



South Cambridgeshire District council

Statement of Pavement Licensing Policy

Effective: 23 July 2020

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1. Executive Summary

This policy addresses the introduction of the Business and Planning Bill 2019-2021 and includes measures that are intended to support businesses and the economy to recover from the disruption caused by the Covid-19 pandemic.

The Bill states:

“As the economy starts to re-open, the Government wants to do all it can to support recovery, help businesses adjust to new ways of working and create new jobs. This Bill introduces a number of urgent measures to help businesses succeed in these new and challenging conditions over the coming months, and to remove short term obstacles that could get in their way.”

The Business and Planning Act makes it easier for premises selling food and drink for consumption on or off the premises, as lockdown restrictions are lifted but social distancing guidelines remain in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

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

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

Currently, tables and chairs permissions are granted as Pavement licences by Cambridgeshire County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28-day consultation period.

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

2. Purpose and Scope

2.1 Definition of pavement café

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

2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

2.3 Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

2.4 Type of furniture permitted

The furniture which may be used is:

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

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

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

2.5 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

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 £, paid by credit or debit card
- a plan showing the location of the premises 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.
- Photo of area to be licenced
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- 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);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- 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 £5 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

3.2 Fees

The fee for applying for a licence under the new process are set locally, but are capped at £100. The Council has determined that there will be no fee for applications.

4. 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.

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

- Cambridgeshire Highways Authority
- Cambridgeshire Police
- Cambridgeshire Fire and Rescue
- Relevant Town or Parish Council
- Environmental Health

Members of the public and others listed above can contact the Council to make representations by writing to the Council's Licensing Department either by letter or email to licensing@scamb.gov.uk

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

4.1 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:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the consultation (5 working days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix B.

4.2 Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
 - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
 - the impact on any neighbouring premises
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility, and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

4.3 South Cambridgeshire District Council will consider the views of those it consults. The Policy will take effect from 31st January 2019 and will be reviewed in line with Government Guidance. However, the Council will keep the policy under review and may amend the Policy at any time. Should such action be required it will only be done following appropriate consultation.

4.4 S.5 of the Act stipulates a number of persons who have an interest in licensing and must be consulted on any Licensing Policy, these are:-

- The Chief of Police
- The Fire Authority
- Persons or bodies representative of local holders of premises licences and club premises certificates
- Persons or bodies representative of local holders of Personal Licences
- Persons or bodies representative of businesses and residents in the area
- Director of Public Health

4.5 This Council will consult with all of the above and any other relevant persons or bodies that it considers appropriate. The views of these bodies/persons will be given appropriate weight when the policy is determined.

4.6 In addition we will consult with Parish Councils, Local members and other additional bodies as appropriate in relation to policy.

5. Determination of Licence

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

If the local authority determines the application before the end of the determination period, the local authority can:

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

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

5.1 Approval of Applications

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

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

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

The Council generally will only permit Pavement Licences between 09:00 and 21:00.

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.

5.2 Refusal of Applications

If the site is deemed unsuitable for a Pavement Café, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory appeal process against decision to refuse an application.

6. Duration of Licence

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

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

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

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

7. Conditions

The Council's standard conditions are set out at Appendix A. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

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

8. 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 comply with all relevant legislation. If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice

requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

- (i) For breach of condition, (whether or not a remediation notice has been issued) or
- (ii) Where:
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence); there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
- (iii) 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.

9. Review Procedures

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act 2020 which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licences generally, relevant social distancing measures or as a result of local considerations within the South Cambridgeshire District.

10. Cumulative Impact

There is strong evidence for a relationship between alcohol outlet density and alcohol-related harms, including social disorder. Cumulative Impact Policies can be a useful tool in limiting alcohol outlet density. Due to the geographical makeup of the district the Authority does not currently have a special policy in place relating to cumulative impact. South Cambridgeshire District Council has no evidence to suggest that there is a need to adopt a 'special policy' in the South Cambridgeshire District at this time.

Any future decision to adopt a 'special policy' will be evidence based to reflect a genuine need to address serious problems of nuisance and disorder resulting from licensed premises. The Authority acknowledges S.182 guidance relating to the matters that should be taken into account and in particular the need for a cumulative impact assessment when deciding if there is sufficient evidence to suggest that adopting such a policy is a proportionate measure within the area. Further, the Authority acknowledges the limitations on 'special policies' when exercising its functions. Where a policy is adopted the authority will observe the legal requirements of the consultation process.

The term 'cumulative impact' should not be mistaken with "need" which relates more specifically to the commercial demand for a particular type of premises i.e. a Pub or Hotel. The issue of need is a matter to be dealt with by development control or by the consumer market and therefore need does not form part of the licensing policy statement.

The Council may receive representations on the cumulative impact of an application from either a responsible authority or an interested party (as defined within the act) to the effect that an area is becoming saturated by premises of a certain type and is therefore acting against one of the four licensing objectives. In such cases the cumulative impact can be taken into account when determining any individual case. In determining any need for a policy for any particular area the Council will have regard to section 182 guidance.

The Council will not adopt a quota which in effect determines any application before it is submitted.

Regard will be given to the particular characteristics of the premises within the given area. It is recognised that Pubs, Restaurants, Clubs etc all have different needs and offer different facilities to the public. Proper regard to these differences will be given and the differing impact they may have on the local community will be considered.

Appendix A

Business and Planning Act 2020

Standard Licence conditions for Pavement Licences

The following conditions will be applied to every licence granted under the above Act:

1. This licence is granted in accordance with compliance with the advice given in the guidance notes issued at the time of application.
2. The licence is issued to the applicant only and is not transferable.
3. No tables and chairs or barriers may be placed in the area until a licence has been granted.
4. No other items may be placed on the highway within the licensed area other than that approved in accordance with the application and the licence when granted. If the premises has licensed tables and chairs area, then any Advertising Board must be contained within the agreed seating area and not outside the area.
5. Furniture placed on the highway after the granting of a licence must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval of South Cambridgeshire District Council.
6. The licensee may only use the land for the furniture in the course of his business only during the hours permitted by the licence and only within the defined area applied for.
7. The amenities must be removed from the public highway at the end of the permitted period each day.
8. The licence is granted for a period specified on the licence.
9. This licence will not be renewed automatically. Compliance with the terms of conditions of any previous licence will be taken into account at any application for renewal. The Licensing Authority reserves the right to refuse renewal applications where appropriate.
10. All tables and chairs authorised by the licence must be removed by midnight on the day the licence expires unless a renewal licence has been applied for and granted.

11. Renewals must be applied for at least 3 weeks prior to expiry to allow sufficient time for the application to be considered.
12. The Licensee shall maintain a public liability insurance policy up to the value of £5 million pounds against any liability, loss or damage, claim or proceeding whatsoever arising under Statute or Common law in respect of the placing and maintaining of the tables and chairs on the highway or their removal there from.
13. The licensee is responsible for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the activity (if requested to do so by the Highway Authority). The permanent surface reinstatement shall be carried out to the satisfaction of the Highway Authority.
14. The Licence may be suspended where necessary to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence. South Cambridgeshire District Council will not be liable for any loss of earnings arising out of the suspension of a licence.
15. Any umbrellas permitted must not protrude beyond the designated boundary of the licensed area. They shall be kept in good condition so as not to detract from the appearance of the street. You are advised that enclosed structures (including gazebos) and the like will not be permitted within the proposed boundary of the licensed area.
16. If you intend to use space heaters, their metric dimensions, materials and colour must be specified as part of the application. You will also be required to submit a formal risk assessment as required by the Management of Health and Safety at Work Regulations 1999 in support of your application. This should be carried out by a competent person i.e. someone who has knowledge of the law, British Standards, and Health and Safety Executive Codes of Practice and Guidance. In considering an application, the Council will have regard to the inherent safety of the equipment, its location, storage of Liquid Petroleum Gas Cylinders, maintenance and training arrangements. Cambridge City Council will consider the adequacy of the risk assessment which must:
 - Identify the hazards e.g. fire, explosions, burns, impact from falling equipment/cylinders
 - Decide who may be harmed and
 - Evaluate the risks and decide whether proposed precautions will be adequate or whether more could be done. Record findings, review assessment and revise on an annual basis or more frequently if the situation requires it e.g. a significant change in equipment, etc.

17. Where furniture put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.
18. The placing of speakers or any other equipment for the amplification of music within the licensed area is strictly prohibited unless authorised by a premises licence issued under the Licensing Act 2003. Any such authorised music must not cause a nuisance or annoyance to others.
19. The licence holder must ensure clear routes of access are maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in the Department for Transport's Inclusive Mobility document in force at the time this licence is granted, and the licence is granted subject to those requirements.
20. The footway must not be obstructed by patrons standing between tables, chairs, and the kerb, or by the personal possessions of patrons.
21. In areas of significant footfall (to be determined by the Licensing Authority), when in use, the pavement café area will need to be enclosed, to demarcate the licensed area and contain the tables and chairs, thus making it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians.
22. Furniture layout must comply with the latest guidance on social distancing.
23. The premises must have reasonable crowd management plan to ensure social distancing is compiled with and be able to produce the plan on request to the Council.
24. Any material alteration to the Means of Escape, which affects people using the Means of Escape, inside or in the immediate vicinity outside the premises must be recorded in the premises' Fire Risk Assessment as a significant finding. Control measures should be put in place to reduce risk within the area as well as recording them. A review of the hazards and risks should be ongoing throughout the period the premises are in use.
25. The Licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times. Under your duty of care, you must ensure that any waste produced is handled safely and in accordance with the law. You must keep all waste safe, prevent it from escaping from your control and ensure that it is only handled or dealt with by persons that are authorised to deal with it.

26. Any sales of alcohol within the licensed area must be authorised by a premises licence issued under the Licensing Act 2003.
27. This Licence covers the use of amenities by customers for consuming food or refreshment which have been purchased from the licensed establishment. This Licence does not permit the use of the amenities for any other purposes at any time.
28. No additional charge shall be made to customers for the use of the tables and chairs within the licensed area.
29. The fee is for the administration and grant of the licence. No refunds will be made in the event of a surrender of the licence before expiry. There is no automatic right to appeal against refusal of consent.
30. Failure to pay the licence fee and return the signed licence by midnight on the day the previous licence expires will render the licensee in breach of the Standard License conditions and subject to enforcement.
31. These conditions may be varied where appropriate to reflect any changes in local circumstances.
32. The Licensing Authority may withdraw this consent at any time upon giving the licensee seven days' notice in writing. Upon withdrawal of the consent the licensee shall remove the amenities from the public highway, and, in default, the Highway Authority may remove the amenities and recover from the licensee its cost in so doing.
33. Periodic inspections of pavement cafés will be made by the Council to ensure compliance with the Pavement Café Policy and Guidance

Breaches of Conditions

34. Where a breach of a licence condition is noted, the operator of the pavement café will:
 - a. be served with both verbal and written notice of the offence(s) being committed
 - b. be given 7 days to comply.
35. Where the Licensing Authority serves a notice on the licensee requiring him/her to remedy any breach of the terms of this consent, and the licensee fails to comply with the notice, the Licensing Authority may
 - a. Revoke the licenceor

- b. take the steps itself required by the notice and recover from the licensee any expenses incurred

36. South Cambridgeshire District Council may also revoke a licence granted if it considers that;

- a. some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
- b. as a result of the licence—
 - i. there is a risk to public health or safety, or
 - ii. anti-social behaviour or public nuisance is being caused or risks being caused,
- c. the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- d. anything material stated by the licence-holder in their application was false or misleading, or
- e. the licence-holder did not comply with the duty of fixing a notice of the application for a Pavement Licence in a readily visible position or did not secure notice of application for the duration of consultation period.

37. If the pavement café continues to operate once the licence has been revoked then any objects/furniture occupying the highway will be removed without further notice.

38. No part of the fee shall be refunded should the licence be revoked

Unauthorised Pavement Cafés (a café without a valid licence)

39. Where an unauthorised pavement café is found to be operating without the correct permissions, the operator will be served with both verbal and written notice of the requirement to remove the pavement café by the Highway Authority from the highway within 7 days.

40. After the 7 day notice has expired, a further inspection will be made and any objects/furniture occupying the highway will be removed from the highway without further notice.

Appendix B

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

Part 1 S2(5) of the Business and Planning Act 2020.

I/We (*name of applicant*),

do hereby give notice that on (*date application submitted*) [I/we] have applied to South Cambridgeshire District Council for a 'Pavement Licence' at:

(*postal address of premises*)

known as

(*name premises known by*)

The application is for:

(*brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink)*)

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

Licensing
South Cambridgeshire District Council Anywhere
South Cambridgeshire Hall
Cambourne Business Park
Cambourne
Cambridgeshire
CB23 6EA

licensing@scambs.gov.uk

by: (*last date for representations being the date 5 working days after the date the application is submitted to the local authority (excluding public holidays)*)

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

Signed

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