



**Lewes District Council**

**LEWES DISTRICT COUNCIL**

**BUSINESS & PLANNING ACT 2020 AND LEVELLING UP AND  
REGENERATION ACT 2023**

**PAVEMENT LICENSING POLICY**

## **Contents**

	<b>Page</b>
<b>Section 1 Introduction and Background</b>	<b>3</b>
<b>Section 2 Application and Determination</b>	<b>4</b>
<b>Section 3 Conditions</b>	<b>9</b>
<b>Section 4 Enforcement</b>	<b>10</b>
<b>Section 5 Review</b>	<b>10</b>
<b>Appendix 1 Site Notice Template</b>	<b>12</b>
<b>Appendix 2 Standard Pavement Licence Conditions</b>	<b>13</b>
<b>Appendix 3 Specific Conditions relating to Noise, Nuisance Crime and Disorder</b>	<b>16</b>
<b>Appendix 4 National Conditions</b>	<b>17</b>

## **1. Introduction**

Lewes District Council is the Licensing Authority under the provisions of the Business & Planning Act 2020. Historically, tables and chairs permissions were granted as pavement licences by East Sussex County Council's Highways Authority, under Part 7A of the Highways Act 1980. The fee varied and involved a time-consuming 28-day consultation period. The measures included in the Business and Planning Act 2020 and revisions since its introduction modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off- sales. It was a temporary measure to boost the economy.

The Business and Planning Act 2020 introduced a temporary fast-track process for businesses 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 capacity during and post pandemic.

The Levelling Up & Regeneration Act 2023 - Schedule 22 consolidates and makes permanent the pavement licensing regime introduced as temporary legislation under the Business and Planning Act 2020. It makes a number of changes and introduces a standard fee cap for both new and renewals of licences, to make the scheme sustainable, as well as increased consultation and determination periods. It also allows local authorities to lengthen the maximum duration of licences and provides them with new powers to remove unlicensed furniture

### **1.1 Definition of pavement licence**

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.

### **1.2 Eligible Businesses**

A person (whether an individual or a company) who 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. This will usually be the registered food business operator and/or the premises licence holder under the Licensing Act 2003. The types of businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlors.

A pavement licence permits the licence-holder 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.

### **1.3 Eligible Locations**

Pavement licences can only be granted in respect of highways to which Section 115A (1) of Highways Act 1980 applies.

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 pavement licence cannot be granted).

### **1.4 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, 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 each day.

The Council would also expect the type of furniture to be 'in keeping' with the local area. In conservation areas, unless afforded "grandfather rights," the use of gazebos, large umbrellas spanning a proportion of the designated area and arbors and similar structures are not permitted.

### **1.5 Planning Permission**

Once 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 pavement licence.

## **2. Application and Determination of Pavement Licences**

### **2.1 Submission of the Application**

An application for a pavement licence must be made to the Council, and the following will be required to be submitted with the application:

- a completed Application Form
- a plan showing the location of the existing premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the area of the highway proposed to be covered by the pavement licence (if granted), and, 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 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 existing fixed

- item in the proposed area such as a lamppost or bench.
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- the proposed duration of the pavement licence (Please note that the duration of a licence will be 2 years and fees are not refundable if used for a shorter period).
- Confirmation that the applicant is either the registered food business operator or the premises licence holder under the Licensing Act 2003
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied.
- (if applicable) reference of existing pavement licence currently under consideration by the local authority.
- The way in which any structures will be affixed in a safe, suitable and secure manner (such as gazebos, umbrella, marquee (including the provision of risk assessments and compliance with the Health and Safety at Work Act 1974
- How the pavement licence area will be defined (e.g. barriers, to include size and type)
- 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)
- See further at 3.3; a copy of a current certificate of public liability insurance that covers anything to be done by the applicant pursuant to the pavement licence (if granted) to a minimum value of £5 million, and
- any other evidence needed to demonstrate how the Council's standard local conditions and any national conditions will be satisfied.

## **2.2 Fees**

The fee for applying for a new pavement licence is £500 (2-year licence)

The fee for applying for renewal of a pavement licence is £350 (2-year licence)

## **2.3 Consultation**

Applications are published by Lewes District Council for consultation for a period of 14 days. The consultation period starts the day after a valid application was made to the Council. The Council then have a period of 14 days to determine the application. This period starts the day after the public consultation ends. If no decision is made in this period, the pavement licence is deemed to be granted for a period of 24 months.

The Council will publish details of the application on its website.

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

- Lewes District Council Environmental Health Service (including Pollution Control and Food Teams)
- Lewes District Council Planning Department
- East Sussex Fire & Rescue Service
- Sussex Police
- Members of the public

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

## **2.4 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 too, 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 (see 3.3 above). Evidence of the Site Notice requirement must be supplied to the Council. A template Site Notice is included in **Appendix 1**

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 ends.
- 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 (14 days starting the day after the application is submitted to the Authority)

## **2.5 Site Assessment**

The following matters will be considered by the Council when considering the site including:

- the matters set out in Section 3(5) to 3(7) of the Business and Planning Act 2020
- public health and safety.
- 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 application site, 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 so that it does not cause issue.
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.
  - Whether there are covenants or conservation rules in place restricting or precluding the use of articles on the highway such as marquees, gazebos, umbrellas or other items not specifically listed here.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the Council, and so take any issues around noise, and nuisance into consideration as part of the proposal. Applicants are also encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

## **2.6 Determination**

At the conclusion of the public consultation period of 14 days, the Council has a further 14 days (with day 1 being the day after the last day of the consultation period) to determine the application.

If the Council 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, or
- refuse the application.

If the Council does not determine the application **14 days after** the application is made, the application will be deemed to have been granted.

Any representations from those statutory organisations consulted and others providing feedback will be considered on their merits and determined accordingly.

Determination may include refusal of the application, reduction in the proposed size of the area intended to be used on the highway, refusal to include specific articles to be placed on the highway and inclusion of conditions on the pavement licence.

The following Table of Delegations notes those who are authorised to grant or refuse applications, and to revoke a licence which has been granted:

Table of Delegations:

Decision type	Delegated to
Grant of an application where no objections have been received during the consultation period	Specialist Advisor
Grant or refusal of an application where objections have been received during the consultation period	Senior Specialist Advisor Licensing or Lead for Regulatory Services
Appeal to the refusal of an application	Licensing Sub Committee
Revocation of a Licence	Senior Specialist Advisor Licensing, Lead for Regulatory Services or Licensing Sub Committee

## 2.7 Granting Applications

Conditions will be attached to the grant of a pavement licence. These will include specific terms such as days of the week and hours of the day when furniture is permitted, and the appearance and placement of furniture. There are some exceptions to this, detailed in Section 3.

A copy of the Mandatory pavement licence conditions and the Council’s standard pavement licence conditions is shown at **Appendix 2**. These will be attached to all pavement licences granted. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case. Additional conditions may also add other bespoke conditions as appropriate on a case-by-case basis.

The Council will generally only grant pavement licences which permit furniture to be placed on the highway between 08:00 and 23:00 hours.

Applications seeking a pavement licence permitting furniture to be placed on the highway outside these hours will be assessed in terms of the criteria detailed above. The Council, however, retains the right to specify permitted hours, which may be fewer than those requested in any application and may restrict the space permitted to be used for the purpose of pavement licensing and the type of article permitted to be placed on the highway.

## **2.8 Licence Duration**

The Council may grant a pavement licence for a minimum of 1 year and up to a maximum period of 2 years.

The expectation from the Government is that Councils will grant licences for 2 years 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 for a two-year period.

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 2 years starting on the first day after the determination period.

## **2.9 Rejection of Applications**

If the Council considers that, taking into account any potential conditions which might be attached to a pavement licence, anything done by the applicant (if the licence were granted) would have one or more of the effects specified in Section 3(6) of the Business and Planning Act 2020, the application will be rejected.

If for any other reason the application site is considered unsuitable and concerns about suitability cannot be mitigated by conditions, then the application may be rejected. The Council may also refuse to permit the inclusion of certain articles on the highway, including marquees, gazebos and dispense counters where it is considered inappropriate at the location.

Failure to make payment of the required fees will deem the application invalid.

## **3 Conditions**

The mandatory and Council's standard conditions are set out at **Appendices 2 and 3**. In some cases, extra measures and conditions may be required. This will be determined when assessing any application, on a case-by-case basis.

Regard will be had to the likely noise, nuisance and disturbance that may occur as a result of increased activity at a premises if a pavement licence is granted. Conditions in this regard will be added as considered necessary to assist in the control, supervision, and management of premises to mitigate against this.

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 is as applies to all Licences. The National 'no obstruction' conditions are shown in **Appendix 4**.

#### **4 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 the Highways Authority or the Police.

Obtaining a pavement 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, etc. are in place prior to applying.

If a condition attached to a pavement licence is breached, the Council will be able to issue a notice setting out steps which must be taken to remedy the breach. If the steps are not taken, the Council may take the steps and recover the costs of this from the licence-holder. The Authority may revoke a licence in the following circumstances:

For breach of condition (whether or not a remediation notice has been issued). Where the Council considers, as a result of the licence, that:

- there is a risk to public health
- there is a risk to the health and safety of patrons, staff and/or the public
- the highway is being obstructed (other than by anything permitted by the licence); or anti-social behaviour or public nuisance being caused or risks being caused.
- It becomes known that anything material stated by the licence-holder in their application was false or misleading.
- The applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

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

Where the area is deemed unsuitable due to conservation or covenants are in place precluding the installation of any structures (temporary or otherwise) and/or the placement of articles on the highway

#### **5 Review Procedures**

This Policy covers pavement licences under the Business and Planning Act 2020 and the Levelling-up and Regeneration Act 2023.

This Policy will be reviewed from time to time including when changes occur in relevant legislation, the nature of pavement licences generally, or as a result of local considerations within Lewes District Council.

## **6 Changes in Legislation and guidance**

This policy will be regularly reviewed and updated, in line with any changes in legislation (in full or part). The same the applies to policy updates as issued by the appropriate Government department. For more information on current policy and legislation, this can be found on the [Government website](#).

### **Further information may be obtained from:**

Lewes District Council  
6 High Street  
Lewes  
BN7 2AD  
Tel: 01273 471600  
Email: [licensing@lewes-eastbourne.gov.uk](mailto:licensing@lewes-eastbourne.gov.uk)

## Appendix 1

### PUBLIC NOTICE

#### Pavement Licence Application

#### Business and Planning Act 2020

An application has been made on (date of application) dd/mm/yyyy by (name of applicant) to Lewes District Council for the grant of a Pavement Licence at

(full postal address of business)

The application is for: (describe the furniture and the proposed licensed area)

Any person wishing to make representations to this application should do so in writing (by letter or email) to Licensing Team Lewes District Council 6 High Street Lewes BN7 2AD

E mail: [licensing@lewes-eastbourne.gov.uk](mailto:licensing@lewes-eastbourne.gov.uk)

Please state 'Representation – Pavement Licence'

By (insert end date for consultation) dd/mm/yyyy

The application can be viewed by contacting [licensing@lewes-eastbourne.gov.uk](mailto:licensing@lewes-eastbourne.gov.uk) to arrange an appointment.

**Signed**

**Date**

## Appendix 2

### Lewes District Council 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 Lewes 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 etc 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. Only those items of removable furniture that have been granted permission and included on the licence may be placed on the highway. If the Licensee wishes to amend this list, formal application must be made to the Council. No changes must take place until and unless permission has been granted.
3. No item of furniture approved for use in the Pavement Licence will be left on the highway 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.
4. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 2-metre clear walkway must be maintained for the use of pedestrians.
5. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
6. Emergency routes to the premises and adjacent buildings must not be obstructed by the Licensed Area, which should not, in normal circumstances, extend beyond the width of the premises frontage.
7. Tables and chairs must be of an approved type and must be kept in a good state of repair. Furniture must be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Awnings, umbrellas etc must not protrude beyond the licensed area to a height below 2.5 metres. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.
8. The licensee must 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.
9. The operation of the area must not interfere with highway drainage arrangements.

10. 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.
11. Lewes District Council and East Sussex County Council are empowered to remove and store or dispose of furniture from the highway, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping. All costs associated with this action will be borne by the Licensee.
12. All debris (food and drink remnants, spillages, bottles, cans, wrappers etc) must be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
13. 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 Lewes District Council and East Sussex County Council.
14. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Pavement Licence Area.
15. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Pavement Licence Area outside the hours in force for the premises itself or otherwise than in accordance with the Premises Licence.
16. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
17. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
18. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
19. Lewes District Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Café. This must indemnify Lewes District

Council and East Sussex 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 purpose. The minimum level of indemnity must be £5 million in respect of any one incident.

20. The licence holder is not to make or cause to be made any claim Lewes District Council and East Sussex County Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
21. Lewes District Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

## **Appendix 3**

### **Lewes District Council Local Licence Conditions relating to Noise, Nuisance, Crime & Disorder**

**(To be added as considered necessary on a case-by-case basis)**

1. No glass vessels shall be allowed off the premises.
2. Staff must ensure that all empty glasses and bottles are promptly cleared away from public areas.
3. Regular patrols are to be conducted, at least hourly, outside the premises where the licence applies.
4. A partition will be installed to clearly delineate the licensed area to prevent passing pedestrians/children walking into furniture or onto the licensed area
5. When the outside area is no longer in use for licensable activity all unsecured tables, chairs and associated furniture shall be removed from the outside area and /or stacked and secured.
6. Waiter/waitress service only to seated members of the public
7. Use of the outside area shall cease at 2100 hours.
8. There shall be a direct means of supervision within the external area to which the licence applies.
9. No amplified entertainment of any sort shall be permitted in the external area(s) covered by the licence.
10. No amplified entertainment of any sort from within the premises shall be audible in any external area(s) covered by the licence.
11. Where takeaway orders are prepared for collection, this must be managed so as not to impact upon social distancing of patrons or members of the public passing the premises
12. Where provided for consumption in external areas and/or within open vessels. all beverages shall be sold, supplied or decanted into shatterproof, plastic or cardboard receptacles.

## Appendix 4

### **NATIONAL CONDITIONS - (adopted by Lewes District Council)**

#### **1. No-obstruction condition**

Nothing must be done by the licence-holder (or any other person which is enabled by the licence) to:

- a) prevent 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) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- d) prevent 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.

Particular regard must be had 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. This guidance can be found on the Gov.uk website section: [“Inclusive mobility: making transport accessible for passengers and pedestrians”](#).

Section 3. of the ‘Inclusive mobility’ guidance sets out a range of recommended widths which would be required, depending on the needs of particular pavement users and states that: ‘a clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another’.

#### **2. Smoke-free seating 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.