



URGENT BUSINESS

FRIDAY, 31 JULY 2020

Please find enclosed Urgent Business Notices in connection with the following:

1. UB121 - Amendment to the Licensing Committee's Terms of Reference within the Council's Constitution to facilitate new legislative provisions in respect of Part 1 of the Business and Planning Act 2020 (Pages 2 - 6)
2. UB 122 - Business and Planning Act 2020 Introduction and Implementation of Pavement Licence requirements and "off sales" of alcohol (Pages 7 - 38)

The urgency in both cases is to ensure that the Council has the necessary decision making processes and policies in place to be able to respond to the requests for applications with regard to pavement licences following the approval given to the Business and Planning Act 2020 which came into effect on 22 July 2020. The Act specifies a short timescale for consultation and the decision-making process, and it is envisaged that the use of pavement licences will be maximised during the summer months.

Queries regarding these documents

Please contact Liz Bateson - Democratic Services - telephone 01524 582047, or email: ebateson@lancaster.gov.uk.

Democratic Services,
Town Hall,
Dalton Square,
Lancaster, LA1 1PJ

Published on FRIDAY, 31 JULY 2020

URGENT BUSINESS 121 - Amendment to the Terms of Reference within the Council's Constitution to facilitate new legislative provisions in respect of Part 1 of the Business and Planning Act 2020

Councillor Consultation

I am in agreement with the recommendation that that the amendments detailed in section 4 of the report be incorporated into the Terms of Reference of the Licensing Committee and Licensing Sub-Committee:

Recommended amendments to the Constitution

That the Terms of Reference (part 2 section 5) for the Licensing Committee be amended to add at para 1.1 :-

- (u) Pavement Licences under the Business and Planning Act 2020.

That the Terms of Reference (part 2 section 5) for the Licensing Sub Committee be amended by the addition of the following.

To determine applications for pavement licences under the Business and Planning Act 2020 where adverse representations have been made and not withdrawn or other reasons why the Licensing Manager considers it relevant to refer the matter, to the Licensing Sub Committee

Signed: Councillor Malcolm Thomas

Position Held: Mayor

Dated: 31 July 2020

In accordance with the Constitution Part 2, Section 7, Delegations to the Chief Executive, Matters of Urgency, Group Leaders have been consulted

Chief Executive/Director Decision

I agree to exercise my delegated authority and approve that the amendments detailed in section 4 of the report be incorporated into the Terms of Reference of the Licensing Committee and Licensing Sub-Committee:

Recommended amendments to the Constitution

That the Terms of Reference (part 2 section 5) for the Licensing Committee be amended to add at para 1.1 :-

- (u) Pavement Licences under the Business and Planning Act 2020.

That the Terms of Reference (part 2 section 5) for the Licensing Sub Committee be amended by the addition of the following.

To determine applications for pavement licences under the Business and Planning Act 2020 where adverse representations have been made and not withdrawn or other reasons why the Licensing Manager considers it relevant to refer the matter, to the Licensing Sub Committee

Signed: Mark Davies – Director of Communities & the Environment

Dated: 31 July 2020

URGENT BUSINESS

Amendment to the Licensing Committee's Terms of Reference within the Councils Constitution to facilitate new legislative provisions in respect of Part 1 of the Business and Planning Act 2020

31 July 2020

Report of Licensing Manager

PURPOSE OF THE REPORT

To seek approval for amendment to the Terms of Reference of the Licensing Committee and Licensing Sub-Committee to facilitate the new statutory powers under Part 1 of the Business and Planning Act 2020 in respect of Pavement Licences

RECOMMENDATIONS

- 1. That the amendments detailed in section 4 of this report be incorporated into the Terms of Reference of the Licensing Committee and Licensing Sub-Committee**

1.0 Introduction

- 1.1 On 22 July 2020 The Business and Planning Act 2020 (the "Act") received Royal Assent and was enacted with immediate effect. The Terms of Reference of the Licensing committee require amendment to incorporate Part 1 of the Act
- 1.2 Part 1 of the Act deals with the sale and consumption of food and drink outdoors, and relates to two particular licensing issues
 - The introduction of Pavement licences
 - The modification of premises licences to authorise off sales of alcohol for a limited period
- 1.3 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. This provision remains in statute but the Act provides a new temporary power for the licensing of such facilities and is seen as key to supporting the hospitality sector during the covid 19 pandemic whilst social distancing requirements are in place
- 1.4 Amendments to the Terms or Reference of Committees of the Council are a function of Full Council.

2.0 Reason for the matter to be considered as urgent

- 2.1 The Act came into force on 22 July 2020 and enquiries re applications are already being received by the Licensing department. The Act specifies a short timescale for consultation and the decision-making process, to enable pavement licences to be facilitated quickly. It is envisaged that the use of pavement licences will be maximised during summer months ie longer days and milder weather. As such it is imperative that the Council has the necessary decision making processes and policies in place without delay.

3.0 Urgent Constitutional Changes

- 3.1 The Councils constitution identifies that the Terms of reference can be amended under matters of Urgency as detailed on page 50 of the constitution and is worded as follows

Where it is necessary for any function of the Council or one of its Committees to be discharged and it is impracticable or impossible, by reason of urgency, for the matter to be considered by the Council or such Committee, to take such action as they consider appropriate, in consultation, so far as practicable, with the Mayor and Group Leaders in respect of a Council function or the relevant Committee Chair in respect of a matter within the Terms of Reference of a Council Committee.

4. Recommended amendments to the Constitution

- 4.1 That the Terms of Reference (part 2 section 5) for the Licensing Committee be amended to add at para 1.1 :-
- (u) Pavement Licences under the Business and Planning Act 2020.
- 4.2 That the Terms of Reference (part 2 section 5) for the Licensing Sub Committee be amended by the addition of the following.
- 2.4 To determine applications for pavement licences under the Business and Planning Act 2020 where adverse representations have been made and not withdrawn or other reasons why the Licensing Manager considers it relevant to refer the matter, to the Licensing Sub Committee

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

FINANCIAL IMPLICATIONS

There is no financial implication associated with the amendments to the constitution, the procedures will be delivered within existing staff resources

LEGAL IMPLICATIONS

As set out in the report

MONITORING OFFICER COMMENTS

These are contained within the report

BACKGROUND PAPERS

None

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Ref: JH

URGENT BUSINESS UB122 – Business and Planning Act 2020**Introduction and Implementation of Pavement Licence requirements and “off sales” of alcohol**Councillor Consultation

I am in agreement with the recommendation that:

- (1) A fee of £100 be set in respect of an application fee for a pavement licence.**
- (2) That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2021 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority**
- (3) That the policy and associated appendices (1-4) attached at Appendix A be approved with immediate effect.**

Name: Cllr Colin Hartley -----

Position Held: Licensing Committee Chair -----

Dated: 31 July 2020 -----

Chief Executive/ Director Decision

I agree to exercise my delegated authority and approve that:

- (1) A fee of £100 be set in respect of an application fee for a pavement licence.**
- (2) That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2021 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority**
- (3) That the policy and associated appendices (1-4) attached at Appendix A be approved with immediate effect.**

Signed: Mark Davies Director of Communities & the Environment

Dated: 31 July 2020 -----

URGENT BUSINESS

**Business and Planning Act 2020
Introduction and Implementation of Pavement Licence
requirements and “off sales” of alcohol**

31 July 2020

Report of Licensing Manager

PURPOSE OF THE REPORT

To seek approval for the introduction and implementation of the administration and enforcement of the provisions contained within Part 1 of the Business and Planning Act 2020 in respect of Pavement Licences

RECOMMENDATIONS

1. A fee of £100 be set in respect of an application fee for a pavement licence.
2. That where a pavement licence is granted it shall normally be granted for a period up to and including 30 September 2021 or a lesser period (not less than 3 months) as directed by the applicant or upon determination by the Local Authority
3. That the policy and associated appendices (1-4) attached at Appendix A be approved with immediate effect

1.0 Introduction

1.1 On 22 July 2020 The Business and Planning Act 2020 came into force.

1.2 Part 1 of the Act deals with the consumption and sale of food and drink outdoors, and relates to two particular licensing issues

- The introduction of Pavement licences
- The modification of premises licences to authorise off sales of alcohol for a limited period

1.3 Historically the Council has dealt with the Licensing of Street/ Pavement cafes utilising the provisions contained within the Highways Act 1980. In effect the licensing of such areas is the Council giving its approval for the applicant to use the part of the highway as indicated by the licensee in his/her application. The Highways Act 1980

street café licences remain in place for 1 year, cost £158 and are subject to a set of standard licensing conditions. The licensing conditions are generally concerned with

- Protecting public safety
- Preventing public nuisance
- Ensuring access for public utility providers when needed
- Promoting the appearance of the area (quality/ type of furniture etc)

The Highways Act 1980 licence makes provision for licences to be revoked where problems are identified. The provisions of the Highways Act 1980 street café licences remain in statute and therefore any licences issued under these provisions remain valid.

- 1.4 The Business and Planning Act 2020 (the “Act”) now introduces a “Pavement Licence” for the licence holder to put removeable furniture on part of the highway **adjacent** to the premises to sell / serve food and/or drink and also allows people to consume food and or drink supplied from or in connection with the premises. In effect this allows the area to be used as an extended seating area to the premises or to be a stall from which food/ drink is sold/ served. The licence can be applied to any premises which sells food and/or drink for consumption on or off the premises and is not restricted to those premises where alcohol is sold. For example, it can be used by a café to set up an ice cream stall outside,) or it can be used to facilitate what we traditionally regard as a street café.
- 1.5 The B Act also introduces provisions for the automatic modification of premises licences (issued under licensing Act 2003) to authorise the “off-sale” of alcohol for a limited period. The period will end on 30 September 2021. The Act does include measures to exclude certain premises that are currently specifically excluded from selling “off sales” and also makes it clear that those off sales are only permitted during the hours that the premises is licensed for on sales. There are also provisions within the Act regarding proposals to review licences in respect of off sales that have proved problematic.
- 1.6 The above two provisions are being introduced as a temporary measure (up to and including 30 September 2021) in order to facilitate the operation of business within the restrictions / guidance currently in place regarding the covid 19 pandemic. The pavement licence provision provides a fast track application procedure detailing a 7 days consultation period and a subsequent maximum 7 day period in which those applications must be determined, failure to do so results in licences being granted by default

2.0 Reason for the matter to be considered as urgent

- 2.1 The Act came into force on 22 July 2020 and requests for applications are already being received by the Licensing department. The Act specifies a short timescale for consultation and the decision-making process, to enable pavement licences to be facilitated quickly. It is envisaged that the use of pavement licences will be maximised during summer months i.e. longer days and milder weather. As such it is imperative that the Council has the necessary decision making processes and policies in place without delay.

3.0 Pavement Licences

3.1 The Act details the following

- Applications must be made in writing to the Local Authority
- Applications must be accompanied by a fee of not more than £100 as the local authority may require
- Applications must contain specific information; these are not detailed in this briefing paper but replicate the information currently required by the Council in respect of Highways Act licence applications
- The local authority has to publish the application and publicise the 7 day consultation period
- The applicant must place a notice at the premises advising of the application, the details of the notice requirements are not provided in this report but largely replicate the Licensing Act public notice requirements. The notice must stay in place until the end of the consultation period
- The local authority must consult the highways authority and any other persons it considers appropriate regarding the application.
- The local authority must take into account any representations made during the consultation period
- The local authority has 7 days following the close of consultation to determine the application, failure to do so means that the licence is granted by default
- The local authority can grant, or refuse the licence in respect of any or all of the purposes and or in respect of some or all of the highway area
- The licence if granted, cannot be for a period of less than 3 months and can be up to and including 30 September 2021
- The licence will be subject to default mandatory conditions in respect of provisions of no smoking areas and access for mobility impaired and can be subject to reasonable conditions imposed by the local authority
- Pavement licences do not repeal the provisions of the Highways Act Licences, as such existing highways licences remain in place and valid
- There are a number of provisions detailed in the Act in respect of enforcement powers, these include the facility to revoke the licence in respect of public health or safety concerns, anti-social behaviour, public nuisance or obstruction of the highway.
- The Act details that a pavement licence constitutes deemed planning permission.

A draft policy has been produced outlining the Councils processes and procedures to be followed in respect of applications for Pavement licences this is attached at within Appendix A

4.0 Modification of premises Licences to permit off sales

This element of the Act requires little or no change to operational practices in the administration and issue of Premises licences. In effect the Act introduces an automatic modification of existing premises licence that only cover on sales to allow off sales of alcohol. There are provisions within the Act to withhold such permissions from particular premises who have actively been prohibited from undertaking off sales and also a facility to review a premises licence in respect of the off sales

provision. There is no requirement in the Act for Local Authorities to reissue premises licences to reflect the time limited automatic modification to allow off sales

5.0 Guidance

- 5.1 Statutory guidance has been produced by the Government and is attached at **Appendix B**. It should be noted that within the Act there is reference to a time period of 7 days where the guidance specifies 5 working days. The time periods detailed in the Act will take precedent



CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

FINANCIAL IMPLICATIONS

The current fee for a Highways Act Street café licence is set at £158, this fee has been set at a level of cost recovery . The Pavement Licence administrative process will largely replicate that of the Highways Act Street café licence process. the maximum fee that can be charged by the Council for a Pavement licence is £100.

It is unclear how many applications will be received, the provision of a outside eating/ drinking area will facilitate social distancing within premises, however this is reliant on appropriate highway space being available and a recognition that the benefit of such areas particularly during winter months may be limited.

The administrative work involved in processing the application is expected to be similar to that associated with Highways Act Street Café licences, with the additional administrative burden of a requirement to determine applications within 7 days of the close of consultation.

Within the Policy attached at Appendix 2 of Appendix A is a proposal to waiver the fee for premises licences application in respect of premises that hold a current valid Street Café Licence for the identical area/ location. This seeks to ensure that premises licensed under the street café licencing regime do not incur an additional financial burden if they wish to transfer to a pavement licence

LEGAL IMPLICATIONS

These are outlined in the report and there are no further comments to add.

SECTION 151 OFFICER'S COMMENTS

MONITORING OFFICER COMMENTS

The Monitoring Officer has been consulted and has no further comments to make.

BACKGROUND PAPERS

None

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Ref: JH

Lancaster City Council
Pavement Licensing Policy
Business and Planning Act 2020

Effective: 31 July 2020
Version 1

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1. Introduction

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

On 25 June 2020 the Government announced an intention to relax 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 2020 received Royal assent on 22 July 2020 and provides a fast track process for premises selling food and drink such as bars, restaurants, cafes and pubs, to sell and provide seating for customers outdoors through temporary changes to legislation. The Act introduces a temporary permission, in the form of a “pavement licence”, to be issued by Lancaster City Council for furniture such as tables and chairs to be placed on the pavement adjacent to their premises which will enable them to sell food and drink from that area and to maximise seating capacity whilst adhering to social distancing guidelines.

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 is a temporary measure, with provisions lasting until the end of September 2021.

Currently, tables and chairs permissions are granted as Street café licences issued by Lancaster City Council, under Part 7A of the Highways Act 1980. The Street café licence fee is currently £158 for an annual licence and is subject to a statutory 28-day consultation period. Licence conditions are also attached to the grant of these licences

The new measures in the Business and Planning Act, places a cap on the application fee for businesses, specifies a 7 day consultation period with licences automatically granted if not determined by the Council within a further 7 day period

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 sell food and or drink and place removable furniture over certain highways adjacent to the premises in relation to which the application was made.

2.2 Highways Act Street Café Licences

A holder of a Street Café licence may choose to apply for a Pavement Licence. A holder of a Street Café licence can apply free of charge for a Pavement Licence, to cover the same licensed area as the Street Café Licence, up to and including 30 September 2021. The application process is as outlined in this policy.

2.3 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.

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.

2.4 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 Crown land are exempt (so a licence cannot be granted).

2.5 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.
- Ancillary items such as hand sanitising stations required to ensure that the area is covid secure

The furniture is required to be removable, and must be capable of being easily moved, and stored away in a secure safe manner when not in use.

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

2.6 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

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

- a completed Application Form
- the required fee of £100, (online payment)
- a plan showing the location of the existing premises and the area to which the application relates (ie pavement licensed area) shown by a red line, so the application site can be clearly identified
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items

that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.

- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- photos or brochures showing the proposed type of furniture ;
- Reference of any current street café licence (Highways Act 1980) issued by Lancaster City Council ;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £2 million,

3.2 Fees

The Council has determined that the fee for applications will be £100. A pavement licence if granted will be issued from the date the application is granted until 30 September 2021. The £100 fee is payable irrespective of the duration of the licence, and is non returnable

3.3 Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council.

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

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

- Lancaster/ Morecambe Town Centre Management/ Business Improvement Manager, Carnforth Chamber of Commerce as appropriate
- Lancaster City Council Environmental Health Service (including Noise pollution and Food and Safety Teams)
- Lancaster City Council Planning Department
- Lancashire Fire & Rescue Service
- Lancashire Police
- Lancaster City Council Environmental Services (refuse/street cleaning)

Representations from the above parties or members of the public should be provided to Lancaster City Council's licensing team by emailing Licensing@Lancaster.gov.uk. The email should be headed Pavement licence representation followed by the name of the premises.

The Council will take into account representations received during the public consultation period and consider these when determining the application. The application will be determined in accordance with the relevant sections of the Council's scheme of delegation outlined at **Appendix 4**

3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period.

Evidence of the site notice requirement must be supplied to the Council.

The Site Notice must: contain the information as detailed in **Appendix 1** and must be a minimum size of A4 and use Black type in a minimum font size 16

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
 - 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 for a pavement licence, 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 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation.

If the Council 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 and impose conditions,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

Where a valid application has been made and no objections received the application will be granted by licensing officers

Where a valid application has been made and relevant representations are received the application will be determined by The Licensing Sub Committee

If the Council does not determine the application within the 14 day period, the application will be deemed to have been granted.

A template for the notice required is provided at **Appendix 1**

3.7 Approval of Applications

On approving the application, the Council will issue a Pavement Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours of operation and appearance and location of the furniture corresponding to the application.

The Council generally will only permit Pavement Licences between 09:00 and 22:00 hours

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

3.8 Licence Duration

The provisions regarding pavement Licences will remain in place until 30 September 2021. As such, the Council will normally grant applications to 30 September 2021.

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 right of appeal detailed in the Act .

4. Conditions

The Council's standard conditions are set out at **Appendix 2**. In some cases, extra measures may be required. This will be considered when determining any application which has been subject to representations, on a case by case basis.

However, this is not the case for the national licence conditions which are applied to all Pavement licences. These are detailed at **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 licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls, 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 Council can take action to cover any costs.

The Council 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, statutory nuisance 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 occur in relevant legislation, the nature of Pavement Licence's generally, relevant social distancing measures or as a result of local considerations within the Lancaster City Council area

BUSINESS AND PLANNING ACT 2020
Notice of Application submitted to
LANCASTER CITY COUNCIL
In respect of a Pavement Licence for

NAME OF PREMISES]
[FULL ADDRESS OF PREMISES]

NOTICE IS HEREBY GIVEN that in accordance with Business and Planning Act 2020
(applicant name)
Has made an application to Lancaster City Council on *(Date)* for a Pavement Licence

The application is in respect of
(Description of the highway area to be utilised e.g area extending X meters from the frontage of the premises address)

And is seeking permission to utilise a Pavement Licence to facilitate
(description of the activities to be carried on)

The proposed hours of operation are as follows
(please insert days and timings)

A copy of the proposal and accompanying plan are available for inspection on the Councils website at XXXXXXXXXX

Any person wishing to make representations to the Council regarding this application may do so by emailing Licensing@lancaster.gov.uk. The email should be headed Pavement licence representation (insert premises name). Alternatively, in writing to the Licensing Manager, Morecambe Town Hall, Marine Road, Morecambe LA4 5AF **to be received no later than 7 days from the date of this notice.**

Signed Name in Print

Dated this th day of 2020

(The date of the notice must be stated as the day after the application was made)

Pavement Licences

Standard licence conditions

- 1.0 The Licence will have effect until 30 September 2021 unless surrendered or revoked.
- 2.0 The issue of a License does not give, or imply any permission to sell intoxicating liquor in the street.
- 3.0 The Licence shall be displayed in the window of the premises to which it relates.
- 4.0 The use of the Licensed Area shall cease before 22.00 hours each day and shall not commence prior to 09.00.
- 5.0 The Licensed Area shall be vacated immediately if requested by the Council, Lancashire County Council as Highway Authority, Lancashire Constabulary or other emergency service, statutory undertaker etc. without any liability for compensation, refund of application fee, or damage arising.
- 6.0 The Council reserve the right to request the clearing of the licensed area if required for special one-off events for public safety
- 7.0 The Licence shall be rendered invalid, should the Licensee cease to own the premises or cease employment.
- 8.0 The Licensee shall indemnify the Council and shall produce to the Council's Licensing Manager for inspection 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 £2,000,000 in respect of any one accident or series of accidents arising from one incident unlimited during the period of the insurance.
- 9.0 Upon expiry or revocation of the permission the Licensee shall 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.
- 10.0 For streets with footways and carriageways, the maximum width of any licensed area shall not exceed one third of the usable width of the footpath. A minimum unobstructed footpath width of 1.8 metres must be provided for safe and convenient pedestrian movement. This distance being, measured from the edge of the licensed area to any significant amount of street furniture (such as lamp posts, bollards, parking meters etc). Where there is a heavy pedestrian flow additional footpath space may be required.

- 11.0 For pedestrianised streets a minimum width of 1.8 meters or two thirds 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. The unobstructed route shall fall equally either side of the centre line of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street.
- 12.0 A clear direct pathway of at least 1.2 metres wide shall be maintained to allow entry and exit from building premises.
- 13.0 Only the Licensed Area shall be used for trading.
- 14.0 Where tables and chairs are proposed directly outside a shop front, a well designed and constructed physical barrier or roped area of approximately 0.8 metres in height is required to designate the area and to guide persons with sight disability around the use. Such barriers must not be permanently fixed to the ground and must be of a style, design and type to be agreed by the Council
- 15.0 Only furniture associated with the operation of the pavement licence shall be placed within the Licensed Area. .
- 16.0 Tables and chairs shall be durable and suitable for outside use. No damaged furniture should be used.
- 17.0 An area of 1 metre around the Licensed Area must be regularly cleansed and floor debris and other' waste immediately removed to the satisfaction of the Council's Head of Environmental Services.
- 18.0 Tables, chairs and umbrellas shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.
- 19.0 No canopy or umbrella shall be lower than two metres in height and shall be adequately secured.
- 20.0 All street cafe furniture, including barriers shall be removed and safely securely and stored at the end of trading each day, or at the end of the approved trading hours as defined by the Licence, whichever is the earliest.
- 21.0 Suitable safe storage for street café furniture shall be identified by the applicant at the time of application for a license.
- 22.0 There must be adequate provision made for the collection and containment of litter and, the Licensee must provide suitable litter bins.
- 23.0 The Licensee will ensure that the designated area is maintained in a clean and tidy condition. The Licensee shall also take appropriate precautions to prevent the immediate highway from becoming littered as a result of trading activities.
- 24.0 The Licensee shall at all times when the pavement cafe is in operation make available for customers toilets and hand washing facilities, to wheelchair accessible standards where it is practicable and reasonable to do so.

- 25.0 The Licensee will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or other persons.
- 26.0 No speakers or playing of music shall be permitted.
- 27.0 No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.
- 28.0 No tables and chairs (street furniture) to be placed so as to cause an obstruction or nuisance to any Charter Market stall holder.
N.B. This may mean that a Pavement Licence cannot be used whilst the market is taking place.
- 29.0 Where alcohol is permitted to be served or consumed in the licensed area glass receptacles including bottles cannot be used. Polycarbonate or similar material receptacles should be used.
- 30.0 All patrons consuming intoxicating liquor must be seated at a table within the licensed area, there will be no vertical drinking

National Licence Conditions

Smoke-free seating condition

The licence holder must make reasonable provision for seating where smoking is not permitted.

No obstruction condition

The licence-holder must ensure that anything done in pursuant to the pavement licence, or any activity of other persons which is enabled by the pavement licence, must not have an effect on the following:

(a) preventing traffic, other than vehicular traffic, from:

(i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),

(ii) passing along the relevant highway, or

(iii) having normal access to premises adjoining the relevant highway,

(b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,

(c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

(d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

| Function | | Decision Delegated to |
|--|---|---|
| Determination of Pavement Licence | Where, during the public consultation period, no representations have been received. | Licensing Manager (ref part 2 Section 7) |
| | Where, during the public consultation period, representations have been received. | Licensing Sub Committee (ref part 2 Section 5) |

Ref – Councils Constitution

Business and Planning Act 2020
Ministry of housing Communities and Local
Government

Guidance: pavement licences (outdoor seating proposal)

Updated 22 July 2020

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1. Pavement licences

1.1 What is a 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. This is a streamlined process to allow businesses to secure these licences in time for the summer and, where they are deemed to have been granted, allow these licences to remain in place for a year but not beyond 30 September 2021. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

1.2 What is 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.

1.3 How does the new process for pavement licences work?

Pavement licences are presently granted primarily under Part 7A of the Highways Act 1980. The fee varies between local authorities. The new process provides a cheaper, easier and quicker way for businesses to obtain a licence. The fee for applying for a licence under the new process, is capped at £100 and the consultation period is 5 working days (excluding public holidays) starting the day after the application is sent electronically to the authority. It is currently a minimum of 28 calendar days under Part 7A.

If the local authority does not determine the application before the end of the determination period (which is 5 working days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for a year (but not beyond 30 September 2021) and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

1.4 What businesses are eligible?

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.

1.5 What furniture can be permitted by a licence?

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. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

1.6 How much do applications cost?

Fees will be set locally, but are capped at a maximum of £100.

1.7 Are there any exclusions from this provision?

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).

1.8 Where does this new process apply?

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

1.9 Which authority can exercise pavement licence functions?

Under Section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. This means that the executive of a local authority can delegate decisions to a committee, or officer of the authority. They may also wish to delegate the functions to another authority, for example to a County Council in a two-tier area.

1.10 How does this interact with other regulatory process, such as alcohol licensing?

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003, through the Business and Planning Act 2020, will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence. More details can be found in the [guidance accompanying the Business and Planning Act 2020](#).

Local authorities will also need to have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.

1.11 Does the applicant need planning permission as well as the licence?

No. 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.

2. Duration

2.1 How long are pavement licenses valid for?

If a local authority determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the end of the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The expectation 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.

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. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

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

2.2 How long will the new process be in place?

This is a temporary measure to support businesses while social distancing measures may still be in place. As it is uncertain how long some form of social distancing measures will be in place for, the new process will remain in place until the end of September 2021 – giving certainty to businesses for the foreseeable future, supporting them to operate safely while social distancing measures are in place. It will also allow them enough time to apply for new licences under Part 7A of the Highways Act 1980 or equivalent provisions in any Local Act, if they want to extend their use of pavement furniture beyond the end of September 2021.

3. Applications

3.1 What information does an applicant need to provide?

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- 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 public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

Local authorities may require applications to be made on a standard application form.

3.2 What other information may the local authority require?

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Any requirements imposed should be reasonable and should be kept as minimal as possible. Examples of the information a local authority might require might include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown;
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority; and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied.

3.3 What happens if an applicant has already made an application under the current regime?

If an applicant has already applied for permission to place furniture on the highway under the existing regime and their application has not been determined, they may proceed with that application. However, that applicant may opt to make a fresh application for a pavement licence under the new process. In those circumstances the pending application will be deemed to have been withdrawn. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

4. National Conditions

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

4.1 How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should

consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who don't, and foster or encourage good relations between people who share a protected characteristic and those who don't.

4.2 What is reasonable provision for seating where smoking is not permitted?

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed [here](#).
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

Public Health England has published [guidance for smokers and vapers during the COVID pandemic](#).

4.3 Where an authority has set a local condition covering the same matter as a national condition, which take precedence?

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

5. Determining the application

5.1 What happens once the information is submitted to the local authority?

Once the information is submitted to the local authority the authority 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 does not determine the application within the 10 working day period, the application will be deemed to have been granted.

5.2 What will a local authority consider when deciding whether to grant a pavement licence?

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may specify conditions for pavement licences, in Regulations. This is in addition to the statutory 'no obstruction' condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 Act and 'smoke-free' seating condition.

Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. When considering their powers in relation to local conditions they should bear in mind the requirements of and seek to impose conditions which have the same effect as the no-obstruction condition and the smoke-free seating condition. They should also take into account any national conditions which may be specified in the future in Regulations.

When setting local conditions and determining applications, issues authorities will also want to consider include:

- public health and safety including security – 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:
- considerations under the no-obstruction condition, in particular considering the needs of disabled people;
 - 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;
 - any other social distancing measures in place, for example any queuing systems that limit the space available on the pavement;
 - whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

5.3 How can local authorities consider Security?

When considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

See the [guidance for managing the most common security implications](#).

5.4 Can local authorities impose conditions which are not published?

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this.

5.5 Where can local authorities find out more about how to manage social distancing?

The government has published the [COVID-19 Secure: safer public places guidance](#), which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing.

See [more detailed information on considering security implications in light of new Covid-19 measures](#).

See [specific advice on protecting queues\(PDF\)](#).

When considering the minimum width needed for clear access, authorities and applicants will need to take into account any social distancing measures in place and ensure that these distancing measures are also applied to allow for safe passing of highway users and for the safety of any customers using the furniture, and any other likely users of the area.

5.6 What are the outcomes of an application?

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 (see [paragraph 4.1](#) and [paragraph 4.2](#)) the licence is granted subject to those requirements .

5.7 Is there a route to appeal a decision?

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licencing committee.

6. Deemed licences and conditions

6.1 What is a deemed licence?

If the local authority does not determine the application before the end of the determination period, the application is deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

To the extent that local conditions deemed to be imposed on the licence do not have the effects specified the statutory conditions (see [paragraph 4.1](#) and [paragraph 4.2](#)). the licence is granted subject to those requirements.

7. Consultation

7.1 What steps should an applicant take to engage with their community?

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority. When counting ‘working days’ public holidays are not included. Applicants are encouraged to keep evidence of this. Applicants are encouraged to engage with any services operated in the

vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

7.2 What must a notice contain?

The notice must:

- be in the form which the local authority prescribes, if it prescribes one;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require.

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.

7.3 What information may local authorities require to be displayed on the site notice?

The local authority may require that other information is included in the notice such as:

- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;
- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email 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 local authorities may wish to adapt is contained in Annex A.

7.4 Who must local authorities consult?

The local authority must consult the highways authority, if they are not the highways authority; this is usually the County Council in a two-tier area, or Transport for London in London. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

7.5 How can members of the public make representations about the application?

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period which is the period of 5 working days starting the day after the

application is submitted (excluding public holidays). In order to promote accessibility to those unable to access printed notices, Local Authorities are encouraged to consider using digital methods of publicity. They should also consider the needs of those who may find it more difficult to access online publications.

7.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?

The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity, such as automatic notices, which members of the public can opt in to receive. In deciding what steps to take authorities should consider the needs of those who may find it more difficult to access online publications.

When publishing applications and publicising the fact that representations can be made, authorities will need to have regard to their duties under the Equality Act 2010 and will need to meet the requirements in the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018, and therefore ensure that these are made accessible.

8. Enforcement

8.1 In what circumstances can the local authority enforce or revoke a licence?

If a condition imposed on a licence (either by the local authority) or nationally is breached, the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
 - there are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together or where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
 - this use of the highway is causing an unacceptable obstruction, breaching the non-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or a wheelchair users to pass along the highway or have normal access to the premises along side the highway.
 - the use is causing 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 local authority 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. It is good practice for local authorities to give reasons where these powers are used.