

**Pavement Licence Policy**



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## **1. Introduction**

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

As the economy starts to re-open, the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown.

The Business and Planning Act 2020 makes it easier for premises serving food and drink such as bars, restaurants and pubs, as lockdown restrictions are lifted but social distancing guidelines remain in place, to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until 30<sup>th</sup> September 2021.

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

Until now, tables and chairs permissions are granted as pavement licences by West Sussex County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varied 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. Scope**

### **2.1 Definition of pavement licence**

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

### **2.2 Eligible Businesses**

A person (whether an individual or a company) who 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. This will usually be the registered food business operator and/or the premises licence holder under the Licensing Act 2003. The types of businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A pavement licence permits the licence-holder 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**

Pavement licences can only be granted in respect of highways to which Part 7A of Highways Act 1980 applies.

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 pavement licence cannot be granted).

### 2.3 Type of furniture permitted

The furniture which may be used is:

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

This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at the end of each day.

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

### 2.4 Planning Permission

Once a pavement 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 pavement licence.

## 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
- a plan showing the location of the existing premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the area of the highway proposed to be covered by the pavement licence (if granted), and, 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 furniture 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,
- the proposed duration of the pavement licence (for e.g. 3 months, 6 months, or a year);
- Confirmation that the applicant is either the registered food business operator or the premises licence holder under the Licensing Act 2003
- 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) - see further at 3.3; a copy of a current certificate of public liability insurance that covers anything to be done by the applicant pursuant to the pavement licence (if granted) to a minimum value of £10 million, and

- any other evidence needed to demonstrate how the Council's standard local conditions and any national conditions will be satisfied.

### 3.2 Fees

The Council has decided that it will initially not charge a fee for pavement licence applications, however, this may be subject to change. If a decision is subsequently taken to charge fees for applications, this Policy will be amended accordingly and published on the Council's website.

### 3.3 Consultation

Applications are published by Crawley Borough Council for consultation for a period of 7 days. The consultation period starts the day after a valid application was made to the Council.

The Council will publish details of the application on its website at [www.crawley.gov.uk/licensing/pavementlicence](http://www.crawley.gov.uk/licensing/pavementlicence).

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:

- Crawley Borough Council Economic Development Team.
- Crawley Borough Council Councillors
- Crawley Borough Council Environmental Health Service (including Pollution Control and Food Teams)
- Crawley Borough Council Planning Department
- West Sussex Fire & Rescue Service
- Sussex Police

Members of the public and others listed above can contact the Council to make representations.

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

### 3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period (see 3.3 above). Evidence of the Site Notice requirement must be supplied to the Council. A template Site Notice is included at Appendix 1

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 (7 days starting the day after the application is submitted to the Authority)

- Where the application is to place furniture consisting of seating for use by persons for the purpose of consuming food or drink, where within the application site the applicant proposes to make reasonable provision for seating where smoking will not be permitted.

### 3.5 Site Assessment

The following matters will be taken into account by the Council when considering the site:

- the matters set out in section 3(5) to 3(7) of the Business and Planning Act 2020
- 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 pavement 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 application site, 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 so that it does not cause issue.
  - 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 Council, and so take any issues around noise, and nuisance into consideration as part of the proposal.

### 3.7 Determination

At the conclusion of the public consultation period, the Council has 7 days (with day 1 being the day after the last day of the consultation period) to determine the application.

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,
- grant the licence for some or all of the part of the highway specified in the application, or
- refuse the application.

If the Council does not determine the application 14 days after the application is made, , the application will be deemed to have been granted.

### 3.8 Granting Applications

Conditions will be attached to the grant of a pavement licence. These will include specific terms such as days of the week and hours of the day when furniture is permitted, and the appearance and siting of furniture.

A copy of the Council's standard pavement licence conditions is shown at Appendix 2 and these will be attached to all pavement licences granted. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council will generally only grant pavement licences which permit furniture to be placed on the highway between 09:00 and 21:00 hours.

Applications seeking a pavement licence permitting furniture to be placed on the highway outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours which may be fewer than those requested in any application.

### 3.8 Licence Duration

The Council may grant a Pavement Licence for a minimum of 3 months and up to a maximum period which does not exceed 30 September 2021.

The Council will usually grant a licence for 6 months in the first instance, after which a licence-holder may apply for a further licence.

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.

### 3.9 Rejection of Applications

If the Council considers that, taking into account any potential conditions which might be attached to a pavement licence, anything done by the applicant (if the licence were granted) would have one or more of the effects specified in section 3(6) of the Business and Planning Act 2020, the application will be rejected.

If for any other reason the application site is considered unsuitable and concerns about suitability cannot be mitigated by conditions, then the application may be rejected.

## 4. Conditions

The Council's standard conditions are set out at Appendices 2 and 3. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

Regard will be had to the likely noise, nuisance and disturbance that may occur as a result of increased activity at a premises if a Pavement Licence is granted. Conditions in this regard will be added as considered necessary to assist in the control, supervision and management of premises to mitigate against this.

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

However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National 'no obstruction conditions is shown in Appendix 4.

## 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 pavement 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, and applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition attached to a pavement licence is breached the Council may will be able to issue a notice setting out steps which must be taken to remedy the breach. If the steps are not taken, the Council may take the steps and recover the costs of this from the licence-holder.

The Authority may revoke a licence in the following circumstances:

1. For breach of condition (whether or not a remediation notice has been issued).
2. Where the Council considers, as a result of the licence, that:
  - there is a risk to public health or safety;
  - the highway is being obstructed (other than by anything permitted by the licence); or
  - anti-social behaviour or public nuisance being caused or risks being caused.
3. It comes to light that anything material stated by the licence-holder in their application was false or misleading.
4. The applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
5. 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

## **6. Review Procedures**

This Policy covers pavement licences under the Business and Planning Act 2020 which are scheduled to expire on 30 September 2021, unless granted for a shorter period.

This Policy will be reviewed from time to time including when changes occur in relevant legislation, the nature of pavement licences generally, relevant social distancing measures or as a result of local considerations within Crawley Borough.





Site Notice Template.

**CRAWLEY BOROUGH COUNCIL**

**PREMISES NAME**  
**FULL ADDRESS**

**BUSINESS & PLANNING ACT 2020**

**AN APPLICATION HAS BEEN SUBMITTED FOR A PAVEMENT LICENCE**

NOTICE is hereby given that on **XXXX**, an application was made to Crawley Borough Council by XXXX (the Applicant) for a Pavement Licence in respect of the highway adjacent to the above address, to include:

- Siting of x tables, x chairs x benches and x barriers/other furniture (describe) of X size/area to delineate the area in front/to the side/at the rear of the premises where the a pavement licence will apply if granted
- The application seeks a Pavement Licence to place furniture on the highway at these times on these days of the week::

Day of the week:	Hours:

**Any representation relating this application should be directed to the email below and received by Crawley Borough Council within the Public Consultation Period.**

**The Public Consultation Period means 7 days beginning on the day after that on which the application is made to the Council. Representations should be received no later than XXXX.**

A full copy of the application and supporting documents can be found on the Council's website at [www.crawley.gov.uk](http://www.crawley.gov.uk)

Date of Application *(NOTE: The date the notice was placed must be the same date as the date the application was submitted to the Council)*

### Crawley Borough Council Standard Pavement Licence Conditions

1. The grant of this pavement licence does not grant the licence-holder an exclusive right to use the highway site covered by the licence ("Licence Site"). Upon request, the licence-holder must give Crawley Borough Council and other public authorities including the Police, Highways Authority and other Statutory Undertakers) access to the Licence Site for emergencies, maintenance, installation, special events, improvements or any other reasonable cause. If the consequence of access is that the licence-holder is unable to use the Licence Site for any period, the licence-holder is not entitled to compensation from Crawley Borough Council or other public authority for any loss arising out of the access.
2. The licence-holder must have at all times during the currency of this pavement licence a valid Public Liability Insurance for the use of the Licence Site pursuant to this pavement licence. The insurance policy must indemnify Crawley Borough Council and West Sussex County Council against all actions, proceedings, demands, liability and claims for injury, damage or loss to users of the public highway, arising from the use of the Licence Site for the permitted purpose. The minimum level of indemnity must be £10 million respect of any one incident.
3. Furniture is only permitted to be placed on the Licence Site by this pavement licence within the permitted times as described in this licence. Outside these times the furniture must be removed from the highway.
4. Crawley Borough Council and West Sussex County Council may remove and store or dispose of furniture from the Licence Site if:
  - a. furniture is on the Licence Site outside the permitted times; or
  - b. furniture is on the highway outside the Licence Site at any time of the day.

Where furniture is removed by either council, the cost of the removal, storage and disposal must be paid by the licence-holder must be paid if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.

5. The licence holder is not to make or cause to be made any claim against Crawley Borough Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
6. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway.
7. Anything done by the licence-holder pursuant to this Licence, or any activity of other persons which is enabled by the Licence, must not have any of the following effects:
  - 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.
8. Where the furniture to be 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.
  9. The method of marking the boundary of the licensed area must be agreed between the licence holder and Officers of Crawley Borough Council. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
  10. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence, which should not, in normal circumstances, extend beyond the width of the premises frontage.
  11. The only furniture which may be placed on the Licence Site pursuant to this licence is that which was described as part of the application or subsequently approved by an officer of Crawley Borough Council.
  12. The licence-holder must keep any furniture placed on the Licence Site pursuant to this licence in a good state of repair.
  13. Crawley Borough Council will have no liability for any damages in the event of any of the furniture permitted to be placed on the Licence Site by this Licence is lost, stolen or damaged in any way from whatsoever cause.
  14. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs.
  15. Placement of furniture permitted to be placed on the Licence Site must allow pedestrians to use the footway parallel to the frontage of the premises. Alternative items may not be used without first seeking the written authority of the Licensing Team of Crawley Borough Council. Patio heaters must not be used.
  16. All potential obstructions must be removed from the Public Highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
  17. The licence-holder should ensure that they use the Licence Site in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the Public Highway or any adjacent land or premises, is minimised.
  18. The licence-holder must ensure that their use of the Licence Site does not interfere with Highway drainage arrangements.
  19. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area.
  20. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the Licence Site. The licence holder must make arrangements to regularly

check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the premises, for a distance of up to 10 metres from the boundary of the Licence Site.

21. The licence holder must ensure that any tables placed on the Licence Site pursuant to this licence are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
22. All furniture covered by the Licence shall be freestanding. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway and it must remain undisturbed. The licence-holder must pay to Wets Sussex County Council any costs incurred as a result of damage to the highway from the positioning of furniture.
23. The Licence Holder must not permit or allow the consumption of alcoholic liquor within the Licence Site unless there is a premises licence granted under the Licensing Act 2003 in respect of the premise adjacent to the Licence Site in respect of which this licence was granted.
24. The Premises Licence Holder of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor outside of the hours in force for the premises itself.
25. The Pavement licence must be displayed on the premises with a plan of the agreed layout of the Licence Site.
26. The licence-holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to.
27. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
28. This permission is for a limited period expiring on the date specified on the Pavement Licence, after which time if the Proprietor wishes to renew or continue the use they will need to submit a further application;
29. On expiration of licence, the table and chairs become an illegal obstruction of the highway if not removed.
30. The Licence Holder is required to display the attached Licence in a prominent position in a front window, or door, of the premises so that it is visible to any person.
31. Crawley Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
32. This licence is not transferrable.
33. The licence-holder must surrender this Licence within 7 days of the selling or transferring their interest in the Premises , such that they no longer have control over the Premises.

Dated                      day of                      2020

Signed

Head of Community Services

I hereby acknowledge receipt of the County Council's permission, which the above is a true copy and I accept the conditions contained therein.

Signed:.....  
On behalf of

Dated:

### **Crawley Borough Council Local Licence Conditions relating to Noise, Nuisance, Crime & Disorder**

**(These will be added as considered necessary on a case by case basis)**

1. A documented risk assessment to address all aspects of the “Health Protection (Coronavirus, Restrictions) (England) Regulations 2020”. This will include but not be restricted to the consideration of the provision of Personal Protective Equipment, the use of Security Industry Authority (SIA) Door Staff to ensure social distancing is maintained, Body Worn Video cameras, staff training policy regarding contraventions of COVID19 regulations by patrons, managing a queuing system (in consultation with neighbouring premises), use of glass vessels, monitoring numbers on the premises and members of differing households, additional cleaning measures, access/ egress, managing anti-social behaviour and the impact of such upon local residents.
2. No glass vessels shall be allowed off the premises.
3. Staff must ensure that all empty glasses and bottles are promptly cleared away from public areas.
4. Regular patrols are to be conducted, at least hourly, outside the premises where the licence applies.
5. A partition will be installed to clearly delineate the licensed area preventing passing pedestrians/children walking into furniture or onto the licensed area
6. When the outside area is no longer in use for licensable activity all unsecured tables, chairs and associated furniture, shall be removed from the outside area and /or stacked and secured.
7. Waiter/waitress service only to seated members of the public
8. Use of the outside area shall cease at 2100 hours.
9. There shall be a direct means of supervision within the external area to which the licence applies.
10. No amplified entertainment of any sort shall be permitted in the external area(s) covered by the licence.
11. No amplified entertainment of any sort from within the premises shall be audible in any external area(s) covered by the licence.
12. Where takeaway orders are prepared for collection, this must be managed so as not to impact upon social distancing of patrons or members of the public passing the premises
13. Where provided for consumption in external areas and/or within open vessels. all beverages shall be sold, supplied or decanted into shatterproof, plastic or cardboard receptacles.

### National Conditions

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.