



Pavement Licence (Outdoor Seating) Policy and Procedure July 2021

1. Purpose and Objectives

1.1. The purpose of this policy is to support the legislative changes brought about by the Business and Planning Act 2020. This policy will be temporary until 30 September 2022, or such other date defined in legislation.

1.2. This policy document introduces a streamlined route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway until 30 September 2022. This will support them to operate safely while social distancing measures remain in place and will improve the viability of hospitality businesses and protect as many hospitality jobs as possible.

2. Background

2.1 Covid-19 lockdown restrictions on bars, restaurants, cafes and pubs have been lifted and these businesses are now able to open to the public. For such businesses social distancing will have considerable impact on the number of customers they can accommodate and consequently on business viability. Access to outdoor alfresco space may make the difference between them being able to operate profitably, or failing.

2.2 Whilst many hospitality businesses have private outdoor seating areas, many don't and therefore may need to utilise adjacent public areas, whether on footpaths, pedestrianised streets, parking areas or other amenity spaces. For many years the use of land for commercial alfresco activities has been subject to complex and layered regulatory processes. Previously, for seating on an existing pedestrian area up to three separate permissions would have been required: Highways, Planning, and Licencing consents as follows:

Pavement Licences (Highways)

Businesses selling food and drink such as cafes, pubs and restaurants can apply to the local council for a "pavement licence" allowing them to put furniture on pedestrian parts of the public highway for their customers. Halton Borough Council has a policy around such pavement licences called the 'Pavement Cafe Policy' containing local conditions and guidelines.

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Planning Permission -

In some instances the use of land as an alfresco seating area may constitute a material change of use. Enquirers generally need to contact Planning Services to determine whether a specific planning permission is needed. A planning application is likely to take circa 8 weeks to be determined.

Alcohol Licences –

Currently many restaurants, bars and pubs will only have a licence to serve alcohol on the premises. Under the Licensing Act 2003, such operators would need to apply for a variation to their alcohol licence to allow the sale of alcohol for consumption off the premises where they are seeking to utilise areas such as pavements for alfresco drinking.

- 2.3 Recognising that with social distancing, having access to outdoor space for bars, cafes, pubs and restaurants is vital to business viability, the Government has sought to simplify, for a temporary period, the current complex and layered regulatory processes which would be a barrier to such outdoor activity happening this year.
- 2.4 The Business and Planning Act received Royal Assent on 22 July 2020. Amongst the measures included in the Act is a streamlined procedure enabling businesses serving food and drink to apply for a temporary Pavement Licence to put a range of furniture on the highway including stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters. The new style Pavement Licences may be granted for a minimum period of 3 months and all licences must expire on or before 30 September 2022.
- 2.5 If a new style Pavement Licence is issued, no separate planning permission is required and any necessary planning permission will be automatically deemed to have been granted.
- 2.6 Furthermore, the Act includes measures to modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. This will be a temporary measure only, with provisions lasting until the end of September 2021, making it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption off the premises without the need to vary their Alcohol licence. Licensees who have had an application for an off-sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension. The default hours in which off-sales will be permitted will be the same as those in which on-sales are permitted. Any licensee who wished to open for longer hours could still apply for a licence variation.
- 2.7 In summary, for a temporary period, instead of having potentially to apply for three different forms of consent from the Local Authority, the Act provides for those businesses seeking to utilise outdoor pedestrian areas for alfresco drinking and eating to apply for a single Pavement Licence under a new streamlined, low cost process.

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3. The Policy

Scope

- 3.1 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). Licences cannot be granted for private land or for highways which vehicles are permitted to drive on during the licenced hours. Applicants will be asked to check the area they are submitting an application for is an area where a licence could be granted, and to confirm they have checked this prior to completing the application and submitting a fee.
- 3.2 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. It does not grant permission for the use of the highway for any other purpose including the sale or display of goods or services.
- 3.3 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.
- 3.4 Unless express written permission is granted by Halton Borough Council ('the Council'), Licences may not be assigned or sublet to any other business.
- 3.5 All licences under these provisions shall remain in force until 30th September 2022 provided that if there is a breach of any of these conditions the Council reserves the right to withdraw the licence by giving the Licence-holder seven days notice in writing of the Council's intention to withdraw the same.
- 3.6 All reasonable directions of the Council or its representative are to be complied with.
- 3.7 In the event that, as a result of the Council requiring the highway for any reason or cause arising in connection with its powers and duties as highway authority, the Licensed Area is not available for use by the Licence-holder, there shall be no claim against the Council for loss of trade.

Fee

- 3.8 The applicant will pay a fee of £100 which is non-refundable.

Information required

- 3.9 An application to the local authority must:
 - specify the premises and, the part of the relevant highway to which the application relates;

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- specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.
- Confirmation that there is a minimum of 1500mm free space between the furniture and the edge of the footpath.

Conditions

- 3.10 Licence-holders will be required to comply with the Schedule of Conditions set out in the licence (see Appendix 1 of this policy).

Consultation

- 3.11 There will be a public consultation period which is the period of 10 working days beginning with the day after the day the application is submitted. During this period, both the public and other interested parties can make representation to the authority. A public notice must be displayed by the applicant at the location of the proposed alfresco area. The council will consult with the following parties, internally; local ward members, Licencing, Planning, Legal, Environmental Health, and externally: parish or town council and the Police.
- 3.12 A register of all applications will be published on the council's website

4. Considerations

When considering Licence applications the authority is guided as to material considerations by the national guidance. The following matters will be taken into account:

- Whether reasonable provision can be made for seating where smoking is not permitted.
- public health and safety including security – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a license being granted and businesses reopening;

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- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
- considerations under the national no-obstruction condition, in particular considering the needs of disabled people;
- any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
- any other social distancing measures in place, for example any queuing systems that limit the space available on the pavement;
- whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian or cycle movements

5. Monitoring and Enforcement

5.1 The policy is intended to ensure that highways enforcement is carried out in a fair and consistent way.

5.2 If a condition of the licence has been breached, the local authority may revoke the licence or require steps to be taken to remedy the breach. The authority may revoke a licence in the following circumstances:

For breach of condition, (whether or not a remediation notice has been issued) or 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.

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5.3 The local authority may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licenced area (or road adjacent) is no longer to be pedestrianised. The local authority will give reasons where these powers are used.

6. Right of appeal.

6.1 There will be no route to appeal the decision. Applicants can reapply if material changes to the original refused application have been made.

SCHEDULE OF CONDITIONS FOR PAVEMENT LICENCE

BUSINESS AND PLANNING ACT 2020

1. Tables, chairs, furniture, fittings and barriers associated with the refreshment area or café (Furniture and Fittings) shall not encroach on to the highway beyond the area licenced for the purpose by the Council, shown on the plan annexed to the Licence ('the Licensed Area').
2. Care shall be taken with the siting of umbrellas and awnings neither of which may extend outside the Licensed Area. The whole of the adjacent highway shall remain open for pedestrian use at all times and shall not be obstructed by public use of the Licensed Area. Free and unobstructed passage of pedestrians on the highway must be maintained at all times so as not to cause any nuisance annoyance or obstruction thereof and the Licence-holder shall:-
 - (a) ensure that all persons taking refreshments do not encroach beyond the Licensed Area
 - (b) be responsible for the conduct of all persons using the Licensed Area.

The furniture which may be used within the Licensed Area is limited to that specified in the application unless otherwise agreed in writing with Halton Borough Council Highways Service.

3. Tables and chairs on the public highway shall be positioned to allow the safe passage of pedestrians, blind or visually impaired people and people with limited mobility. 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](#).
4. In order to mitigate any impacts on the elderly, those pregnant or with small children, and those with disabilities, consideration must be given to the potential impacts of proposals on these groups.
5. The tables and chairs must be placed so as not to obstruct drivers' sight lines or highway signs. They must be within an area defined by an appropriate temporary barrier.
6. Reasonable provision must be made for seating where smoking is not permitted. Clear 'smoking' and 'non-smoking' areas must be provided, with 'no smoking' signage displayed in designated 'smoke-free' zones. Licence-holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible.
7. In the event of the surface of the highway being disturbed by the Licence-holder by any means, the Licence-holder shall restore and made good the highway at the Licence-holder's cost, to the satisfaction of the Council. The Licence-holder shall be responsible for all

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damage caused to the Licensed Area as a consequence of its use, whether caused by the Licence-holder or not.

8. Access for emergency services must be available at all times. If the Licence-holder is requested to move any Furniture and Fittings or other items within the Licensed Area by the Council, police, fire service or statutory undertaker
 - (a) in the interest of public safety (for example on occasions when there are demonstrations, public unrest and disorder, bomb warning or fire alert) or
 - (b) for the purpose of carrying out works in on or under the highwaythe Licence-holder shall immediately comply with that request.
9. Access to adjacent properties should remain unobstructed and available at all times and the use of the Licensed Area should not interrupt the operation of adjacent businesses.
10. Any Furniture and Fittings associated with the use of the Licensed Area shall be installed and maintained to the satisfaction of the Council.
11. Access to the Furniture and Fittings and the Licensed Area shall be afforded at all reasonable times to officers of the council for the purposes of inspection.
12. The Licensed Area shall be kept in a clean, litter free and tidy condition during its operation and used glasses, plates, cutlery, containers, papers and all other articles thereon shall be removed on a regular basis and at the close of business each day and all refuse shall be removed. Care should be taken to ensure that litter does not stray onto adjacent areas; any windblown litter outside the perimeter of the Licensed Area must be collected. Cleansing of any spillages is to be dealt with by the Licence-holder as soon as they occur.
13. Any signage, flags, banners, "A" boards or temporary advertisements displayed or placed in on or around the Licensed Area must be in accordance with the Council's Policy and Guidelines.
14. No live entertainment or amplified music will be allowed within the Licensed Area.
15. The Licenced Area will only be open for the use as a refreshment area between the hours of 0700 hrs and 2359 hrs (or such alternative hours as may be designated on the Licence (the Refreshment Period).
16. Furniture and Fittings may only be placed on any part of the Licenced Area which is shared with vehicles (partially pedestrianised areas) 30 minutes after vehicular access is closed and must be removed and the Licensed Area completely cleared no later than 30 minutes before vehicular access re-commences.
17. The Licence-holder shall remove all Furniture and Fittings and any other items within the Licensed Area by the end of a Refreshment Period and shall not place any Furniture and

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Fittings or any other items within the Licensed Area before the commencement of a Refreshment Period.

- 18. The Licence-holder shall indemnify and keep indemnified the Council from and against all actions demands costs charges or expenses arising out of or in connection with the use of the refreshment area and for this purpose shall take out an insurance policy in at least the sum of £5,000,000 (Five million pounds) for any one accident without limiting the number of claims arising out of any one accident with an insurance company to be approved by the Council and shall produce such policy and the receipt for the premium thereof to the Council.
- 19. A legible copy of the current Licence and accompanying plan must be displayed for inspection at any time by the Council.

Example of Pavement Café licence plan

