

Pavement Licensing Policy

Date (to be inserted on approval)

Draft

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1. Introduction

The Business and Planning Act 2020 (the Act) makes it simpler for premises serving food and drink such as bars, cafes, restaurants and pubs to seat and serve customers outdoors.

The Act introduced a process for these food and drink led 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 enabled them to maximise their capacity for the sale or service of food and/or drink.

Previously, tables and chairs permissions were granted as pavement licences by Nottinghamshire County Council as the Highways Authority, under the Highways Act 1980.

The Business and Planning Act was amended by the Levelling Up Act 2023 and the amended measures place a cap on the application fees for businesses, and introduces a 14-day consultation period, followed by a 14-day determination period, ensuring that businesses can obtain licences in a timely and cost-effective manner.

The Council will consider all pavement licence applications made under the Business and Planning Act 2020 (BPA20) after taking into account the Government Guidance which can be found at: [Pavement licences: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/pavement-licences)

2. Scope

2.1 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 prescribed purposes.

2.2 Eligible Businesses

A business which uses (or proposes to use) a 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 pavement 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 consumption of food or drink supplied from, or in connection with the use of the premises.

2.3 Eligible Locations

Pavement licences can only be granted in respect of highways listed in section 115 A (1) of the Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.

2.4 Type of Furniture

Types of furniture that can be licensed include counters or stalls for selling food and drink; tables, counters or shelves on which food and drink can be placed; chairs, benches or other forms of seating; umbrellas, barriers, heaters, planters and other articles used in connection with the outdoor consumption of food and drink. Furniture placed on private land does not fall within this legislation and would be a matter for the landowner to grant permission.

Barriers must be provided where the boundary of the licensable area abuts the highway/pavement. The barriers must be a minimum 1000mm high and incorporating a tapping rail not more than 200mm above the ground must be provided to guide persons safely around the area of the pavement licence. Barriers must not be permanently fixed to the ground within the public highway. Barriers must be designed to resist collapse or movement (e.g. by being blown over). The specification of barriers must be approved by the Council.

2.5 Planning Permission

The applicant will not require separate planning permission while a licence is valid.

3. Application and Determination Process

3.1 Submission of an application for a new or renewal licence

Pavement licence applications will only be accepted through the Council's online system at: [Pavement Licensing - food and drink premises only - Gedling Borough Council](#)

3.2 Fees

The current fees can be found at: [Pavement Licensing - food and drink premises only - Gedling Borough Council](#)

Fees will not be refunded where an application is refused, withdrawn, revoked, surrendered or amended (with the licence holders consent) before the expiration date.

3.3 Plan

Applications need to be accompanied by a plan showing the proposed licensing area and must include measurements of the area in millimetres. This does not have to be to scale but the measurements must be clearly shown.

Applicants are expected to take into account the Government guidance on Inclusive Mobility found at: [Inclusive Mobility. A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) when drafting their plan for the proposed licensing area. The Council encourages a minimum 2000mm between the boundary of the licensable area and any other obstruction on the highway (eg statutory undertaker plant or utilities, drainage gullies, trees, planters, benches, railings, post boxes, bollards, signposts, lamp posts, traffic lights, cellar hatches, inspection covers, manholes, fire hydrants etc).

3.4 Insurance

All applications must include evidence of third-party public liability insurance for the operation of the Pavement Licence. This must indemnify Gedling Borough Council and Nottinghamshire 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.

3.5 Furniture images

Applications need to be accompanied by clear photographic images of the type of furniture that is being proposed in the application. If the furniture has not yet been purchased, then stock images will be accepted. For renewal applications, where no changes have occurred, an image of the existing licensed area and furniture will be accepted. Where seating is provided barriers must be used to enclose the licensing area in accordance with the standard conditions of a licence.

3.6 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 applicant must use the current template provided by the Council. The notice must be constructed and secured so that it remains in place until the end of the public consultation period.

The Council's template is at Appendix A to this policy and this can also be found on the Council's website at: [Pavement Licensing - food and drink premises only - Gedling Borough Council](#)

A copy of this notice must also be submitted with the application.

3.7 Consultation

Once the application is deemed complete the Council will also circulate the application to the Council's partners for comment such as:

- the Highways Department at the Nottinghamshire County Council (this is legally required by the Act).
- the Police.
- the Fire Service.

It will also be circulated to the:

- Town Centre Managers.
- Planning Department.
- Environmental Health.
- any other consultee the Council considers necessary in each case.

The application will also be published on the Council's website at:

www.gedling.gov.uk

Once the consultation period of 14 days has passed the Council will then have 14 days to consider the application in the light of any responses to the consultation and following any site visits by the Licensing Team and discussion with the applicant during the consultation period. The applicant will be notified within this second 14-day period of the decision of the Council.

3.8 Site Assessment

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

- public health and safety including security – for example any reasonable crowd management measures needed because of a licence being granted.
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter.
- 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 fixed structures in place on the footway that already reduce access.
 - the impact on any neighbouring premises.
 - considerations under the no-obstruction condition, 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 take any issues around noise and nuisance into consideration as part of the proposal.

3.9 Determination of applications

Once the application is submitted, the Council has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 days for public consultation, and then 14 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 the terms specified in the application or,
- grant the licence in respect of some of the terms in the application or,
- grant the licence for some of the highway specified in the application
- grant the licence and impose additional conditions or,
- refuse the application.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted.

If an application is withdrawn during the 28-day consultation and determination period no refund or part refund of the fee will apply.

3.10 Renewal applications

If an application is submitted on the same basis as a previously held or existing licence and there have been no issues with the previous held or existing licence the fee charged will be a renewal fee. The pavement licence will be issued on the same terms as the existing licence.

If officers consider that there is a significant change to the times or days applied for, if the licensable area has been amended, additional furniture requested or for any other reasonable cause then the application will be considered as a new application and the appropriate fee will apply. This decision will be at officers' discretion and will be notified to the applicant as soon as possible after the application is received by the Council.

3.11 Approval

The Council will consider the guidelines within this policy together with the Government guidance for pavement licensing when considering the approval of an application for a pavement licence.

The licence will also contain specific terms such as the days, hours and the plan of the licensed area detailing when and where the tables and chairs are permitted to be used.

A copy of the Council's standard conditions, which will be attached to all pavement licences are shown at Appendix B. Additional conditions may be attached if the Council considers it appropriate and proportionate in the circumstances of any particular case.

3.12 Licence Duration

The statutory Guidance recommends that local authorities grant licences for the maximum period of 2 years. Therefore, unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space, the Council will normally grant licences for a 2-year period.

A licence can be surrendered at any time by the licence holder during the licence period. The licence holder is required to notify the Council by email at: licensing@gedling.gov.uk of their intention to surrender the licence and the date that the surrender is to come into effect. The licence must be returned to the Council.

A licence can be amended by the Council, with the licence holders' consent, if there is a material change to licensing area or the area surrounding it.

If a licence is revoked, surrendered, or amended a refund or part refund of the fee will not apply.

Pavement licences are not transferrable.

Refusal of applications

If the site is deemed unsuitable for a pavement licence, if relevant representations are received during the consultation period, which cannot be mitigated by conditions, or the applicant does not provide information requested to assist in determining the application, then the application may be refused. A decision notice will be given to the applicant detailing the reasons for the refusal of the application.

If an applicant is aggrieved by the refusal of a pavement licence they can make representations against this decision, by email, to the Community Protection Manager at: licensing@gedling.gov.uk within 14 days of the date of the decision notice. These representations will be considered by the Community Protection Manager whose decision is final. A further notice will be given to the applicant detailing the reasons for the decision within 21 days of receiving any representations.

4. Conditions

The Council's standard conditions are set out at **Appendix B**. In some cases, additional conditions may be required. This will be determined when assessing an application on a case-by-case basis.

The Business and Planning Act 2020 sets out two National Conditions which apply to pavement licences: a no-obstruction condition and a smoke-free seating condition. The National Conditions are shown in **Appendix C**.

5. Enforcement

5.1 Breach of condition(s)

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing.

5.2 Revocation or amendment of a licence

The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

- (a) If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised.
- (b) Or if there is evidence that:
 - there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this will be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
 - this use of the highway is causing an unacceptable obstruction, breaching the no- obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or
 - the use is causing, or risks causing, anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up.

The local authority may revoke a licence in the following circumstances:

- For a breach of condition (whether a remediation notice has been issued or not); or
- 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 and had applied for 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 of the application or secure that the notice remains in place until the end of the public consultation period.

A notice will be given to the licence holder dealing the reasons for the revocation of the licence.

If a licence holder is aggrieved by the revocation of a pavement licence they can make representations against this decision, by email, to the Community Protection Manager at: licensing@gedling.gov.uk within 14 days of the date of the decision notice. These representations will be considered by the Community Protection Manager whose decision is final. A further notice will be given to the applicant detailing the reasons for the decision within 21 days of receiving any representations.

5.3 Unlicensed furniture place on the highway

In cases where furniture, which would normally be permitted by a pavement or other licence, has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

Any enforcement action will be taken in accordance with the Council's Enforcement Policy.

6. Review Procedures

This Policy will be reviewed from time to time should changes occur in relevant legislation and/or guidance, or because of local considerations within the Borough.

Appendix A

BUSINESS AND PLANNING ACT 2020

PUBLIC NOTICE: APPLICATION FOR A PAVEMENT LICENCE

NAME OF APPLICANT:	
DOES HEREBY GIVE NOTICE THAT ON:	INSERT DATE APPLICATION SUBMITTED TO COUNCIL
HAS APPLIED TO GEDLING BOROUGH COUNCIL FOR A PAVEMENT LICENCE AT:	
NAME OF PREMISES:	
ADDRESS OF PREMISES (INCLUDING POST CODE):	
<p>THE APPLICATION IS FOR THE PROVISION OF REMOVABLE FURNITURE PLACED ON THE HIGHWAY TO ENABLE THE SALE, SERVICE AND/OR CONSUMPTION OF FOOD AND DRINK SUPPLIED FROM, OR IN CONNECTION WITH THE RELEVANT USE OF THE PREMISES.</p>	
<p>ANY PERSON WISHING TO MAKE REPRESENTATIONS TO THIS APPLICATION MAY DO SO BY WRITING TO: Gedling Borough Council, Licensing Section, Arnot Hill Park, Arnold, Nottingham NG5 6LU or by email at: licensing@gedling.gov.uk</p>	
DEADLINE FOR REPRESENTATIONS:	14 DAYS FROM DAY AFTER APPLICATION SUBMITTED TO COUNCIL
<p>THE APPLICATION AND INFORMATION SUBMITTED WITH IT CAN BE VIEWED ON THE COUNCIL WEBSITE: www.gedling.gov.uk</p>	
SIGNATURE OF APPLICANT:	
DATE NOTICE PLACED ON PREMISES:	INSERT DATE NOTICE PLACED ON FRONT WINDOW OF PREMISES

A COPY OF THIS NOTICE MUST BE SUBMITTED WITH THE APPLICATION AND AFFIXED TO THE PREMISES SO THAT THE NOTICE IS READILY VISIBLE AND CAN BE READ BY MEMBERS OF THE PUBLIC WHO ARE NOT ON THE PREMISES

BUSINESS AND PLANNING ACT 2020 PAVEMENT LICENCE STANDARD CONDITIONS

The Standard Conditions below apply to all Pavement Licences granted by Gedling Borough Council (the Council) however, each application will be treated on its own merits and the Council reserves the right to remove, vary or add additional conditions if considered reasonable.

- 1. Sole Purpose of the Licence:** A Pavement Licence permits the business to use removable furniture placed on the highway to:
 - a. sell or serve food or drink; and/or
 - b. allow it to be used by people for consumption of food and drink supplied from, or in connection with the relevant use of the premises.

The “relevant use” in relation to premises, means either or both of the following:

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

- 2. Production of the Licence on Demand:** The Pavement Licence shall be displayed on the premises to which it relates so as to be visible to members of the public. Any failure to do so may result in an Authorised Officer requiring the removal of the items from the highway.
- 3. Site Constraints:** Any furniture placed within the permitted area of the Pavement Licence shall not obscure sight lines for any highway user, interfere with drainage, or, conflict with dropped crossings, etc.
- 4. Accessibility:** When a licence is granted the issue of accessibility for disabled people will have been taken into consideration by the applicant and the Council. Any use of the area outside the boundary of the pavement licence will be considered a breach of the licence and may result in the revocation of the licence.
- 5. Furniture:** The Pavement Licence permits the following items of removable furniture to be placed on the permitted area of the highway:
 - Counters or stalls for selling or serving food or drink
 - Tables, counters, or shelves on which food and drink can be placed.
 - Chairs, benches or other forms of seating, and:
 - Umbrellas, barriers, heaters, planters and other articles used in connection with the outdoor consumption of food or drink
 - The furniture must be removable

The specification of all furniture must be approved by the Council and any changes in the furniture as approved by the licence must be notified to the Council during the course of the licence.

- 6. Barriers:** Where seating is provided a barrier approximately 1000mm high and incorporating a tapping rail not more than 200mm above the ground must be provided to guide persons safely around the area of the pavement licence area. Barriers must not be permanently fixed to the ground within the public highway.

Barriers must be designed to resist collapse or movement (e.g. by being blown over). The specification of barriers must be approved by the Council. The barriers and seating should be arranged so as to prevent chairs or personal effects (e.g. shopping) escaping the area of the pavement licence and encroaching into the walked highway.

7. **Emergency Exits:** All emergency exits and routes from buildings must be kept clear.
8. **Removal of Furniture:** All furniture and all barriers must be removed from the highway daily at the end of the hours of operation as detailed above or on the Pavement Licence and shall not be stored within the highway.
9. **Obstruction/Danger/Nuisance on the Highway:** The licence-holder shall not cause any obstruction or danger to people using the highway. The licence holder is responsible for the conduct of people within the area of the pavement licence, as allowing rowdy or unruly behaviour may lead to the revocation of the licence.
10. **Noise/Nuisance Control:** Licence holders must not permit any excessive noise, disturbance, smells or litter which cause a nuisance to the owners or occupiers of any adjacent premises or to members of the public.
11. **Surface of the Highway:** The licence-holder shall not undertake any alterations to the highway surface.
12. **Cleansing of the Area:** The licence-holder will ensure that the area permitted by way of the pavement licence is maintained in a clean and tidy condition and they shall take all necessary precautions to prevent the highway from becoming littered as a result of their trading activities.
13. **Liability Insurance / Indemnity:** The licence-holder is required to indemnify the Council and its agents against all losses and claims for injuries (including death, illness and disease) or damage to any person or property whatsoever, and, against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising directly or indirectly out of the granting of this Licence. To this end, the applicant must obtain and maintain third party public liability insurance which offers 'indemnity to principal'. The level of cover must be to a minimum value of £5,000,000 for any one incident. The insurance cover must be in place for the full duration of the licence and evidence of valid insurance covering the area of the pavement licence must be made available when requested by an authorised officer.
14. **Sale of Alcohol:** The Pavement Licence does not give or imply any permission to sell intoxicating liquor.
15. **Advertising:** Advertising alcoholic, gambling or smoking products, or their manufacturers, will not be permitted on barriers or furniture associated with the pavement licence. Logos / legends on barriers etc. may only relate to the premises or business. No advertising shall be displayed that may cause offence or alarm to any person.

- 16. Removal of Furniture if requested in an emergency:** If so requested in an emergency by Gedling Borough Council, a Police Officer, Fire Brigade Officer, Ambulance Attendant or Statutory Undertaker, or by the Highway Authority for the purpose of maintaining the highway, the licence holder shall remove the permitted furniture from the highway.
- 17. Unpublished Conditions:** The Council may impose any reasonable conditions whether or not they are published upfront on a case by case basis.

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BUSINESS AND PLANNING ACT 2020

PAVEMENT LICENCE NATIONAL CONDITIONS

The National conditions below apply to all Pavement Licences granted by Gedling Borough Council (the Council).

1. **No-obstruction Condition:** Anything done by the licence-holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not:
 - 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.
2. **Smoke-free seating condition:** where the furniture to be put on the 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.