

SCARBOROUGH BOROUGH COUNCIL

BUSINESS AND PLANNING ACT 2020

Policy Statement on PAVEMENT LICENCES

1.0 BACKGROUND

- 1.1 The Business and Planning Act 2020 was passed to promote economic recovery and growth in response to the impacts of the global Covid-19 pandemic. The Act includes urgent provisions designed to make it easier for premises in England serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.
- 1.2 Sections 1 to 10 of the Act create a temporary regime for the issuing of “pavement licences” by appropriate local authorities. Scarborough Borough Council is responsible for issuing Pavement Licences within our district.
- 1.3 This new process introduces a streamlined procedure for businesses which sell food and drink to secure a licence to place furniture on the highway. The aim of the legislation is to support businesses to operate safely while social distancing measures remain in place.
- 1.4 The temporary licensing regime remains in place until 30 September 2021 when these provisions should expire in accordance with section 10 of the Act.

2.0 PAVEMENT LICENCE

- 2.1 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 Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. In general terms, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).
- 2.3 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.

- 2.4 A licence permits the business to use removable 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.

Furniture in this context means:

- (a) Counters or stalls for selling or serving food or drink,
- (b) Tables, counters or shelves on which food or drink can be placed,
- (c) Chairs, benches or other forms of seating, and
- (d) Umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink;

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

3.0 SECRETARY OF STATE'S GUIDANCE

- 3.1 In accordance with the requirements of section 8 of the Business and Planning Act 2020, the Council will have regard to any guidance issued under that section by the Secretary of State when dealing with the pavement licensing provisions contained in the Act.

4.0 INTERACTION WITH PART 7A OF THE HIGHWAYS ACT 1980

- 4.1 Part 7A of the Highways Act 1980 already provides a mechanism for local authorities to grant businesses permission to place objects or structures on the highway for any of the following:
- (i) for a purpose which will result in the production of income;
 - (ii) for the purpose of providing a centre for advice or information; or
 - (iii) for the purpose of advertising.
- 4.2 In Scarborough Borough Council, permissions for premises issued under Part 7A of the Highways Act 1980, are dealt with by North Yorkshire County Council.
- 4.3 The new pavement licence regime does not supersede Part 7A of the Highways Act 1980, which remains in place. Therefore, any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

5.0 NEW APPLICATIONS

- 5.1 Those wishing to put removable furniture on the highway can apply for either a Pavement Licence under the Business and Planning Act 2020 or for permission under Part 7A of the Highways Act 1980.

6.0 PLANNING PERMISSION

6.1 There is no requirement to apply for planning permission for a Pavement Licence issued under the new legislation for as long as the Act remains in force.

Licences will be valid until 30 September 2021

7.0 THE APPLICATION PROCESS AND FEES

7.1 Applications must be made on the Council's standard application form and must be submitted electronically to licensing.services@scarborough.gov.uk along with the required supporting documentation and evidence of payment of the appropriate application fee.

7.2 The completed application must be accompanied by the following:

- 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 of 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.
- 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,
- Photos or brochures showing the proposed type of furniture (including the means of enclosure such as barriers) and where the furniture is likely to be sited within the plan submitted.
- Evidence of consent from neighbouring frontage(s) to use the highway outside their property (if applicable).

7.3 The Council has determined that the fee for making an application for a pavement licence is £50. The application fee is non-refundable in the event that the application is refused or withdrawn or if any licence which gets granted is subsequently surrendered or revoked.

7.4 An application will not be considered complete until the application form, all required documents and the application fee have all been received. The public consultation period will not commence until the day after a complete application has been made.

8.0 APPLICANT'S DUTY TO GIVE NOTICE OF APPLICATION

8.1 The Act requires an applicant for a pavement licence to:

- (a) *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, and
- (b) Secure that the notice remains in place until the end of the public consultation period which means the period of 7 days beginning with the day after that on which the application is made.

8.2 A template notice for use by applicants can be found at **Annex A** to this policy statement and can also be downloaded from <https://www.scarborough.gov.uk/home/business-licensing-and-grants/licences-and-licence-applications/pavement-licences>

9.0 CONSULTATION

9.1 Before determining an application, Scarborough Borough Council will consult with the following bodies:

- North Yorkshire County Council (The Highway Authority)
- Police
- Environmental Health

9.2 Any objections from consultees **must** be made within the 7 day public consultation period.

9.3 Details of applications received and the relevant public consultation periods for each application will also be published at <https://www.scarborough.gov.uk/home/business-licensing-and-grants/licences-and-licence-applications/licence-applications-under>

10.0 DETERMINATION OF APPLICATIONS

10.1 Scarborough Borough Council supports the aims of the Act and wants to help promote economic recovery and growth in its area and will therefore look to grant a pavement licence where possible.

10.2 The council also has a duty to ensure the issuing of pavement licences does not put public health or safety at risk; does not lead to anti-social behaviour or public nuisance and ensures that all members of the public, especially those with mobility or visual impairment, can safely use the highway.

- 10.3 The Council will consider all relevant circumstances in determining applications. Each case will be individually considered.
- 10.4 The Council will not grant a licence when doing so might affect any of the following:
- (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.
- 10.5 When considering the placement of furniture or other effects of the Pavement Licence, the Council will have regard in particular to the needs of disabled people and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.
- 10.6 The above does not constitute an exhaustive list of grounds for refusal. The Council may refuse an application on other grounds where the granting of the licence would put at risk public health or safety, lead to antisocial behaviour or public nuisance or unreasonably impede the passage of pedestrians using the highway. Again, this is not an exhaustive list.
- 10.7 The Council will consider any objections or comments received in respect of the application during the public consultation period, whether made by the bodies consulted or any other person, before the application is determined.
- 10.8 Having considered any objections or comments received in respect of the application, the Council may:
- (a) Grant a licence subject to the standard conditions

- (b) Grant a licence subject to the standard conditions and any other reasonable conditions that are considered appropriate in the circumstances of the case
- (c) Refuse the application

10.9 Where relevant objections to an application are received from the Highway Authority, pavement licences will **not** be granted

11.0 LICENCES DEEMED GRANTED

- 11.1 The Council aims to determine all applications within the determination period provided by the Act. That means that applications will be granted or refused within the period of 7 days beginning with the first day after the public consultation period.
- 11.2 If the Council does not make a determination by the end of the determination period, section 3 (8) of the Act provides that the licence for which the application was made is deemed to be granted by the Council to the applicant.

12.0 LICENCE CONDITIONS

- 12.1 All pavement licences whether granted or deemed granted, will be subject to the Council's published standard conditions, which can be seen at **Annex B** to this policy statement.
- 12.2 All pavement licences whether granted or deemed granted, will also be subject to the statutory conditions provided under section 5(4) of the Business and Planning Act 2020.
- 12.3 These statutory conditions are shown at **Annex C** to this policy statement.
- 12.4 Where appropriate, further reasonable conditions may be added (or existing conditions amended) to individual licences as the Council deems appropriate upon receipt of comments or objections received during the public consultation period.

13.0 DURATION OF LICENCES

- 13.1 All licences **granted** by the Council will be valid until 30 September 2021 and will then expire.
- 13.2 Any licence **deemed granted** under section 3 (8) of the Act will be valid for a period of 12 months or until 30 September 2021, whichever is the shorter, and will then expire.

14.0 ENFORCEMENT AND REVOCATION OF LICENCES

- 14.1 The Council will always seek to remedy any breaches arising from the issuing of a pavement licence informally with the licence holder in the first instance.
- 14.2 If compliance cannot be achieved by these means, formal action may result as detailed below.
- 14.3 If the Council considers that a licence-holder has breached any condition of the licence, the authority may—
- (a) revoke the licence, or
 - (b) serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.
- 14.4 If a licence-holder on whom an enforcement notice is served fails to comply with the notice, the Council may—
- (a) revoke the notice, or
 - (b) take the steps itself and recover the costs of doing so from the licence holder.
- 14.5 The Council may also revoke the licence if it considers that—
- (a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
 - (b) as a result of the licence—
 - (i) there is a risk to public health or safety, or
 - (ii) anti-social behaviour or public nuisance is being caused or risks being caused,
 - (iii) the highway is being obstructed (other than anything done by the licence-holder pursuant to the licence),
 - (c) anything material stated by the licence-holder in their application was false or misleading, or
 - (d) the licence-holder did not comply with the duty to advertise their application.
- 14.6 All enforcement activity will be undertaken in line with the principles set out in the Regulator’s Compliance Code .

15.0 RIGHTS OF APPEAL

- 15.1 The Business and Planning Act 2020 does not provide any statutory right of appeal against a decision to refuse or revoke a pavement licence, nor is there a statutory right of appeal against any enforcement notice served on a licence holder.
- 15.2 Clear and justifiable reasons will always be provided if a licence is refused or revoked, or if an enforcement notice is served on a licence holder.

16.0 HAZARDS OR OBSTRUCTIONS OF THE HIGHWAY

- 16.1 Notwithstanding the grant or deemed grant of a licence, the Highways Authority is empowered to remove items that present a hazard or obstruction to highway users.

17.0 REVIEW OF THIS POLICY STATEMENT

- 17.1 This policy statement covers the temporary provisions for the issuing of pavement licences under the Business and Planning Act, scheduled to expire on 30 September 2021.
- 17.2 This policy statement may be reviewed from time to time should changes in legislation, relevant social distancing measures or local circumstances dictate.

PUBLIC NOTICE

APPLICATION FOR A PAVEMENT LICENCE

BUSINESS AND PLANNING ACT 2020

I/We *[name of applicant]*

hereby give notice that on *[date of submission to Council]*

[I/we] have applied to Scarborough Borough Council, for a 'Pavement Licence' at: *[postal address of premises]*

known as *[name of the premises – ie The Gun Tavern]*

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

Any person wishing to make representations to this application may do so by writing to: licensing.services@scarborough.gov.uk

by: *[date – 7 days from the date of application – 5 working days]*

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

Signed

Dated *[date of submission to the council]*

GUIDANCE NOTES

On the same day that the application is made, a completed copy of this notice must be fixed to the premises so that it is readily visible to, and can be read easily by, members of the public who are not on the premises, and secure that the notice remains in place until the end of the public consultation period.

FAILURE TO COMPLY WITH THIS REQUIREMENT MAY LEAD TO THE REVOCATION OF ANY LICENCE GRANTED OR DEEMED GRANTED.

STANDARD CONDITIONS FOR PAVEMENT LICENCES

1. Public Liability insurance for £5million, must be applied to any highways area covered by this licence. The issuing council is indemnified against any injury damage or loss howsoever caused.
2. The licence must only be used for the purpose of placing removable furniture 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 licence holder's business premises.
3. Furniture may only be placed within the area of the highway identified on the plan that accompanied the application for the licence.
4. The licence holder must ensure that furniture is positioned in such a way so as to ensure compliance with relevant Government guidance on social distancing in place at the time and that staff can service the space regularly for cleaning and other purposes, in a manner that does not compromise their health and safety.
5. Furniture used on the highway must be of a safe and suitable standard and condition.
6. The licence holder must ensure that any equipment used will not cause damage to the highway. Any damage caused shall be recharged by the Highways Department. No furniture shall be fixed to the highway surface.
7. Unless a more restrictive condition is applied to this licence in response to concerns raised during the public consultation period, the licence holder must not place any furniture or equipment on the highway before 0800 hours and must remove all furniture placed on the highway relating to this licence when the premises closes or by 2200 hours each day, whichever is the earlier.
NB this may be varied if, as a result of consultation, a more restrictive condition has been attached to the licence
8. A useable footway width of 2m must be maintained between the carriageway and the pavement licence area. There must be no obstruction to the highway.
9. The licence holder must observe and comply with any direction made by a Police Officer, Fire and Rescue Officer, or authorised officer of the local authority in relation to the use of the highway, including any direction to remove furniture from the highway.
10. The area of the highway covered by the licence must be kept clean and tidy at all times. This will include washing down the area, and removing any refuse and litter on the highway in the vicinity of the removable furniture.

11. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the licence.
12. All users of the pavement spaces must be seated. Gatherings of persons standing up in the licensed area drinking and/or smoking shall not be permitted.
13. The licence holder must ensure that customers using the area do not engage in anti-social or disorderly behaviour.
14. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that the above conditions are followed.

STATUTORY CONDITIONS FOR PAVEMENT LICENCES

1. 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). 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.

2. 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.