

Kirklees Council
Pavement Café Licences
Business and Planning Act 2020

1. Introduction

The Business and Planning Act introduces a new 'time limited' licensing regime for pavement café licences. The Act allows the operators of businesses selling food and drink to apply for authorisation to place tables, chairs and other furniture linked to the sale of food and drink on the highway adjacent to their premises, for their customers to use.

This new licensing regime provides a fast-track process for obtaining permission and is an alternative process to the existing licensing regime under the Highways Act 1980.

The aim of the new regime is to support the hospitality industry in its recovery and help businesses to adjust to new ways of working in a time when social distancing remains the most effective way of combating the spread of COVID-19.

This document outlines Kirklees Councils response to this new legislation, how a business can apply for a licence and the expectations of the Council should a licence be granted.

This document takes into account statutory guidance issued under the Business and Planning Act by the relevant Secretary of State – [GOV UK: Pavement Licences Draft Guidance](#)

2. Application Process

Applications can be found on the [Licensing](#) service webpages - applications must be submitted via email to licensing@kirklees.gov.uk

Each application must be accompanied by the following

- Completed application form
- A plan showing the location of the street furniture outside the business, clearly indicating how the business will meet the social distancing requirements
- Photos or brochures showing the proposed type of furniture
- Photo of public notice in situ
- Evidence to demonstrate how any local and national conditions will be satisfied (more details below)
- Copy of Public Liability Insurance covering a minimum of £5,000,000
- Fee

A fee of £100 will need to be paid as part of the application. Once a completed application is received a licensing officer will contact the applicant and arrange for this fee to be taken over the telephone. Failure to make payment will result in the application being rejected.

Please note – submitting an incomplete application will result in the application being rejected.

Consultation

Once an application has been made there is a 7 day public consultation period.

The consultation consists of –

- **Public Notice –**

A public notice must be placed at or on the premises for which the application is being made. It is the responsibility of the applicant to ensure this public notice is displayed, and continues to be displayed, during this 7-day period. The notice must be placed on / at the premises on the day the application is submitted to the licensing team and you must submit photographic evidence of this with your application. The notice must be placed in such a manner that it can be seen by the public at all times whether or not the premises are open or closed.

A template notice can be found at appendix C to this guidance document.

Failure to display the public notice will result in your application being rejected and the applicant having to re-start the process.

- **Interested Parties –**

Upon receipt of a completed application the licensing team will consult with the following –

- West Yorkshire Police
- Highways
- Ward Councillors (if a new application)
- Environmental Health – Noise Team
- Environmental Health – Health and Safety Team

If your application is for a premises within Huddersfield or Dewsbury Town Centres the licensing team will consult with the following additional services –

- Town centre management team
- Council's major project team

Interested parties have 7 days in which to submit any representations either in support or against the application, you may be contacted by any one of the interested parties to discuss your application in more detail.

Decision

A decision on your application will be made within 7 days, starting the day after the end of the consultation period, and you will be notified via email of the Council's decision.

In coming to a decision, the Council must take into account any representations received, and the following options are available to the Council –

- Grant the application as applied for,
- Grant the application but amend its scope i.e. grant a licence but reduce the area that was applied for,
- Reject the application,

There is no right of appeal if your application is rejected or if the scope is amended.

Duration

The Council has set the default duration of a licence at 12 months from the date it is granted. However, the Council may issue a licence for less than 12-months where it is necessary to do so. If the Council issue a licence for less than 12-months you will be notified accordingly with an explanation as to the reasons why.

Irrespective of how long the Council grant a licence for, legislation dictates that all licences issued under this process will cease to have effect on the 30th September 2021, and the Council will not, under these provisions, grant a licence beyond that date.

If you require a licence beyond the date of 30th September 2021, you should contact the licensing service who can advise on how you can do this.

Applications awaiting decision

The fact an application has been submitted does not give an applicant the right to place furniture on the highway while a decision on that application is made.

Should you place furniture and / or other structures on the highway without the relevant authorisations being in place, you will be asked to remove them. Failure to remove upon request could affect your application and will likely result in the Council exercising its powers under the Highways Act 1980, or other appropriate legislation, to remove the furniture / structures.

3. Conditions

There are two types of conditions attached to a licence issued under these provisions, those set by the Government and those published by the Council.

Government Conditions

The following conditions are imposed on all licences¹

It is a 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 as set out in Section 3.1 of [Inclusive Mobility](#) guidance.

It is also a condition that reasonable provisions are made for seating where smoking is not permitted. This means that where business provide for smokers, customers will also have the option of sitting in a non-smoking area.

Local Conditions

A copy of the local conditions published by the Council can be found at Appendix B to this document.

Hours of Use

It will be a condition of the licence that the pavement café area can only be operational during the hours of 08:00 until 22:30. For Huddersfield and Dewsbury town centres the hours are 10:00 until 22:30.

4. Pavement Restrictions

In line with the Government condition in section 3 above, before considering whether to apply for a licence or not you should assess the area to which you want the licence to apply, to ensure it meets the requirements of Section 3.1 of the Inclusive Mobility Guidance, which state –

- A clear width of 2.0mtrs 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 1.5mtrs could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1.0mtrs clear space.

- The maximum length of restricted width should be 6 metres (see also Section 8.3).

If there are local restrictions or obstacles causing this sort of reduction in width they should be grouped in a logical and regular pattern to assist visually impaired people.

- It is also recommended that there should be minimum widths of 3.0mtrs at bus stops and 3.5mtrs to 4.5mtrs by shops though it is recognized that available space will not always be sufficient to achieve these dimensions.
- Where a cycle track runs alongside a footway or a footpath best practice is to physically segregate the two as advocated in Local Transport Note (LTN) 2/86 Shared Use by Cyclists and Pedestrians.

5. Licensing Act 2003

The granting of a pavement licence does not in itself, authorise the retail sale of alcohol, or authorise any other licensable activity as defined in the Licensing Act 2003.

If the business to which the pavement licence applies is in possession of a premises licence issued under the Licensing Act 2003, you are advised to check that licence to ensure the use of the pavement licence does not breach any of the conditions associated with the premises licence.

For further guidance on this matter please contact the licensing team at licensing@kirklees.gov.uk

6. Permitted furniture / other structures

A pavement licence granted under these provisions is to place removable furniture on the highway, and the furniture is to be used by the licence holder to sell or serve food from or for the businesses customers to consume food and / or drink from.

Before you purchase any furniture, you should ensure it meets the specification as outlined in Section 4 of the Design Guide which can be found at Appendix A to this policy.

Any other structure placed on the highway may require separate and distinct permission from the Councils planning and highways teams. These can be contacted at Planning.ContactCentre@kirklees.gov.uk and highways.ROSS@kirklees.gov.uk

7. Enforcement

While the Council wishes to support the recovery of the hospitality sector, it must do so in a way that balances the need to protect the public and reduce the risk of spreading COVID-19.

In support of this the Act provides the Council with powers to take appropriate action against licence holders who do not operate or conduct their business in a responsible manner.

The Act provides the Council with the powers to revoke a licence, under any of the following circumstances –

- there is a risk to public health or safety
- anti-social behaviour or public nuisance is being caused or risks being caused,
- the highway is being obstructed,
- misleading or false information on an application,
- breach of conditions
- the application failed to display notice of their application

In respect of a breach of conditions the Council could issue an improvement notice as an alternative to revocation.

APPENDIX A – Application Form and design Guide
APPENDIX B – Pavement Café Licence Conditions
APPENDIX C – Public Notice

APPENDIX A



Applic No:	Rec No/Date:	Licence No
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APPLICATION FOR PERMISSION TO PROVIDE CAFÉ FACILITIES ON A PUBLIC HIGHWAY

BUILDING AND PLANNING ACT 2020

(ONLY APPLICABLE UNTIL 30.09.2021)

PART A: Particulars of Applicant

Name of Applicant:

Contact Name (if organisation):.....

Address:

Post Code: Tel No:

Fax No: E-mail:

PART B: Particulars of Premise

Premise Name:

Type of Premise:

Address:

Post Code: Tel No:

PART C: Proposed Café Area

Dimensions of area: metres (width) by metres (depth)

Does the area extend beyond the frontage of your own premise? YES/NO

If yes please submit written confirmation from your neighbour(s) of their agreement to your proposal to use the space in front of their premise.

Does your proposal meet the requirements relating pavement widths as outlined in Section 4 to the policy? YES/NO

If no, please explain why.

Application that do not meet the requirements relating to pavement widths and unobstructed pedestrian routes will only be approved if there are exceptional circumstances.

PART D: Type of Equipment

Proposed number of tables?	Proposed number of chairs?
Do you propose to use parasols? YES/NO	If YES, how many?
Please provide details of proposed tables/chairs/parasols giving design information, dimensions and colour (see Design Guide)	

PART E: Means of Enclosure

By what means is the proposed café to be enclosed?

Please provide photographs or manufacturer's illustration of barriers and/or planters if possible (see Design Guide)

PART F: Plan Requirements

A plan must accompany this application showing the following details:

- (a) the outline of your building with accesses, including emergency accesses, clearly marked;
- (b) the outline of adjacent building(s) if your café area is to extend in front of your neighbour's premise;
- (c) the location of the kerb line;
- (d) the position of any street furniture, eg lamp posts, litter bins, trees, bollards, pedestrian crossings, etc, which must show how you will maintain social distancing;
- (e) measurements clearly marked;

PART G: TIMES, DURATION & OPERATION

Times of Day: Days of Week:

Please Note: Licences will only be granted between the hours of 08:00 until 22:30, for town centre the hours will be 10:00 until 22:30

Season (if applicable):

Will alcoholic drinks be served and consumed within the café area? YES/NO

If YES, please state: Premise Licence No:

Designated Premise Supervisor's Name:

Personal Licence No:

PART H: ADDITIONAL DETAILS

- (1) Have you taken the needs of disabled customers into consideration?

YES/NO

- (2) Is your building listed or within a conservation area? (see Design Guide)

YES/NO

If you are unsure, the Council can advise you further, contact:
Conservation Design Section, Planning Services, 01484 221000 or email
planning.contactcentre@kirklees.gov.uk

- (3) Have you reviewed your staffing situation to ensure that you have sufficient staff to adequately manage the increased café area?

YES/NO

- (4) Have you put a cleaning schedule in place? (see Design Guide)

YES/NO

- (5) Do you currently have public liability insurance of £5,000.000 (five million pounds) and are you prepared to indemnify the Council against any claims arising from the café being located on the highway?

YES/NO

You will need to submit evidence of this with your application.

PART I: DECLARATION

I declare that I am over 18 years of age and I certify that, to the best of my knowledge and belief, the information I have provided in this application form and on the submitted plans is both accurate and correct.

Signature of Applicant:

Name of company (if applicable):

Position in Company (if applicable):

Dated:

You must email your completed application, including supporting documents, to licensing@kirklees.gov.uk

Once a completed application is received a member of the licensing team will contact you to take payment.

PART J: CHECKLIST OF REQUIRED SUPPORTING DOCUMENTS

Written confirmation from neighbouring premise (if applicable) ☐

Photographs, brochures or scaled drawings showing design, dimensions, colour and materials of proposed tables, chairs, parasols ☐

Photographs, brochures or scaled drawings showing design, dimensions, colour and materials of proposed means of enclosure ☐

Public Liability Insurance for £5,000.000 (five million pounds) ☐

☐

Photograph of public notice in situ

A plan as detailed in PART F

☐

Additional details as required in PART H

☐

Personal Data

We have recently updated our Privacy Notice about how we use personal data provided to the Council. Further information can be found at:

<http://www.kirklees.gov.uk/beta/information-and-data/pdf/privacy-notice-other-licenses.pdf>

DESIGN GUIDE**1 Introduction**

- 1.1 This guide is intended to ensure that outdoor cafes can be established in the streets and precincts of Kirklees without conflicting with the needs of other street users and ensure a high quality of design that enhances the environment.
- 1.2 It will not normally be necessary to obtain planning consent; however, it will be necessary to obtain a licence from the Licensing Service.
- 1.3 If it is intended to provide liquor for consumption on the highways it is essential that all applicants ensure that their current licence extends to the proposed facility.

2 Size and Layout

- 2.1 This will be dependent on factors such as available space, type of premises and street furniture. Needs of other highway users should be taken into account, e.g. pedestrian flows, vehicular access etc. Although these criteria will be determined by Highways Service, it should be noted that the following key principles will apply in every case.
- 2.2 A clear pedestrian route shall be maintained for those walking past the premises. This should preferably be adjacent to the kerb to ensure that most pedestrians and particularly those with visual impairments can maintain their regular route. This should normally be of a minimum width of 2.0 metres. Emergency exits from adjacent buildings must not be obstructed by the seating area. Visibility splays must not be obstructed.
- 2.3 In the case of a precinct, a maximum of one third of the total width will normally be allowed.
- 2.4 The layout of the tables, seats, access points and enclosure will have to be approved. It is essential that the layout of these areas do not provide any obstruction or inconvenience to those customers with disabilities and particularly that adequate space is left between tables for wheelchair access.
- 2.5 The approved café area may be permanently marked out by the Council by steel pins or markers set into the pavement or where appropriate by paving materials and design. It is important that no obstructions such as tables, chairs or barriers etc be left on the pavement outside the approved hours.

3 Means of Enclosure

- 3.1 When a street café is in use a temporary form of enclosure will normally be required, with adequate openings to permit access. The function of this enclosure is to demarcate and contain the cafe but also to give a clear warning particularly to people with visual impairments.
- 3.2 For this reason it is essential that the barrier has some solid elements particularly just above ground level to be detectable by a stick and an element approximately 800mm high in a contrasting colour to the background that is highly visible.

- 3.3 It is essential that the means of enclosure is lightweight in construction, both to ensure that it is not too visually dominant in the street scene and to enable it to be dismantled and stored in the premises outside the approved hours.
- 3.4 The colour and materials of the enclosure will have to be considered carefully to ensure that in the longer views it is not too visually dominant but close up that certain key elements stand out against the background (e.g. a waist high rope).
- 3.5 In some circumstances a particular design may be insisted upon to retain some continuity of design in a particular space or square for instance.
- 3.6 Please note that post & chain or rope barriers are not considered suitable although existing street furniture or street railings may be utilised where appropriate.

4 Furniture

- 4.1 A standard design of seating and tables will not be insisted upon but a reasonable quality will be requested and a mixture of furniture is not recommended. The materials and colours should not be too bright, garish or overly reflective. White plastic furniture will not normally be approved. Tables should be of a design to allow wheelchair use.
- 4.2 The use of umbrellas will have to be specified as part of the design along with their location material and colour. These must be positioned so they cannot overhang beyond the means of enclosure, even if adjusted, which could create a danger to a passing pedestrian.
- 4.3 Only fabric umbrellas will be permitted to avoid reflective surfaces, and in certain circumstances a particular type may be insisted upon to retain some continuity of design in a space.
- 4.4 The colours and design on the umbrella itself will not be restricted to a particular type but again, too bright or garish colours must be avoided allowing for the fact that these elements will bring some colour to the street scene.
- 4.5 Any advertising must relate to items on sale within the café. Any other advertising would require specific planning consent.
- 4.6 Picnic style benches are not permitted.
- 4.7 Furniture associated with the licence must be of a suitable type / design to enable it to be removed in its entirety from the highway, and securely stored, outside of the hours permitted by the licence. Securely stored in this instance means stored in a place that is not accessible to members of the public

5 Environmental Issues

- 5.1 It will be expected that the approved café area will be kept clean and litter free and it should also be ensured that litter does not stray onto the neighbouring area.

- 5.2 It will be the responsibility of the licence holder to ensure any waste or debris of any kind is removed from the area covered by the licence and the area in the immediate vicinity, i.e. to the side and / or front of the premises and pavement café area.

APPENDIX B

PAVEMENT CAFÉ LICENCE CONDITIONS

1. Outside drinking to be restricted to the area covered by the pavement licence.
2. Tables, chairs and other furniture covered by this licence must be removed from the highway, and securely stored, outside of the times stated in the licence. Securely stored means off the highway and away from any area accessible by the public,
3. You must ensure you are taking all reasonable steps to minimise the risk of spreading Covid-19. Reasonable steps are those that have been identified by means of a risk assessment, or by way of guidance issued by the Government and / or authorised officer of the Council.
4. Tables, chairs or other furniture covered by this licence must be so positioned to ensure unconnected groups are not facing each other and to enable compliance with the most up to date version of Government guidance relating to social distancing,
5. Sufficient management controls and monitoring should be in place for the collection of glasses, bottles, plates etc. at regular intervals, removal of discarded food wrappers etc. to prevent litter from blowing onto the adjacent highway.
6. At the end of each trading period, you must ensure the area covered by this licence, and the area in the immediate vicinity (i.e. to the side and / or front) are clear of any detritus,
7. Any spillages onto the Highway must be cleaned immediately, the tables and chairs to be kept tidy at all times.
8. The premises shall be responsible for the cost of making good any damage to the highway caused by street furniture or usage area.
9. Music must not be played outside the premises at any time.
10. Current Government guidance suggests windows and doors are kept open to aid ventilation and reduce the risk of transmission of COVID-19. Where windows and doors are kept open, music from within the premises should be maintained at such a level that it is not audible outside of the premises.
11. Sufficient controls should be in place to manage any incidents of disorder.
12. 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 as set out in Section 3.1 of [Inclusive Mobility](#) guidance.

13. Reasonable provisions need to be made for seating where smoking is not permitted. This means that where business provide for smokers, customers will also have the option of sitting in a non-smoking area.
14. You must immediately remove your tables, chairs and any other furniture authorised by this licence upon request of an authorised officer of the Council or West Yorkshire Police, where possible you will be given prior notice of this.
15. You must immediately remove your furniture upon request of a statutory undertaker (i.e. utility / communications companies) so as to allow them access to their equipment / services, where possible you will be given prior notice of this.
16. During the hours of operation, the pavement café area authorised by this licence must remain enclosed with adequate openings to permit access. The function of this enclosure is to demarcate and contain the cafe but also to give a clear warning particularly to people with visual impairments.



Business and Planning Act 2020

Pavement Licence

Notice is hereby given that **{insert premises name}** has applied in respect of **{insert address}** for an amenities licence issued under Section 115 of the Highways Act 1980.

This application is to permit **{No.}** tables and **{No.}** chairs to be placed on the highway immediately in front of the premises in an area no larger than **{No.}** metres wide by **{No.}** metres long.

Any person(s) wishing to make representations on the above-mentioned application must do so in writing by ***{insert last day for consultation}***, to licensing@kirklees.gov.uk, or alternatively the Licensing Service, Flint Street Depot, Flint Street, Huddersfield, HD1 6LG

Dated -