



**BRISTOL CITY COUNCIL
Business and Planning Act 2020
Pavement Licences – Removable Furniture
With effect from date TBC**

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1. Introduction

The Business and Planning Act 2020 (hereafter 'the Act') was introduced during the Covid-19 pandemic to enable premises to utilise outside space for hospitality whilst restrictions existed on indoor space. In relation to the placing of removable furniture on the highway the Act reduced the timescales for applications to be determined and limited the costs to businesses. Initially the Act was intended to last for one year, however this was extended and now expires on 30 September 2024. The Levelling Up and Regeneration Act 2023 make the measures under the Act permanent, once enacted by regulations issued by the Secretary of State.

The Act places a duty on the council to determine applications within certain timescales, as well as making provision for consideration of issues such as smoke free areas, and the impact on persons with a disability. It allows the council to set local conditions on licences which are issued.

The legislation may be viewed here:

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

The Government has issued statutory guidance in relation to the Act, which the Council must have regard to in determining applications. The statutory guidance can be found here:

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

2. Scope

This policy will guide the Council when determining applications made in connection with the Business and Planning Act 2020 in relation to the placing of removable furniture on the highway.

The policy covers all applications for pavement licences under this Act which allows the holder to place removable furniture on part of a relevant highway adjacent to the premises to which they relate for specific purposes.

The purposes, types of premises permitted, and relevant highway are defined in Appendix A to this policy and are as set out in the Act.

The policy does not apply to non-removable furniture, parasols over 2.5m in diameter, sided or un-sided structures, outdoor electricity supply, or decking. These matters are dealt with under separate legislation and will require separate permissions, including but not limited to planning permission.

A pavement licence enables an area to be used for serving food or drink from an adjacent premises. A pavement licence will not be granted for an area which enables only vertical drinking.

3. Decision making responsibility

By law all functions of the local authority concerning this regime, including the making of this policy and determination of applications, are matters that cannot be the responsibility of its Executive. As such the Full Council is the body that controls the way decisions are made. The Full Council exercised its powers to arrange for the Licensing Committee (as constituted for the purposes of the Licensing Act 2003) to also be responsible for the pavement licensing functions on behalf of the Council. Determinations in relation to pavement licences are made under the Business and Planning Act 2020.

Applications will normally be determined by officers for which delegations are in place. In complex cases the Head of Highways may refer applications to a sub-committee for determination.

4. Determining applications

This policy is intended to be strictly applied but will not operate inflexibly; the Council will take all relevant factors into consideration when determining applications and each and every case will be decided on its merits.

In exercising its functions under this regime the authority will seek to ensure premises licensed by this Authority under this legislation do not inhibit the needs of all users of the highway whilst seeking to recognise the positive impact outdoor seating can have in promoting a vibrant and diverse hospitality offer within the city.

5. General obligations that apply to the discharge of all the Council's powers and duties

There are a number of general obligations that apply whenever the Council is discharging any of its many functions. Those most likely to be relevant are highlighted in this part of the policy and must be borne in mind when considering any aspect of the regime including all of the things specifically addressed in the following paragraphs. For the avoidance of doubt, the Council has screened this policy statement to ensure it is compatible with those obligations and will, through its information gathering powers, seek to ensure that relevant information may come forward through the application process to enable all of its general obligations to be satisfied in the discharge of the function of determining applications for pavement licences. Material that

is relevant to the achievement of these obligations will be properly taken into account.

These include:

- its fiduciary duties to the Council Tax and Rate payers of the City (protection of the public purse).
- its obligations to act compatibly with rights conferred under the European Convention of Human Rights. The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a convention right.
 - Article 6 details that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
 - Article 8 details that everyone has the right to respect for his home and private life;
 - Article 1 of the First Protocol details that every person is entitled to the peaceful enjoyment of his or her possessions.
- its general and specific duties under Equalities Law – The Equality Act 2010 states that no one may discriminate, harass, or victimise another in respect of their protected characteristics. The Act itself includes a Public Sector Equality Duty which requires the Council to show “due regard” to:
 - eliminating discrimination, harassment, and victimisation
 - advancing equality of opportunity.
 - fostering good relations between people who share a protected characteristic
 - fostering good relations between those who have a protected characteristic and those who do not.
- its obligations under Crime and Disorder legislation - In accordance with section 17 of the Crime and Disorder Act 1998, the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in the City.
- The Regulators’ Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) requires the Council not to impede economic progress by its regulations, and, particularly to consider their impact on small businesses

6. Considering applications and representations

a. Applications process

Applications must be made in writing and contain the particulars specified in paragraphs 2(2) (a) to (f) of Part one of the Act and such other information as the Council may require. The Council’s application

form will be designed to elicit information that enables its decision making to be guided by this policy, including information that is relevant to enabling it to meet all of its general obligations such as those referred to in the preceding paragraph.

b. Public consultation

Applications are subject to a consultation period of seven consecutive days beginning with the day after the day on which the application is made.

The applicant must advertise the application by way of placing a notice of the application at the premises. The notice shall be in the form prescribed by the Council. It must contain the date the application is made, that representations can be made and when the representation end date is. It must be placed on the premises in a place which is readily visible to, and can be easily read by, members of the public. The notice must remain in place for the duration of the consultation period.

The council must also publish notice of any applications and will do so by publishing the information on its webpages. The Council will normally also consult with a range of internal teams.

c. Representations

Persons objecting to the grant or renewal of a licence must give notice in writing of their objection to the Council no later than seven days after the date of the application.

Representations must be taken into account when determining applications.

d. Conditions

The Council may attach conditions it considers reasonable to the licence granted. The standard conditions which the Council intends to apply to granted licences are published on the Council's website.

The Council intends that these conditions will apply to all licences granted, or deemed granted, unless expressly excluded in relation to a specific premises in writing by the Council.

There are two national conditions which must be imposed on every licence granted. These are a no-obstruction condition, and a smoke-free condition. The Council will have due regard to the requirements of the statutory guidance in respect of these conditions.

The no-obstruction condition requires that the Council consider whether furniture constitutes an unacceptable obstruction. In doing so the Council must consider the needs of disabled people and in particular the following factors:

- Whether a width of more than the minimum 1800mm is required between any obstacle and the edge of the footway. The Council may require more than the minimum, and in high footfall areas, or where there are specific access restrictions or considerations it is likely that a greater distance may be specified. In exceptional circumstances the Council may permit a width of between 1500mm and 1800mm where this occurs over a short distance.
- Whether there is a need for additional barriers to separate furniture from the rest of the footway to assist visually impaired users in navigating around the furniture
- Whether there is any conflict of street furniture with the principal lines of pedestrian movement, particularly for disabled people and those with mobility needs.
- Whether the furniture is non-reflective and of such reasonable substance that it cannot be easily blown over by the wind

The Council will impose such a condition on all licences which requires licence holders to ensure that any furniture placed on the highway does not obstruct any users of the highway, with particular consideration for disabled people, those with mobility needs, and those with pushchairs or similar.

The smoke-free condition requires that the Council consider whether adequate provision is made for non-smokers in any outside seating area. The Council will impose such a condition on all licences which requires the licence holder to ensure that reasonable provision is made for seating where smoking is not permitted.

e. Factors for consideration

The Council must take into account any objections when determining applications. It must also have regard to the Public Sector Equality Duty and the potential impact of the granting of the licence on this.

It must consider the two national conditions detailed in section d above and how the licence holder can meet these requirements.

The regime is permissive, and the Council will consider whether attaching conditions would allow a licence to be granted which would otherwise be unacceptable.

The Council will also consider the following when determining applications and deciding whether to attach conditions:

- public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted;
- 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:
 - considerations under the no-obstruction condition, in particular considering the needs of disabled people;
 - 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 fixed structures in place on the footway that already reduce access; and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.
 - Where queuing for the premises will take place, and whether it can be contained within the licensed area.

The Council will also consider the type of furniture applied for and whether it is permissible as removable furniture. Careful consideration will be given to items such as planters, fencing, or heaters, to determine whether they are quickly and easily removable in the event of an emergency. All furniture must be included in the application, which includes all those items listed above.

In particular the following will be relevant when considering the type of furniture applied for:

- Tables, chairs, stools or benches – these must be safe, well maintained, be easily removable in case of emergency or engineering or other works. They must also be removed outside of the times authorised in the licence unless otherwise agreed with the Council. Agreements will be listed as conditions on the licence.
- Planters – Planters must be safe, well maintained, have reflective markings on the ends, be easily removable in case of emergency or engineering or other works. These must continue to be maintained throughout the licence period. They must also be removed outside of the times authorised in the licence unless

otherwise agreed with the Council. Agreements will be listed as conditions on the licence.

- Fencing or barriers – these must be safe, well maintained, be suitably contrasted to be easily identifiable for anyone with a visual impairment, be sufficiently weighted so as not to fall over, and be easily removable in case of emergency or engineering or other works. They must also be removed outside of the times authorised in the licence unless otherwise agreed with the Council. Agreements will be listed as conditions on the licence.
- Parasols – Parasols over 2.5m in diameter will not be considered as part of an application. These require a hospitality structures licence which must be obtained separately. Parasols 2.5m or less may be considered, as long as they are safe, well maintained, well-secured to ensure safety, with specific measures taken in adverse weather conditions, and any branding included in application in order for it to be considered at the time of application. If branded parasols are added at a later date approval of the branding must be obtained from the Council before using them.
- Heaters – Outdoor heaters will not normally be approved.
- A-Boards – One A-board is permitted per licensed area. They must be safe, well maintained, appropriately secured or tethered, and have a maximum height of 1.1m and no larger than A1 size. Applicants should refer to the accompanying Council policy on A-boards. All A-boards must be fully contained within the licensed area, and must be positioned so as not to cause obstruction to those using the licensed area.
- Bins – Bins for customer use at the exterior of the premises will not normally be permitted under the pavement licence, unless required under another licence held for the premises which requires exterior bins to be provided. In any case exterior bins for customer use must be wholly contained within the licensed area must be positioned so as not to cause obstruction to those using the licensed area..

f. Other considerations

- Glassware and ceramics – The Council does not restrict the use of glassware or ceramics under the pavement licence, however applicants should ensure that they are aware of any restrictions on other permissions they hold such as under planning permission or Licensing Act 2003.

In all cases the licence holder should consider whether it is appropriate to have alternatives to glass or ceramics in any area for which they hold a pavement licence and undertake a risk assessment as part of this consideration. In particular, those premises who operate within the night-time economy may wish to consider alternatives such as polycarbonate or safety glass.

- Licensing times – Applicants should consider any other restrictions such as those under planning permission or Licensing Act 2003 which are already in place.

A pavement licence will not normally be granted for hours later than those on a premises licence issued under the Licensing Act 2003. A pavement licence will not normally be granted past 2300 hours on any day, unless a premises licence issued under Licensing Act 2003, and which permits on and off sales of alcohol for the relevant times, is also in place for the premises.

g. Determination

The Council must determine applications within seven days, beginning with the day after the representation end date. The Council can either:

- Grant the licence as applied for.
- Grant the licence with some amendments to the area applied for, and impose conditions
- Refuse the application.

If the Council fail to determine the application within seven days it is deemed granted as applied for, and subject to the two national conditions, and the Council's published standard conditions.

Where an application is refused written reasons will be given.

There is no formal appeal process set out in the Act. Any applicant wishing to appeal a decision given by the Council must put such a request in writing outlining their case and why they are appealing. They should clearly outline why they believe the decision is incorrect providing additional evidence where appropriate.

This will be subject to an internal review, and once a case has been considered the applicant will be notified in writing as to whether their appeal was successful, and if it was not, the reasons for that decision.

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Appendix A – Definitions and Glossary of terms

The purposes for which a person can place removable furniture on the highway are:

- a. use of the furniture by the licence-holder to sell or serve food or drink supplied from, or in connection with relevant use of, the premises;
- b. (b)use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of, the premises.

The relevant use of premises which may apply for a licence under this act are:

- a. use as a public house, wine bar or other drinking establishment; and/or
- b. other use for the sale of food or drink for consumption on or off the premises.

The “relevant highway” in relation to applications under the Act means a highway:

- a. to which Part 7A of the Highways Act 1980 applies, and
- b. which is not over Crown land or maintained by Network Rail.

The "relevant highway" is defined under Part 7A, section 115A of the Highways Act 1980 and states:

115AScope of Part VIIA.

(1)This part of this Act applies—

(a)to a highway in relation to which a pedestrian planning order is in force;

[F2(aa)to a restricted byway;]

(b)to a bridleway;

(c)to a footpath (including a walkway as defined in section 35(2) (of the Highways Act 1980));

(d)to a footway;

(e)to a subway constructed under section 69 (of the Highways Act 1980);

(f)to a footbridge constructed under section 70 (of the Highways Act 1980);

(g)to a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and

(h)to a local Act walkway.

Glossary

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