



Business and Planning Act 2020

Temporary Fast-Track Pavement Café Procedure.



INTRODUCTION

Temporary Pavement Café Licences (COVID-19)

The Council has adopted a Pavement Café Policy to help promote vibrant and diverse areas of the town for people to enjoy.

Many businesses have had to cease trading for several months, and others have had to significantly modify their operations. The Business and Planning Act 2020 introduces a number of urgent measures to help businesses selling food and drink to recover and to temporarily ease some of the legislative requirements in relation to planning and licensing. Social distancing guidelines remain in place.

The measures are designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence” for the placement of furniture such as tables and chairs on the public highway outside their premises. Permission is not required for private land not on the highway.

To support local businesses, and in line with the Government position, the Council has introduced a temporary pavement café procedure. This will help businesses to use outdoor space, which forms part of the public highway, provided that the area is available and suitable for them to do so.

SUMMARY OF THE PROCEDURE.

National Position

The Government has set out guidance on the temporary pavement café process:-

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

A copy of the Business and Planning Act is available:-

<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>

Regard should be given to the legislation and Government Guidance and sole reliance should not be placed on this policy.

Use of the Public Highway

The Council will look to proactively engage with businesses around the use of the public highway. It is important that we also use the public highway to enable people to move safely around, whilst respecting social distancing. We will endeavour to work with businesses to help them to identify suitable areas of the public highway, where this is possible.

It is a standard 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. This will be included as a condition of the licence.

Enquiries can be sent to: pavementcafe@warrington.gov.uk

Who can apply?

A business which uses (or proposes to use) premises for the sale of food or drink for consumption can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

What furniture can be permitted by a licence?

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.

The furniture should be removable and should not be a permanent fixed structure. It should also be sufficiently robust to prevent it from being blown over.

Equality Act 2010

The Council must have due regard to the Public Sector Equality Duty, under the Equality Act 2010 in order to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Applicants must therefore have regard to their own duties under the Equality Act 2010, including the need not discriminate in providing a service.

Considering the needs of disabled people in relation to the requirements of the no-obstruction condition.

It is important that due regard is given to the needs of disabled people. The applicant should satisfy themselves that they can comply with the no-obstruction condition set out in section 3(6) of the 2020 Act. In determining the application, and in considering any enforcement action, the Council will have regard to whether sufficient free access has been maintained between any obstacle and the edge of the footway. The use of suitable barriers/tap rails to demarcate the area may be appropriate provided that they do not inhibit other users, such as the mobility impaired. The positioning of furniture should not discourage pedestrians from using the footway.

How do I deal with the provision for smoking?

The Council wishes to promote health and wellbeing and the provision of suitable smoke free environments. The national condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that customers should have the option of sitting in a non-smoking area. The Council considers that it is reasonable and justified to impose a smoke free condition.

Businesses must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

Public Health England has published guidance for smokers and vapers during the COVID pandemic (<https://www.gov.uk/government/publications/covid-19-advice-for-smokers-and-vapers/covid-19-advice-for-smokers-and-vapers>)

Protection of Customers

In determining the application the Council will have regard to the risk to people from vehicular traffic, including the risk of any vehicle borne attack.

I have an existing Licence, can I alter or extend it?

Businesses who are requested to move their existing area to allow the Council to maintain pedestrian flow and social distancing, and where alternative locations exist, will be allowed to temporarily modify their licence subject to determination by the Licensing Officer.

Businesses who have existing pavement café licences and who wish to consider expanding the area to accommodate customers, whilst following social distancing guidelines, will be able to follow the same process as a new Temporary Pavement Café Licence (TPCL). It is strongly recommended that you seek pre-application advice.

How to apply.

Businesses will be able to apply for a free TPCL or to vary their existing licence. This should be submitted only to pavementcafe@warrington.gov.uk Areas not on the public highway do not require a TPCL but you will require the permission of the land owner.

Businesses will be asked to confirm their agreement to the conditions of the licence in the application form. Evidence of public liability insurance must also be provided, along with a suitable site plan evidence that a public notice has been displayed. The business must also be registered as a food business.

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days (excluding bank holidays) starting the day after the application is sent electronically to the authority. Applicants are encouraged to keep evidence of this. A draft notice is set out in the policy.

How much do applications cost?

There is no fee for this licence.

Do I need to amend my alcohol licence?

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence. However, the default hours in which off-sales will be permitted is 11pm and any new permissions for off-sales do not apply to times when the premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.

Licensees who have had an application for an off-sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension.

Determining the application.

Once the information is submitted, if the Council does not determine the application before the end of the determination period (which is 5 working days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for a year (but not beyond 30 September 2021)

The designated officer 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 (there is no right of appeal for a temporary licence).

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.

How long will the new process be in place?

A licence granted or deemed to be granted is subject to a minimum duration of 3 months and all temporary licences will expire at the end of September 2021. Applicants may apply for a permanent licence under the highways Act if they wish to seek permission to extend the use of the area beyond the end of September 2021.

Respecting residents.

We are keen to support businesses to recover but it's important that we respect residential amenity and that nearby residents are not unduly disturbed by the use of TPCLs. The business in seeking a TPCL is therefore required to agree to the TPCL conditions, which include steps to protect residential.

We will respond to any complaints received and liaise with the business to address any undue disturbance.

How can members of the public make representations about the application?

Members of the public can make representations to pavementcafe@warrington.gov.uk

We will consider relevant representations during the consultation period, which is the period of 5 working days starting the day after the application is submitted (excluding public holidays). The application will be determined on its relative merits having regard to the relevant representations.

We will publish the application and the deadline for representations on our website.

Enforcement

If a condition imposed on a licence 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 Council reserves the right to revoke a licence having regard to be not limited to:-

- A breach of condition
- Risk to public health and safety
- Obstruction of the highway
- Anti-social behaviour or public nuisance
- False or misleading statements in the application and failure to affix the notice for the relevant period.

The Council also reserves the right to revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable.

If a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it may be revoked at any time on the grounds that it has breached the conditions.