



COTSWOLD  
DISTRICT COUNCIL

# **Cotswold District Council Pavement Licensing Policy**

## **DRAFT**

Effective: (date)

## Contents

<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>1</b>	<b>Introduction</b>	<b>3</b>
<b>2</b>	<b>Scope</b>	<b>3</b>
<b>3</b>	<b>Application and Determination of Pavement Licences</b>	<b>4</b>
<b>4</b>	<b>Conditions</b>	<b>8</b>
<b>5</b>	<b>Enforcement</b>	<b>8</b>
<b>6</b>	<b>Review Procedures</b>	<b>9</b>
<b>Appendix 1</b>	<b>Site Notice Template</b>	<b>10</b>
<b>Appendix 2</b>	<b>Standard Pavement Licence Conditions</b>	<b>12</b>
<b>Appendix 3</b>	<b>National Conditions</b>	<b>14</b>

## 1. Introduction

The Business and Planning Act 2020 was passed to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The Act included 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.

**Sections 1 to 10** of the Act create a temporary regime for the issuing of “pavement licences” by appropriate local authorities. Cotswold District Council is the appropriate local authority for issuing pavement licences in the administrative area covered by the Council.

This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars 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. The aim is to provide much needed income over the summer months and protect as many hospitality jobs as possible.

The temporary licensing regime is due to be in place until 30 September 2021 when these provisions are due to expire in accordance with **section 10** of the Act.

## 2. Scope

### 2.1 Definition of pavement café

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 the 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 Crown land are exempt (so a licence cannot be granted).

## 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 means it is not a permanent fixed structure, and is able to be moved easily, and stored away at the end of the evening.

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

## 2.5 Planning Permission

If a pavement 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 and remains in force.

## 2.6 Existing tables/chairs

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.

Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

# 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 on the appropriate form, and accompanied by:

- A plan showing the location of the premises marked 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 to be placed 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.
- Photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied.

The applicant must also have public liability insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million before the licence can be utilised.

An application will not be considered complete (valid) 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.

### 3.2 Fees

The fee for applying for a licence under the new process is set locally, but capped at £100. The Council has determined that the fee for applications will be £100.

### 3.3 Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application was received by the Council.

The Council will publish details of the application on its website at [www.cotswold.gov.uk](http://www.cotswold.gov.uk)

The Council is required by law to consult with the Highway Authority. In addition, to ensure that there are no unacceptable detrimental effects arising from the application proposals the Council will consult with:

- Cotswold District Council forward planning teams
- Cotswold District Council Food, Health and Safety team
- Cotswold District Council Operations (Environmental Health) team
- Gloucestershire Police
- Ward members

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

The Council must take into account representations received during the public consultation period and consider these when determining the application.

### 3.4 Site Notice

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 having been complied with 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;
- 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.

### 3.5 Site Assessment

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

- 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 as set out in Section 3.1 of [Inclusive Mobility](#), 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. Discussions with neighbours should consider any plans neighbouring businesses have to also place tables and chairs on the highway and plans for customers to queue outside.

### 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 within the 14 day period, the application will be deemed to have been granted. Consultees will therefore be informed that failure to respond within the stated timeframe will be considered as consent.

### 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 Pavement Café 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 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 Café Licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement Cafés to operate between 08:00 and 22:00hrs. Applicants are encouraged to not apply outside of these times.

Applications outside these hours will be assessed in terms of the criteria detailed above regardless of whether objections have been made or not. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

### 3.8 Licence Duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period, excluding public holidays) the Council can 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 one year.

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

### 3.9 Refusal of Applications

If the site is deemed unsuitable for a Pavement Café, 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 a decision to refuse an application.

A business may apply again after refusal but will have to make a new application with an additional fee and address the concerns raised in the original application.

## 4. Conditions

Any licence which is granted, or deemed to be granted, will be subject to:

- The Council's standard conditions;
- Any additional conditions which the Council imposes as a result of the individual circumstances of the case; and
- The National 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.

## 5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. It remains the case that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority 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, Social distancing controls, and applicants must ensure all such permissions are in place prior to applying.

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 or 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 but had applied for a licence where 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.

## **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 Cafés generally, relevant social distancing measures or as a result of local considerations within the Cotswold District.

**BUSINESS AND PLANNING ACT 2020**

**NOTICE OF APPLICATION FOR GRANT OF A PAVEMENT LICENCE**

I / We .....(1)

Do hereby give notice that on ..... (2)

I / we have applied to Cotswold District Council for a pavement licence at:

.....

..... (3)

Known as..... (4)

The application is for:

.....

..... (5)

Any person wishing to make representations to this application may do so by writing to [ers@cotswold.gov.uk](mailto:ers@cotswold.gov.uk) by:

..... (6)

The application and information submitted with it can be viewed at:

[www.cotswold.gov.uk](http://www.cotswold.gov.uk)

Signed .....

Date ..... (7)

## **Guidance notes on completing this notice of application**

Complete the notice by putting the following information in the numbered spaces:

- (1) Name of the applicant
- (2) Date the application is made (submitted)
- (3) Postal address of the premises
- (4) Name the premises is known by
- (5) Brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink).
- (6) Last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays)
- (7) The date the notice was placed (must be the same date as (2) above)

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. It should be secured so that the notice remains in place until the end of the 7 day public consultation period.

**Failure to comply with this requirement may lead to the revocation of any licence granted or deemed granted.**

### Standard Pavement Licence Conditions

1. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that Cotswold District Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements or any other reasonable cause. This may mean that the pavement café 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. 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.
3. The licence holder must ensure that furniture is positioned in such a way so as to ensure compliance with the relevant Government guidance on social distancing that is in place at any particular time and that staff can service the space in a manner that does not compromise their health and safety or the health and safety of customers .
4. Unless another more restrictive condition has been attached to the licence in response to particular concerns raised during the public consultation period, the licence holder must not place any furniture on the highway in pursuance of this licence before 08:00hrs on any day and must remove all furniture placed on the highway in pursuance of this licence when the premises closes or by 22:00hrs on any day, whichever is the earliest.
5. The licence holder must at all times hold a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million.
6. 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.
7. 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.
8. The licence holder is not to make or cause to be made any claim against the District or County Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
9. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions (see Appendix 3).
10. 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.

11. 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.
12. 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 Cotswold District Council or the Highway Authority.
13. The premises must ensure that if alcohol is sold from the business that all necessary permissions under the Licensing Act 2003 are in place.
14. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café and the types of furniture that have been agreed to be used on the highway.
15. Cotswold District Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
16. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure that all of the conditions above are being adhered to.

### 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.