

Swale Borough Council



Pavement Licensing Policy

Business and Planning Act 2020

(as amended by the Levelling Up & Regeneration Act 2023)

Version 1.1

Next Scheduled Review:

All enquiries relating to this document should be sent to:

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Issue & Review Register

Summary of Changes	Issue Number & Date	Approved by

Compiled by Johanna Thomas, Licensing Team Leader

Date:

Approved by: Licensing Committee

Date:

Changes and Corrections

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Contents

Section	Title	Page
1	Introduction	4
2	Scope	4
3	Application and Determination of Pavement Licences	5
4	Conditions	10
5	Enforcement	10
Appendix 1	Site Notice Template	14
Appendix 2	Standard Pavement Licence Conditions	15

1. Introduction

The Business and Planning Act 2020 introduced during the COVID-19 pandemic as a temporary fast-track process for premises serving food and drink such as bars, restaurants and pubs to obtain permission, in the form of a “pavement licence”, from the Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their sale or service of food and/or drink.

Previously, street furniture permissions were granted as tables and chairs licences by Kent County Council, the Highways Authority, under Part 7A of the Highways Act 1980. Applications under this legislation required a 28-day consultation period.

The Levelling Up and Regeneration Act 2023 made pavement licences pursuant to the Business and Planning Act 2020 a permanent regime as of 31st March 2024

The amended measures set a new cap on the application fees for businesses, and increased the consultation period to 14 days, followed by a 14-day determination period. A new Enforcement schedule was inserted providing the local authority with powers to remove unlicensed furniture or where the conditions of the licence are not being met.

Premises with granted Pavement Licences benefit from deemed planning permission for the street furniture for the duration of their licence.

2. Scope

2.1 Definition of Pavement Licence

A pavement licence is 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.

A licence permits a 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

2.2 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.

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).

2.4 Type of furniture permitted

The furniture which may be used are:

- Counters or stalls for selling or serving food or drink
- Tables, counters or shelves on which food or drink can be placed
- Chair, benches or other forms of seating
- Umbrellas, barriers, heaters or other articles used in connection with the outdoor consumption of food or drink.

Photos of the proposed furniture to be used must be submitted to the Council when an application for a licence is received. In order to protect the aesthetics of the surrounding neighbourhood the Council reserve the right to refuse the proposed furniture if it is not of sufficient quality.

This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

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.

3. **Application and Determination of Pavement Licences**

3.1 Submission of the application

An application for a NEW Pavement Licence must be made to the Council and the following will be required to be submitted with the application:

- a) a completed application form and the required fee
- b) a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- c) 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 entrance to the premises must also be shown
- d) the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- e) evidence of the right to occupy the premises (e.g. the lease);
- f) photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- g) (if applicable) reference of existing pavement licence currently under consideration by the local authority;

- h) evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- i) 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
- j) any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

An application for a RENEWAL of a pavement licence must be made electronically to the Council and be accompanied by the following:

- a completed application form
- the required fee
- 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, (caveat: there may be rare circumstances where a different minimum value may be agreed in advance before submission of application)
- any other information or evidence requested
- Note: photographs of furniture are not required on renewal unless the proposed items differ from those currently licensed

NOTE: a renewal cannot be submitted after expiry of the current licence. A new application would be required.

NOTE: There is no transfer process for a pavement licence, where the business changes hands the new proprietor will be required to apply to the Council for a new pavement licence.

3.2 Fees

The fee for applying for a licence can be set locally but are capped at £500 for a new application and £350 for renewal. Please refer to the Council's website to look up current fees <https://swale.gov.uk/business-licensing-and-procurement/licences-permits-and-consents/putting-furniture-in-a-public-place>

Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.

The fee can be paid using the Council's automated payment line 01795 417286 or on the Swale website <https://swale.gov.uk/business-licensing-and-procurement/licences-permits-and-consents/make-a-licensing-payment>

The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

3.3 Consultation

Applications are consulted upon for 14 days, starting with the day on which a valid application is made to the Council.

The Council will publish details of the application on its website at <https://swale.gov.uk/news-and-your-council/consultations>

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to this application the Council will also consult with:

- Swale BC Environmental Health Service (including environmental protection and food and safety teams)
- Ward Councillors
- Police
- The relevant Town and/or Parish Council
- The Officer of the Council with responsibility for market contracts

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 them when determining the application.

3.4 Site Notice

An applicant for a pavement licence must, on the day 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 passers-by. The notice must remain in place until the end of the public consultation period.

Evidence of the placement of the site notice must be emailed to the council at licensing@swale.gov.uk

The Site Notice must:

- a) state that the application has been made and the date on which it was made
- b) state the statutory provisions under which the application is made
- c) state the address of the premises and name of the business
- d) describe the proposed use of the furniture
- e) 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
- f) state the Council's website where the application and any accompanying material can be viewed during the consultation period
- g) state the address to which representations should be sent during the consultation period
- h) 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**.

3.5 Site Assessment

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

- a) Public health and safety – for example any reasonable crowd management measures needed and, if it were to become applicable again any government guidance on social distancing requirements
- b) Public amenity – would the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter
- c) 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 particular 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 as set out in Section 3.1 of Inclusive Mobility publication www.gov.uk/government/publications/inclusive-mobility
 - Other users of the space, for example if there are high levels of pedestrian or cycle movements

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the Council and to take any issues around noise, and nuisance into consideration as part of their proposal.

3.6 Determination

Once the application is submitted the Council 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 days of public consultation, and then 14 days to consider and determine the application after the consultation.

If the Council determines that application before the end of the determination period it 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/or impose conditions
- Refuse the application

If the council does not determine the application within 14 days, the application will be deemed to have been granted.

3.7 Approval of applications

Swale Borough Council supports the aims of the Business and Planning Act 2020 and wishes to promote economic recovery and growth in its area and will therefore seek to grant applications for licences where possible.

However, this aim has to be balanced with the need to ensure that the issuing of Pavement Licences does not put public health or safety at risk, does not lead to anti-social behaviour and ensures that the public, particularly those with disabilities such as sight impairment are unhampered when walking along streets

The Council will consider the criteria contained within these guidelines in determining applications and will treat each case on its merits.

On approving the application, the Council will issue a Pavement Licence and attach conditions. The licence will also contain specific terms such as days and hours when tables and chairs and other street furniture are permitted and if necessary, the appearance and location of the furniture corresponding to the application.

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

3.8 Licence Duration

If the Council determines an application before the end of the determination period they can specify the duration of the licence, subject to a maximum of 2 years.

The Council will normally grant applications for a 2 year period unless a shorter period has been requested or it is necessary for good reason, such as known upcoming street works, for example.

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 period of two years.

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 imposing conditions, then the application may be refused.

The Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to

anti-social behaviour or public nuisance or unreasonably hamper pedestrians' ability to move freely.

The Council will notify applicants of the reasons for refusal following determination. There is no statutory appeal process against a decision to refuse an application. However, the Community & Regulatory Services Manager will consider any appeal submitted within 14 days of the refusal notification. Clear reasons should be given for the reasons of an appeal. The Community & Regulatory Services Manager's decision is final.

3.10 Where the Council deems to Grant the licence in respect of the application but with a modified plan and/or hours or for part of the highway specified in the application, and/or imposes conditions the applicant may submit and appeal to the Community & Regulatory Services Manager for their consideration within 14 days of the grant of the licence. Clear reasons should be given for the reasons of an appeal. The Community & Regulatory Services Manager's decision is final.

3.11 Variation of licences

There is no provision in the legislation to apply for variation of a pavement licence. Should the licence holder wish to vary the licence, they would need to submit a new application.

4. Conditions

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

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 Kent County Council Highways or the police.

Obtaining a Pavement Licence does not confer the licence holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety and Alcohol and Entertainment Licensing, and applicants must ensure that all such permissions etc. are in place prior to operating.

Where a licence is issued:

The Levelling Up and Regeneration Act 2023 states that:-

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council is able to issue a notice requiring the breach to be remedied.

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:
 - 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 transpires the applicant has 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.

As an alternative to revoking the licence the Licensing Authority may, with the consent of the licence holder, amend 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, (ii) anti-social behaviour or public nuisance is being caused or risks being caused, or (iii) the highway is being obstructed (other than by anything done by the licence holder pursuant to the licence).

Unlicensed activity

Where a person/business puts removable furniture on a relevant highway and is not authorised to do so, the licensing authority may, by issuing a notice, require the person/business to:

- Remove the furniture before the date specified on the notice and
- Refrain from putting furniture on the highway unless authorised to do so.

Contravention of such a notice may lead to the authority removing the furniture and storing it, and require the person/business to pay the authority's reasonable

costs in removing and storing the furniture and to refuse to return the furniture until those costs are paid.

If, within the period of three months beginning with the day on which the notice is given, the person/business does not pay those reasonable costs, or does not recover the furniture, the local authority may-

- Dispose of the furniture by sale or in any other way it thinks fit, and
- Retain any proceeds of sale for any purpose it thinks fit

In this section, 'authorised' means authorised by-

- A pavement licence,
- Permission under Part 7A of the Highways Act 1980, or
- Permission granted under any other enactment

If the Council considers that a licence holder has breached any condition of the licence it may:

- Revoke the licence, or
- Serve a notice on the licence holder requiring the taking of such steps to remedy the breach as specified in the notice

If the licence holder fails to comply with the terms of a notice it may revoke the licence.

The Council may also revoke a licence in the following circumstances:

- a) Where the highway is being obstructed (other than by anything permitted by the Pavement Licence)
- b) If there is anti-social behaviour or noise nuisance associated with the operation of the Pavement Licence – for example if the use of the Pavement Licence increases the amount of noise generated late at night or litter is not being cleaned up

The Council may also revoke a Pavement Licence where all or any part of the area of the highway to which the licence relates has become unsuitable for the purpose that the licence was granted. The Council will give reasons where these powers are used.

All enforcement activity will be undertaken in line with the principles set out in the Regulator's Code and the Council's Enforcement Policy.

6. Review of Policy

This Policy covers the processes and procedures for Pavement Licences under the Business and Planning Act 2020 (as amended by the Levelling Up and Regeneration Act 2023) .

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, or as a result of local considerations within the Borough.

Appendix 1

NOTICE for display by an applicant for a Pavement Licence.

[Clause 2] of the Business and Planning Act 2020.

I/We *(name of applicant)*

do hereby give notice that on *(date of application)* [I/we] have applied to Swale Borough Council for a 'Pavement Licence' at: *(postal address of premises)*

known as *(name premises known by)*

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

Any person wishing to make representations to this application may do so by writing to: Swale Borough Council. Email: licensing@swale.gov.uk or Swale Borough Council, Swale House, East Street, Sittingbourne, Kent ME10 3HT

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: www.swale.gov.uk/licensing

Signed

Dated: *(date the notice was placed which must be the same date as the date of application)*

Appendix 2

PAVEMENT LICENCES CONDITIONS

1. The Council generally will only permit Pavement licences to operate until 23:00hrs
2. 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
(National Condition relating to clear routes of access)
3. If barriers are to be used they must be disability compliant barriers. This means that 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
4. No tables, chairs or removable street furniture sited on a footway are to be placed within 1.2m of the edge of an adjacent carriageway. A minimum clear footway width of 1.5m must be obtained at all times and 2m in busy locations or at busy times except in the following circumstances where additional width may be required:
 - A – Proposals which place furniture within 20m of a road junction or roundabout.
 - B – Proposals which place furniture within 15m of a push button, zebra crossing or pedestrian island crossing.
 - C – Proposals which place furniture within 5m of a bus stop

Additional widths may be required to accommodate social distancing in line with the guidance issued by the Secretary of State.

5. Furniture should be placed so as not to obstruct driver's sightlines, or road traffic signs. 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 Swale Borough Council.
6. 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
7. Every table, chair and item of removable street furniture shall be positioned so that it does not impede the surface water drainage of the highway.
8. No wastewater or other substances shall be discharged on to the highway or highway drainage system

9. A licence holder must make reasonable provision for seating where smoking is not permitted so that customers have the option of sitting in a smoking or non-smoking area **(National Condition relating to Smoke Free Regulations)**
10. No items shall be sited as to obstruct access to any premises unless the consent of the occupier of these premises has been obtained. No items shall be sited in such a way that it obstructs any fire exits or dry risers etc.
11. No tables, chairs or removable street furniture shall be left on the highway longer than is necessary.
12. Tables, chairs and removable furniture within a pedestrianised area covered by a traffic Regulation Order shall only be placed on the highway during the hours of pedestrianisation.
13. No tables, chairs or removable street furniture shall remain on the highway pursuant to this permission after the period of this licence has expired.
14. Tables and chairs must not be placed in position outside of the permitted times stated on the licence.
15. Tables, chairs and removable street furniture shall be taken inside and stored during the hours when the business is not trading.
16. 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.
17. The licensee shall be responsible for keeping the designated area as shown on the submitted plan 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.
18. The licensee is responsible for disposing of all waste from the premises and should provide sufficient refuse facilities for customers use. No waste from the premises should be put in public bins either by the owner or customer.
19. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.
20. The tables, chairs and removable street furniture shall be positioned in the area agreed with Swale Borough Council.
21. Any infringements of the licence or problems arising out of the use of the site must be immediately rectified to the satisfaction of Swale Borough Council, Kent County Council or the Police who reserve the right to revoke a licence without notice.
22. Swale Borough Council requires evidence that the Licence Holder has Public Liability Insurance for the operation of the Pavement Licence. This must indemnify Swale Borough Council and Kent County 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 purposes. The minimum level of indemnity must be £5million in respect of any one incident.

23. Permission to operate a Pavement Licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Swale Borough 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 and it is a condition of this licence to provide such access. This may mean that the 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.
24. The licence must be clearly displayed on the premises with a plan of the agreed layout of the Pavement Licence.
25. There should be no external speakers, background music, recorded or live music within or into the licensed pavement area.
26. The use of the area must not create a noise nuisance to surrounding premises.
27. Risk assessments must ensure that the hazard such furniture present e.g. a trip hazard is risk assessed and appropriate control measure are implemented to reduce any risks as far as is reasonably practicable