



# **Pavement Licensing Policy**

Effective from:

## Contents

<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>1</b>	<b>Introduction</b>	<b>3</b>
<b>2</b>	<b>Scope</b>	<b>3</b>
<b>3</b>	<b>Application and Determination of Pavement Licences</b>	<b>6</b>
<b>4</b>	<b>Conditions</b>	<b>9</b>
<b>5</b>	<b>Enforcement</b>	<b>9</b>
<b>6</b>	<b>Appeals</b>	<b>10</b>
<b>7</b>	<b>Policy Review Procedures</b>	<b>11</b>
<b>Appendix 1</b>	<b>Site Notice Template</b>	<b>12</b>
<b>Appendix 2</b>	<b>Standard Pavement Licence Conditions</b>	<b>13</b>
<b>Appendix 3</b>	<b>Statutory Conditions</b>	<b>14</b>

## 1. Introduction

Pavement Licences enable eligible businesses to sell, and/or their customers to consume, food or drink from removeable furniture placed on certain areas of the highway adjacent to their premises.

These licences are granted and regulated by Local Authorities under the Business and Planning Act 2020, as amended by the Levelling Up and Regeneration Act 2023.

The application process provides a streamlined route for businesses to secure a licence, providing much needed support for the hospitality industry and local economies, particularly during times of increasing living costs.

This Policy seeks to provide guidance and clarity on the scope of the Pavement Licensing regime and its application in Medway.

## 2. Scope

### 2.1 Definition of pavement licence

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

### 2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include (but are not limited to): 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.

Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible, though they can apply for permission to place furniture on the pavement under the Highways Act 1980.

For further information and guidance, please contact [highwaylicensing@medway.gov.uk](mailto:highwaylicensing@medway.gov.uk)

### 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).

Not all areas of eligible highways are suitable for pavement licences however as certain local and national conditions (see Section 4) must be met, including minimum unobstructed widths of footpaths/footway having particular regard of the needs to disabled people.

In addition, a local authority cannot grant a pavement licence where it would:

- prevent traffic, other than vehicular traffic, from:
  - 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)
  - passing along the relevant highway, or
  - having normal access to premises adjoining the relevant highway
- prevent any use of vehicles which is permitted by a pedestrian planning order, or which is not prohibited by a traffic order
- prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- prevent 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.

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.

## 2.4 Types of furniture permitted

The furniture which may be placed on the pavement include:

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

This furniture is required to be removable and related to the serving, sale and/or consumption of food or drink. A pragmatic approach will be applied 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 at night.

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

## 2.5 Types of furniture not permitted

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence.

Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also

require express advertising consent under the Town and Country Planning Regulations 2007.

Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980. For further information and guidance, please contact [highwaylicensing@medway.gov.uk](mailto:highwaylicensing@medway.gov.uk)

## 2.6 Interaction with other regulatory processes, such as alcohol licensing

Any businesses that would require a licence to place furniture on the highway and which would fall within the scope of the Pavement Licensing regime, must apply under this regime and not via any alternative legal frameworks, i.e. the Highways Act.

Applicants will however still need to apply for permission to carry out other similar activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.

Additionally, the grant of a pavement licence only permits the placing of furniture on the highway and does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

Temporary amendments to the Licensing Act 2003, under the Business and Planning Act 2020, allow the sale of alcohol by eligible holders of an on-sale licence for consumption off the premises without needing to apply for a variation of their licence. These temporary amendments apply if the premises had a licence that permitted sales of alcohol only for consumption on the premises on 22 July 2020, and the premises still retain that licence. More details can be found in the [guidance accompanying the Business and Planning Act 2020](#). This is currently in place until 31 March 2025. It will remain legally independent and separate from the pavement licences process.

Local authorities must 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 section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

## 2.7 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**

N.B For the avoidance of doubt, unless otherwise specified, all references to 'our website', the council's website, or the publication or availability of materials, application forms, information, guidance, etc. online, relate to the Pavement Licensing pages of our Licensing Shared Service partners' website:

[www.gravesham.gov.uk/licences/pavement-licences](http://www.gravesham.gov.uk/licences/pavement-licences)

#### **3.1 Submission of the Application**

Applications (including payments) for Pavement Licences must be made electronically using the relevant online form.

All applications must contain certain information that is required by law along with such other information as the council reasonably requires.

Government guidance advises that publicising information requirements, and applicants ensuring that they have provided all relevant information to meet these requirements, is beneficial to all parties involved in the process and can speed up decision making.

In support of this, a list of all such requirements, as may vary from time to time, will be published and maintained online.

#### **3.2 Fees**

Application fees are set locally and subject to period revision but are capped at a maximum of £500 for first time applications and £350 for renewals. The current fees will be published and maintained online.

Licence fees will not be refunded in part or full for any licence that is revoked or revised.

#### **3.3 Application Consultation**

The applicant is required to affix a notice to the premises (see 'Site Notice' below), 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 duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority. When counting 'days' public holidays are not included.

Applicants must submit evidence of this with their application.

Applicants are encouraged to talk to neighbouring businesses, occupiers and any services operated in the vicinity for vulnerable customers, for example, care homes or disability organisations where individuals may be at particular risk before applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

The Council will publish details of the application online at:

The Council is required by law to consult with the Highways Authority. In addition, to reduce the likelihood of detrimental effects arising from the application, the Council will ordinarily also consult with:

- Environmental Health Service
- Police
- Fire Service
- Local Authority Town Centre Managers
- Any such other persons as it considers appropriate

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

The prescribed Site Notice referenced in the 'Application Consultation' above must be downloaded from our website, completed and displayed on the premises on the day the application is made. It must be 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.

A template Site Notice is shown as Appendix 1.

### 3.5 Site Assessment

The following is a non-exhaustive list of example matters that will ordinarily be considered by the Council and consultees in considering the suitability of the proposed application:

- Public health – for example compliance with the national smoke-free seating condition
- Health and safety – for example, risks to employees and the public, fire safety, crowd management, emergency vehicle access
- Ability for compliance with both the national statutory and local conditions (see Section 4 'Conditions' below and Appendices 2 and 3), but with particular regard to maintaining minimum footway widths.
- Local amenity – risks to neighbouring occupiers arising from anti-social behaviour, litter, noise, artificial lighting nuisance, or other similar adverse impacts.
- Faith in management – having regard to any current or previous relevant issues associated with the premises or its management
- Equality and accessibility – including compliance with the national no-obstruction condition (relating to minimum widths of accessible footpaths for wheelchair users and others with accessibility needs) and the overall nature/locality of the site, its surroundings, and other local uses.
- Cumulative impacts

### 3.6 Determination

Once ALL the information and the FEE is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

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

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

### 3.7 Approval of Applications

The Council may approve applications meeting the criteria contained within this policy.

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 when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

The Council will generally only permit Pavement Licences between 07:00 and 23:00, however, there may occasions where longer hours may be permitted. An example of this may be where a premises has longer licensed operating hours and has previously held a highways licence for those hours without prior issue or problem.

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

If a local authority determines an application before the end of the determination period (which is 14 calendar 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. To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 2 years, 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 two years starting with the first day after the determination period. 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.

### 3.9 Refusal of Applications

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

There is no statutory appeal process against decisions to refuse an application, however the Council has an internal review process as set out in section 6 of this Policy.

## 4. Conditions

The 2020 Act sets out two conditions which apply to all 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. Further details on these can be found within Appendix 2 of this policy and section 4 of the Government's Pavement Licences Guidance available to view at:

<https://www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance>

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.

A copy of the Council's standard conditions, which will be attached to all Pavement Licences are shown at Appendix 3 and will be available to view on the council's website. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

## 5. Enforcement

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. If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing.

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

The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised.
2. Or if there is evidence that:
  - there are risks to public health or safety – for example 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 no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or
  - the use is causing, or risks 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.

The local authority may revoke a licence in the following circumstances:

1. For a breach of condition, (whether a remediation notice has been issued or not) or
2. It comes to light that the applicant provided false or misleading statements in their application – for example falsely claiming they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture is not removed or removed only to be later returned to the site, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

## **6. Appeals**

There is no statutory appeal process for refusals to grant a licence, grant a licence with conditions or revocation of a licence. However, Medway Council has an internal review process as set out below.

Reviews will be conducted by the Assistant Director of Legal and Governance, or any such other senior officer to whom delegated authority for this purpose is given. For the purposes

of this appeals procedure, the officer conducting the reviews is therefore referred to as the Appeals Officer.

Upon refusal to grant a licence, granting of a licence with conditions, or revocation of a licence, an applicant/licensee will be informed of their ability to appeal the decision within 10 working days from the date of the notification.

Any such appeal submitted must be made in writing and include their grounds for appeal.

The appeal must be determined, and the licensee/applicant notified of the decision within 21 days from the date the appeal is received.

Upon receipt of an appeal:

1. The case officer will notify the Appeals Officer of the appeal and outline the case and grounds for refusal to grant/grant with conditions/revocation. The notification of appeal from the applicant/licensee must be included and the final date for determination.
2. The Appeals Officer may invite the applicant/licensee and/or case officer to a meeting or otherwise contact them to obtain further clarity.
3. The Appeals Officer will notify the case officer of the decision outlining what had been considered and the grounds for the decision.
4. The case officer will notify the applicant/licensee of the decision made by the Appeals Officer, outlining what had been considered and the grounds for the decision.

The decision of the Appeals Officer will be final.

## **7. Policy Review Procedures**

This Policy will be kept under review and updated as required following changes to legislation, national guidance, or local policies/priorities.

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



**NOTICE for display by an applicant for a Pavement Licence.  
Section 2 of the Business and Planning Act 2020.**

**I/We** *(name of applicant)*, do hereby give notice that on *(date the application is submitted to Licensing)* **[I/we]** have applied to Medway Council for a ‘Pavement Licence’ at: *(postal address of premises)*

**known as** *(name premises are known by)*

**The application is for:**

	Number
Tables	
Chairs	
Menu Boards / A Boards	
Parasols / Umbrellas	
Planters	
Litter Bins	
Barriers / Balustrades	
Stalls	
Other (please specify)	

<b>In an enclosure measuring</b>	<b>Length (metres):</b>
	<b>Width (metres):</b>
<b>Between the hours of</b>	<b>and on the following days:</b>

**Any person wishing to make representations to this application may do so by emailing [licensing@gravesham.gov.uk](mailto:licensing@gravesham.gov.uk)**

**by:** *(last date for representations being the date 14 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: <https://www.gravesham.gov.uk/pavement-licence>**

**Signed** .....

**Dated:** *(must be dated and displayed on the same date the application is submitted)*

.....

## NATIONAL CONDITIONS

The following conditions are applied under s(5) of the Act and as explained further in Section 4 of the accompanying [Government Guidance](#)

### 1. Smoke-free seating condition

Where 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.: Ways of meeting this condition may include:

- Displaying clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage in designated 'smoke-free' zones in accordance with Smoke-free (Signs) Regulations 2012.
- Not providing nor permitting ash trays or similar receptacles in areas where smoke-free seating is identified.
- Providing a minimum 2m distance between non-smoking and smoking areas, wherever possible.

### 2. No-obstruction condition

Anything done by the licence-holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6) of the Act:

These effects are:

- (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.

### Standard Conditions Attached to a Pavement Licence

#### These conditions are published under Part 1, Section 5(2) of the Business and Planning Act 2020

1. The site must not exceed the width of the premises frontage and must be positioned within the area specified on the licence.
2. The furniture used must not cause any damage to the highway or impede surface water drainage.
3. The furniture must not impede access to or egress from any premises.
4. There are to be no permanent fences, enclosures, fixtures, fittings or furniture.
5. No barbecues, fire pits, gas heaters or naked flames are permitted.
6. All customers must be seated, with no vertical drinking.
7. The licensee must ensure patrons behave in a civil manner and minimise any disturbance to local residents.
8. No live music, singing, recorded music, or other amplified sound is permitted in the licensed area.
9. Public Liability Insurance of at least £5m must be maintained and evidence must be provided to the local authority upon request.
10. The licence holder must comply with all reasonable requests from an officer of the local authority, highways authority (where this is not the local authority) or emergency services.
11. Artificial lighting associated with the licence may only be used during the permitted licence hours and must not cause disturbance/nuisance to occupiers of other properties.
12. A record detailing the date, time and nature of, and resolution to, all incidents of crime or antisocial behaviour occurring within the licensed area must be kept and made available to police and authorised officers from the local authority upon request.
13. Every table, chair and item of temporary street furniture shall be positioned so that it does not impede the surface water drainage of the highway.
14. No items shall be sited as to obstruct access to any premises unless the consent of the occupier of those premises has been obtained. No items shall be sited in such a way that they obstruct any fire exits, dry risers or any other places of equipment that requires access by emergency services.
15. A minimum continuous unobstructed footway width of at least 1.6 metres (not including kerbs) must be maintained at all times.

16. No tables, chairs and temporary street furniture, shall be left on the highway longer than the permitted hours specified on the Pavement Licence. Tables, chairs and temporary street furniture shall be taken inside and stored during the hours outside of licensed hours.
17. All tables, Chairs and temporary furniture shall be separated from the remaining highway using disability compliant barriers. Barriers MUST:
  - a. Be between 1000mm and 1200mm in height
  - b. Have a continuous tapping rail (150mm to 200mm deep) or panel edge either on the ground or up to a maximum height of 200mm above the ground.
  - c. Have a colour contrast to ensure they are highly visible.
  - d. Be continuous around the area of tables, Chairs and temporary street furniture except for the access point
  - e. Be removed from the highway outside the licensed hours.
18. No tables, chairs, temporary street furniture, including barriers shall remain on the highway pursuant to this permission after the period of the pavement licence has expired.
19. The licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times and shall ensure that any associated debris is removed at the end of each day and make good any damage caused to the surface area.
20. No apparatus such as power cables or water pipes shall be allowed to be laid across or suspended above the highway for the purposes of providing services to outside areas on or off the highway.
21. No wastewater or other substances shall be discharged on to the highway or highway drainage system.
22. Where 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 ensure:
  - a. Smoking of tobacco is not permitted within the licensed area.
  - b. No advertising, other than the premises name and/or logo is permitted on items within the licensed area, including parasols, barriers, tables and chairs.