

North Warwickshire Borough Council

Pavement Licence Guidance

1. The government has introduced a new process for businesses to obtain licences to put temporary furniture on the pavement adjacent to their premises. Key changes are:
 - Licences are administered and approved by District and Borough councils in Warwickshire, rather than by the County Council. This means you must apply to North Warwickshire Borough Council for a licence.
 - The fee for applying for a licence is £100.00 in North Warwickshire Borough Council's area.
 - Once an application for a licence is made there is a 'consultation period' of 5 working days (excluding bank holidays) during which representations can be made in relation to the application.
 - Following the 'consultation period' there is a 'determination period' of another 5 working days (excluding bank holidays) for the Council to determine the application.
 - If the Council does not determine the application during the determination period, the application is deemed to have been granted.
 - Licences can be granted for such period as the Council determines, but this may not be for less than 3 months, and no licence may continue after 30 September 2021. If the Council does not place a time limit on your licence, then it will end on 30 September 2021. If the Council does not determine your application within the determination period it is deemed to be granted for one year or until 30 September 2021, whichever is earlier.

What can be licensed – Purposes

2. To put furniture on a public highway, you must obtain a licence from your local Council under the Business and Planning Act 2020 (the Act). You may apply if you use or intend to use premises as:
 - a. a public house, wine bar or other drinking establishment; or,
 - b. other use for sale of food or drink for consumption on or off premises.
3. A licence, if granted, allows the holder to put removeable *furniture* on part of a *relevant highway* for use by:
 - a. licence holder to sell and/or serve food or drink supplied from the premises; and
 - b. by other persons for consuming food or drink supplied from or in connection those premises.
4. A licence can be granted for footpaths, footways (pavements), subways or walkways. There are some parts of highways which can not be licensed, including the parts usually used by vehicles. It is worth checking with [Warwickshire County Council Highways Department](#) at to see if a licence could be granted for the area you wish to licence.

Furniture

5. Furniture 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.
6. Full details of the guidance relating to licences can be found at: <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

Before applying

7. We advise applicants to read the Council's:
- a. [Pavement Furniture Published Standard Conditions](#);
 - b. [Pavement Licence Plan and Layout guidance document](#); and,
 - c. the rest of the notes below;
- to assist your application.

Application Process

8. To apply for a licence, you will need to do the following:
9. The [application form](#) (Pavement Licence Application) **must** be completed and a licence must be granted, or deemed granted, before you can place furniture on the pavement. All information requested in the application form **must** be provided. You must include a plan showing the area which you want to be licensed and the premises you trade from or intend to trade from. You must also provide details of the furniture and equipment you want to place in the licensed area. If the requested information is not provided the application will be returned to you to provide the missing information.
10. The Act says applications must be made to the Council electronically. This means you can not send an application on paper. You should check the e-mail address given in the application is correct since the Act says all correspondence regarding the application and any licence granted **must** be sent by e-mail.
11. Please note that submitting an application form does NOT mean permission has been granted, and no furniture may be put on the pavement until a licence has been granted or is deemed to be granted.
12. You must pay the fee of £100.00 to the Council when you make your application.

Notices

13. On the day you make your application you **must** affix a notice to your premises. The notice must:
- a. be in the form given in the sample notice below;
 - b. be A4 sized with a Calibri or Arial size 14 or larger Font;
 - c. be printed on white coloured paper;
 - d. contain all the information required in the notes on the form;
 - e. be clearly visible to people who are outside your premises; and,
 - f. remain in place for a period of at least 5 working days not including bank holidays following your application (the consultation period).
14. If you do not display the notice as required, then the Council may refuse to grant your licence or may revoke any licence which is granted or deemed to be granted.

After you apply

15. The Council must publicise your application. It will do this by adding details of your application to its website. The Council must also consult Warwickshire County Council (the highway authority). The Council may also consult other people it considers appropriate, e.g. the police, fire and rescue authority and parish or town councils.
16. During the 5 working days after you apply the people that the Council consults and any other person can make representations about your application.
17. At the end of the 5 working day consultation period the Council has a further 5 day period (the determination period) in which it must make a decision about your application. When it makes its decision, it must take into account any representations which have been made.
18. The Council may decide to:
 - a. grant your application; or
 - b. reject your application.
19. if it grants your application the Council may:
 - a. attach conditions;
 - b. limit the size of the area which is covered by the licence;
 - c. allow some or all of the purposes in your application; and/or
 - d. limit the amount or type of furniture you may place on the highway.
20. If the Council does not make a decision about your licence during the determination period, then your licence is deemed to be granted. If this happens then your 'deemed' licence will allow what you have asked for in your application, but it will also include the Council's published conditions (see below).

False statements

21. If you make a false or misleading statement in your application which makes a material difference in considering whether to grant a licence, then the Council may revoke any licence which is granted or deemed to be granted.

Obstruction

22. The Act says the Council may only grant a pavement licence if (taking account of any conditions it may attach) nothing done by holder under the licence would prevent:
 - a. pedestrians:
 - i. entering the highway at a place they could otherwise enter;
 - ii. passing along the highway;
 - iii. having normal access to premises adjoining the highway;
 - b. use of vehicles permitted by a pedestrian planning order (e.g. access for deliveries etc.) which is not restricted by a traffic order;
 - c. preventing statutory undertakers (e.g. gas or electric companies) accessing apparatus in, on or under the highway;
 - d. preventing telecommunications operators accessing apparatus in, on or under the highway.

The Council will consider the highway authority's advice when deciding whether granting the licence would have this effect.

The Act says that all licences automatically contain a condition which says the licence holder may not do anything under the licence which causes an obstruction as set out in a. to d. above.

Disabled People

23. The Act says that when deciding whether placing furniture on a highway as requested in an application would obstruct any access referred to in paragraph 22, the Council must have regard to:
- a. the needs of disabled people; and
 - b. the recommended distances required for access by disabled persons in Guidance issued by the Secretary of State.

The Guidance says that in most cases a minimum of 1.5 metres of clear space will be the minimum acceptable distance between any item placed on the highway and the edge of the pavement. The Guidance also suggests good practice, including using barriers to separate the licensed area from the rest of the footway, placing furniture so that pedestrians do not have to walk through tables and chairs, making sure furniture is not lightweight so that it can be blown over, and making sure social distancing measures are considered in deciding how much space is available for disabled persons. See: <https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

Smoking

24. Under the Act, all licences (whether granted or deemed to be granted) include a condition which requires smoke free seating to be available. Any licence will automatically include the following condition:

‘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’.

You should show the smoking and non-smoking seating area on the plan submitted with your application and explain any additional steps that you are taking to help protect non-smokers from the effects of smoke.

Duration

25. Pavement licences can be granted:
- a. for the period that the Council decides (but not less than 3 months or to continue after 30 September 2021); or
 - b. with no time limit, in which case it ends on 30 September 2021.

If you want the licence to last until a specific date (which is earlier than 30 September 2021) you should say so in your application. A licence which is deemed to be granted (see 20. above) will last for one year, starting the first day after the determination period, or until 30 September 2021 if it is deemed to be granted on or after 1 October 2020.

Conditions

26. When it grants a licence, the Council can add any conditions it considers reasonable. The Council may publish the conditions which will normally be added to a licence. The [Council's published conditions](#). The Council can add some or all of these conditions, amend them as necessary to apply to your licence or add completely different conditions to suit your licence.
27. If the Council does not make a decision about your licence application in the determination period meaning that it is deemed to be granted, then the published conditions will apply to your licence.

Enforcement and Revocation

28. If you breach a condition of your licence (whether it was granted or deemed to be granted), the Council may:

- a. revoke the licence; or,
- b. serve a notice requiring you to remedy the breach.

If you fail to comply with the notice and remedy the breach, the Council may:

- c. withdraw the notice; and,
- d. take the steps set out in the notice and recover the cost of doing so.

29. In addition to being able to revoke your licence for making false statements or failing to display notice of your application, the Council may revoke your licence (whether it was granted or deemed to be granted), if:

- a. some or all of the highway to which it relates has become unsuitable for using the licence;
or
- b. due to the licence;
 - i. there is a risk to public health or safety;
 - ii. anti-social behaviour is being caused or may be caused; or
 - iii. you obstruct the highway (other than by doing something which the licence allows).

Premises Licensed to Sell Alcohol

30. If you are applying for a pavement licence in relation to premises which are licensed to sell alcohol under the Licensing Act 2003 you will also need to comply with any conditions which are contained in that licence in relation to sales of alcohol. Special rules in the Act apply to allow premises which are licensed to sell alcohol for consumption off the premises to sell it for consumption off the premises during times they are usually authorised to sell alcohol.