on a licence by the local authority do not have the effects specified in the statutory conditions the licence is granted subject to those requirements.*
- 16.6 There is no statutory appeal process for these decisions.
- 16.7 Officers may defer a decision to grant a pavement licence to the Licensing Sub Committee.
- 16.8 The objects will not be permitted to be placed on, under or above the highway until all relevant fees and charges have been paid and the licence has been issued to the applicant. The object can only then be placed in accordance with the licence.
- 16.9 Where the Council refuse to grant a licence, it shall provide in writing a statement of the reasons for its decision within seven days of the decisions being made.
- 16.10 All decisions will be recorded in accordance with the Openness of Local Government Bodies Regulations 2014.

17 Conditions

- 17.1 The Council is permitted to attach conditions and restrictions to any licence they issue which they deem to be reasonably necessary.

18 Enforcement

- 18.1 If a licence holder fails to comply with the conditions of their licence, the Council may serve a notice on them requiring them to take steps to remedy the non-compliance within a specified time.
- 18.2 If the licence-holder fails to do so, the Council may:
- Amend the licence, with the consent of the licence-holder,
 - Revoke the licence, or
 - Take steps itself to remedy the breach including arranging for the items to be removed.
- 18.3 The Council can recover any costs of undertaking any of the above.

- 18.4 If items are removed by the Council and the expenses are not settled within 3 months after service of a notice of demand for the expenses, all items will be destroyed.
- 18.5 If objects are placed on the highway without prior permission, enforcement action may be taken, which could ultimately result in the Licensing Authority making arrangements for the removal of the object.
- 18.6 Before any enforcement action is taken, the owner of the object will be given ample opportunity to apply for a licence. If the objects position is deemed dangerous, the owner will be asked to remove it and if they fail to do so the Council will arrange for it to be removed. Any costs incurred will be recharged.
- 18.7 If an object is removed by the Council where permission has not been granted, the object will be retained, and any costs recovered as per paragraph 18.4 above.

19 Related Documents

- Corporate Plan
- Street Furniture Permits and Pavement Licences

[Corporate Plan 2021 - 2025 \(iow.gov.uk\)](https://www.iow.gov.uk/corporate-plan-2021-2025)
[Street Furniture Permits and Pavement Licences \(iow.gov.uk\)](https://www.iow.gov.uk/street-furniture-permits-and-pavement-licences)

20 Summary

Action	Highways Act 1980	Levelling Up and Regeneration Act 2023
Type of activities being undertaken.	Non food or drink related	Food or drink related
Application required before commencement of activity.	Minimum of 2 Months	Minimum of 28 days
Fixing of Sign.	Licensing Authority	Applicant
Consultation Period.	28 days	14 days
Determination Period.	20 working days	14 days
Maximum Period of Permission	1 year	2 years
Renewal Application	Minimum of 2 months before expiry date of existing permission	Minimum of 28 days before expiry date of existing permission
A Boards	Yes (if over 1.5m high)	No