

Birmingham City Council Temporary Pavement Licensing Policy

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Version 2

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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 started to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.

The Business and Planning Act 2020 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 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 “temporary pavement licence”, from Birmingham City 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.

Currently, tables and chairs permissions are granted as pavement licences by Birmingham City Council, the Highways Authority, under Part VIIA 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 consultation and 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 Temporary 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: 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).

If an application would also require additional permissions, such as a Temporary Traffic Regulation Order, these permissions MUST be sought separately.

Where the criteria for a Temporary Pavement Licence have been met i.e. relevant premises, relevant use, a licence must be applied for. (see Part 5 – Enforcement)

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.

2.6 Licensing Act 2003

Pavement Licences confer no authorisation to sell or supply alcohol from the licensed area. Any such authorisation must be obtained under the existing alcohol licensing regime.

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 through the website, and the following will be required to be submitted with the application:

- a completed Application Form
- the required fee of £100, 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.
- 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. if the proposals encroach onto a neighbouring property, evidence of any agreement reached with that party);
- 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 or previous licence granted for the area.
- Details of any existing authorisation to sell or supply alcohol under the Licensing Act 2003 (including licence number)
- 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 necessary 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 the fee for applications will be £100.

This fee is **non-refundable** in the event of refusal, surrender or revocation.

Applicants are advised not to submit any application unless they can satisfy all the requirements and have included all required documentation.

3.3 Consultation

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

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

To ensure that there are no detrimental effects to the application the Council will consult with:

- Birmingham City Council Environmental Health Service (including Pollution Control and Food and Safety Teams)
- Birmingham City Council Planning Department
- Birmingham City Council Waste Management Department
- City Centre Operations Team and or Local Engineers (Highways) (where applicable)
- Birmingham City Council Traffic Management Services
- West Midlands Fire Service
- West Midlands Police
- The appropriate Local Ward Councillor(s)

- Birmingham City Council Community Safety, Prevent and Resilience
- such other persons as the Council considers appropriate

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

The Council must consider representations received during the public consultation period and consider these when determining the application. The period in which the licence must be determined is seven days, commencing the day AFTER the public consultation ends.

If the local authority does not make a determination by the end of the determination period, the licence for which the application was made is deemed to be granted by the authority to the applicant.

3.4 Site Notice

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

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

The Site Notice must:

- 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; (the application will be published on the next working day)
- 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).

A template Site Notice is shown as Appendix 1.

A Site Notice populated with the information supplied as part of the application will be emailed to the applicant to print and display on receipt of the completed application.

3.5 Site Assessment

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

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

3.6 Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation.

If the 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 by the end of the 14-day period, the application will be deemed to have been granted.

3.7 Approval of Applications

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

On approving the application, the Council will issue a Temporary 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. These terms will also be regarded as conditions of licence.

A copy of the Council's standard conditions, which will be attached to all Temporary Pavement Licences are shown at Appendix 2. Additional or alternative conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Temporary 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.

Premises licensed under the Licensing Act 2003 may apply for a Pavement Licence which reflects the hours on their LA03 licence. This must be specified on the application.

Applicants should note that, although the Business and Planning Act 2020 modifies the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises, this modification ceases at 11pm (or the terminal hour of the existing on-sales permission – whichever is earlier).

Applications for tables (or similar) for the display of goods for sale will only be considered where the proposed use meets the requirements for relevant use (food and drink) and will be expected to include provision for the space occupied by customers while browsing or paying/ waiting to be served.

3.8 Licence Duration

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 may 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 only.

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

There is no provision in the Act to vary or transfer a Temporary Pavement Licence.

3.9 Refusal of Applications

If the site is deemed unsuitable for a Temporary 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 decision to refuse an application.

4. Conditions

The Council's standard conditions are set out at Appendix 2. 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.

However, this is not the case for the statutory no-obstruction condition which applies to all Licences. The National 'no obstruction' condition is shown in Appendix 3.

The Business and Planning Act 2020 includes a provision regarding smoking outdoors. The Council would urge all licence holders to consider making their outside spaces entirely smoke free, however, it recognises there will be some premises who feel they should provide facilities for customers who choose to smoke. The Act states, where provision is made for smoking, the licence-holder must make **reasonable provision** for seating where smoking is not permitted.

Ways of meeting this condition could include:

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

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

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 and/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, Equalities Act, Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

If an application would also require additional permissions, such as a Temporary Traffic Regulation Order, these permissions MUST be sought separately. There may be additional costs for such permissions. Issuance of a Pavement Licence does NOT supersede any requirement for such permission, and its validity would be conditional on the securing of such permission.

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:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

Failure to comply with the requirements with regard to pavement licences may result in offences under the Highways Act 1980.

Failure to secure the appropriate permissions would also mean all of the relevant planning and street trading considerations would apply.

6. Review Procedures

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

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, relevant social distancing measures or as a result of local considerations within the Birmingham City Council Area.

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

[Section 1] of the Business and Planning Act 2020

I/We: *[applicant name]*

do hereby give notice that on *[date of application]* [I/we] have applied to Birmingham City Council for a 'Pavement Licence' at:

[premises address]

known as

[premises name]

The application is for:

Description: *[e.g. tables and chairs for customers to eat food]*

Purpose:

[e.g. Food and non-alcoholic beverages to take away]

Hours: *[hours as per application will be populated here]*

Monday: *[hours from:to]*

Tuesday: *[hours from:to]*

Wednesday: *[hours from:to]*

Thursday: *[hours from:to]*

Friday: *[hours from:to]*

Saturday: *[hours from:to]*

Sunday: *[hours from:to]*

Any person wishing to make representations to this application may do so by completing the online feedback form: at <https://www.birmingham.gov.uk/xfp/form/750> quoting ref number *[reference#]*

by end of: *[closing date]*

The application and information submitted with it can be viewed on the Council's website at: <https://www.birmingham.gov.uk/tpl-applications>

Signed

Dated *[date]*

Standard Pavement Licence Conditions

1. Permission to operate a temporary pavement licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Birmingham City Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the temporary pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
2. Birmingham City Council requires evidence that the licence holder has Public Liability Insurance for the operation of the temporary pavement licence. This must indemnify Birmingham City Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.
3. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
4. Tables, chairs or other approved furniture must not be moved beyond the boundary of the licence as granted.
5. Birmingham City Council is empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, 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.
6. The licence holder is not to make or cause to be made any claim against Birmingham City Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
7. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
8. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Highways Authority. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
9. Emergency routes to the premises and adjacent buildings must not be obstructed by the temporary pavement licence area, which should not, in normal circumstances, extend beyond the width of the premises frontage.
10. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used without a written Risk Assessment.

11. All electrical supplies and electrical appliances (including lighting) must be battery or mains powered and meet all applicable standards for outdoor use. Generators are not permitted.
12. 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.
13. The licensee should ensure that the area operates 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.
14. The operation of the area must not interfere with highway drainage arrangements.
15. During the hours of darkness, suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
16. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility. The licence holder must ensure that any tables 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.
17. Use of the licensed area should be managed such that so far as is reasonably practicable, there is no additional impact on public litter bins. This may involve providing customer bins in the licensed area alongside a robust litter control plan.
18. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by Birmingham City Council
19. The Licensee of a pavement licence related to a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within licensed area.
20. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Facility (the area subject to the Temporary Pavement Licence) outside the hours in force for the premises itself.
21. Where the Temporary Pavement Licence is within a PSPO which prohibits consumption of alcohol, the licensee should take steps to prevent patrons leaving with open containers of alcohol.

22. The licence must be displayed on the premises with a plan of the agreed layout of the temporary pavement licence area.
23. Where the furniture on the relevant highways 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.
24. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
25. 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.
26. The licensed area must be capable of complying with Government guidance with regard to social distancing and must be included in a COVID-19 Risk Assessment. (This will usually form part of the Risk Assessment for the main premises.)
27. Birmingham City Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

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.