

GUIDANCE NOTES: Application for a licence to place tables and chairs on the highway under the Business and Planning Act 2020

1 Introduction

- 1.1 Under the Business and Planning Act 2020, it is now faster for premises to apply to put tables and chairs on the highway. This is a temporary provision and will only apply until the **30 September 2021**.
- 1.2 Tables and chairs on highway land can be a vital part of the life and character of an area; however, if they are not carefully controlled pedestrians may be put in danger. People with impaired vision, in wheelchairs or with prams can be particularly disadvantaged. In some places, people eating or drinking outdoors can also cause considerable noise nuisance for residents and impede access for emergency vehicles.
- 1.3 These guidance notes provide information about making an application and set out the conditions likely to be imposed by the licensing authority if they are mindful to grant consent. Contact details are also provided should you require any further information or assistance.

2 Scope

- 2.1 A pavement licence is a licence granted by the local authority, or deemed to be 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.
- 2.2 A business which 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. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.
- 2.3 A 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.
- 2.4 Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. 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 licence cannot be granted).
- 2.5 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 or other forms of seating; and
 - umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.



This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area. Further guidance on furniture, including measurements, can be found in the tables and chairs policy on the following webpage

<https://www.basingstoke.gov.uk/table-chairs-on-highway-licensing>

- 2.4 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.

3 Requirement and Standards

- 3.1 Before any amenity use on the highway is proposed or established, the following issues need to be considered:

- Environment - Is the quality of air and the immediate environment suitable for the use proposed?
- Regulations - Does the proposal meet the various criteria outlined in legislation and this guide? Further details on the Business and Planning Act can be found here:

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

- Public health and safety – the application must make reference to how social distancing will work and reasonable crowd management. Further guidance on managing social distancing can be found here:

<https://www.gov.uk/guidance/safer-public-places-urban-centres-and-green-spaces-covid-19>

- Public amenity – will granting this application create nuisance through noise or antisocial behaviour?
- Accessibility – obstructions on the pavement (planters, street furniture), recommended minimum footway widths.
- Other users of the space such as high levels of pedestrian or cycle movements

- 3.2 Full details of the requirements for tables and chairs can be seen in the tables and chairs policy found here: <https://www.basingstoke.gov.uk/table-chairs-on-highway-licensing>

4 Submission of the Application

- 4.1 An application for a Pavement Licence must be made to the Council electronically, and the following will be required to be submitted with the application:
- a completed Application Form
 - the required fee of £100, paid by credit or debit card using the councils pay for it online system or over the phone to the contact centre.



- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the proposed area covered by the licence in relation to the highway, 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 items 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 fixed item in the proposed area.
- 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 licence (for e.g. 3 months, 6 months, or a year);
- evidence of the right to occupy the premises (e.g. the lease);
- 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;
- 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). Copy of the site notice available at appendix 4
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £10 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

4.2 The fee for applying for a licence under the new process are set locally, but are capped at £100. The Council has determined that the fee for applications will be £100.

4.3 The authority has 10 working days, starting the day after the application is made, to consult and determine the application. The Council will publish details of the application on its website at <https://www.basingstoke.gov.uk/licensing-act-applications>

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

- Environmental Health Service (including Environmental Control and Food and Safety Teams)
- Planning
- Property Services
- Hampshire Fire & Rescue Service
- Hampshire Police
- The appropriate Local Ward Councillor(s)
- The appropriate Parish or Town Council
- Hampshire County Council (if required)

4.5 Members of the public and others listed above can contact the Council to make representations. The Council must take into account representations received

during the public consultation period and consider these when determining the application.

4.6 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 notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of compliance with the site notice requirement must be supplied to the Council.

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 comes to an end;
- 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 (7 days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix 4.

4.7 Site Assessment

The following matters will be taken into account by the Council in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that users conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise 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, 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 of access and egress to the premises
- the impact on any neighbouring premises
- 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](#), 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.

4.8 Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation period has ended.

If the local authority 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,
- impose conditions on any licence granted, or
- refuse the application.

If the local authority does not determine the application within the 14 day period, the application will be deemed to have been granted subject to any published local or national conditions.

4.9 Licence Duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the end of the public consultation period, excluding public holidays) the duration of the licence will be specified, subject to a minimum duration of 3 months. 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 a year. **A licence granted or deemed to be granted will not be valid beyond 30 September 2021.**

5 If Permission Is Granted

- 5.1 Highway licenses are renewable annually and if the premises conducts its business within the terms of the conditions of use the renewal would normally be



granted; however, the granting of a license does not give an automatic right of renewal in subsequent years.

- 5.2 The highway license will limit the hours during which the tables and chairs may be used on the highway and may require that outside of these hours all furniture is removed and the highway cleaned or if appropriate washed down. The responsibility for removing tables, chairs and other obstructions from the highway rests with the owner/operator of the premises.
- 5.3 Special additional conditions may be added to the license or permission as and when necessary.
- 5.4 Tables and chairs placed outside require extra care on the part of management and staff to ensure that amenities of the area are not adversely affected. It will be the responsibility of the licensee to ensure that the conditions of the highways licence, planning permission and alcohol licence are adhered to. The licensee will be responsible for the behaviour of and actions by his customers whilst in the licensed area.
- 5.5 The Borough Council, under the terms of Section 115K of the Highways Act 1980 has powers to ensure compliance with the terms and conditions imposed on a license and to recover any expenses in so doing.
- 5.6 The applicant should be aware that Hampshire Police, as part of the coordinated consultation process, may stipulate that toughened/non-glass drinking devices be used within the enclosed area of the highway; bottles will not be permitted within the enclosed area; and/or, supervisors patrol the enclosed area when it is in use or existing CCTV extended to monitor persons using the designated area.
- 5.7 Applicants must ensure that any areas where smoking is permitted comply with the smoke free legislation (From 1st July 2007).

6 If an application is refused

- 6.1 There is no right of appeal against a refusal of an application.

7 Enforcement

- 7.1 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 Consent 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, and Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to operating.
- 7.2 If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied. If the notice is not complied with, the Council may revoke the licence or take the required steps itself and recover the costs of doing so.
- 7.3 The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night or litter is not being cleaned up;
 - 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 for the relevant period.
3. The Council may also revoke the licence 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. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

8. Review Procedures

- 8.1 This guidance covers the Temporary Permissions for Pavement Licences under the Business and Planning Act 2020, which are scheduled to expire on 30 September 2021. This guidance will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, relevant social distancing measures or as a result of local considerations within Basingstoke and Deane Borough council.

Contact details

All other enquiries should be made to the Council's Licensing Team

Tel: 01256 844844

email: licensing@basingstoke.gov.uk

Licensing

Highways Act 1980, Section 115E

Application to place tables and chairs on the public highway

Notes to applicants

This form is for an application to place tables and chairs outside your premise on the public highway for the purpose of providing food and drink to seated customers.

Please ensure you have read the guidance notes attached and the standard licence conditions that will be attached to any licences granted, and ensure you include all required documentation.

Incomplete applications will be returned as invalid.

If you have any questions please contact the Licensing team on 01256 844844 or email licensing@basingstoke.gov.uk

Surname of applicant	
First name(s) of applicant	
Applicant address	Tel. No.
Email address	
Applicant address	Postcode
Telephone number	
Are you the: (please tick all that apply)	
Freeholder <input type="checkbox"/>	Leaseholder <input type="checkbox"/>
Licensee <input type="checkbox"/>	Tenant <input type="checkbox"/>
Other <input type="checkbox"/>	<input type="checkbox"/>
If you are not the freeholder of the premise, state the name, address and contact details of the freeholder.	
Name	



Address		
Telephone number		
Describe the nature of the business at the premise to which the application relates		
Is there a premises licence issued under the Licensing Act 2003 in force at the premise?		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Licence Number
Name of Licensee stated on the premises licence		
Indicate the proposed days and times of operation for the tables and chairs		
	Start time	Finish time
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
Sunday		
Will your tables and chairs and associated furniture, barriers etc be removed from the highway outside the hours identified above?		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Provide details of your public liability insurance to the value of £10 million		
Policy provider	Name of policy holder	
Policy number	Start date	End date
I confirm that I have enclosed the following (please tick)		
(a) Application form completed and signed by the applicant.	<input type="checkbox"/>	
(b) The application fee.	<input type="checkbox"/>	



(c) A location plan at 1:1250 scale plan showing location or premises.	<input type="checkbox"/>
(d) A site plan at 1:50 as detailed in the guidance notes.	<input type="checkbox"/>
(e) Elevation plans at 1:50 or 1:20 with supporting detail if required to show the means of enclosing the highway.	<input type="checkbox"/>
(f) Photos and/or brochures showing types of furniture, umbrellas, etc to be placed on the highway.	<input type="checkbox"/>
(g) A written specification describing details, materials and colours (these could be notes on the drawing).	<input type="checkbox"/>
(h) I have displayed the Public Notice at the premises with a start date of the date of application to the council.	<input type="checkbox"/>
(i) There is a management strategy in place to monitor social distancing and crowd management	<input type="checkbox"/>
Please note that incomplete applications will be returned.	
1. New applicants are required to complete (a) to (h).	

Declaration			
I hereby declare that the information and particulars given by me in this application are true and correct to the best of my knowledge and belief and I make it knowing that if it is tendered inaccurately, any licence determined and issued in connection with it may be suspended, modified and/or revoked.			
I also understand and consent that the information given on this form may be issued to and verified with other enforcement agencies and consulting bodies; including the DVLA, Hampshire Police, local Magistrates Court and any of the trade associations mentioned hereon and any other corporate body in accordance with data protection and the council's disclosure policy.			
Signed		Date	
Print Name:			

HOW WE COLLECT AND USE INFORMATION

We will use the information given in this form and any supporting evidence you send us to process your licence/certificate application.

We may pass the information to other agencies or organisations, such as the Department for Work and Pensions and the Inland Revenue, as allowed by law.

We may check information you have provided, or information about you that someone else has provided, with other information held by us. We may also get information about you from certain third parties, or give them information to:

- make sure the information is accurate;
- prevent or detect crime; and
- protect public funds.

These third parties include government departments, local authorities, and private-sector companies such as banks and organisations that may lend you money.

We will not give information about you to anyone else, or use information about you for other purposes, unless the law allows us.

Basingstoke and Deane Borough Council is the data controller for the purposes of the Data Protection Act. If you want to know more about what information we have about you, or the way we use that information, please ask us.

You have a right of access to the information that this Council holds about you. To request this please write to:

Information Management (Legislation and RIPA) Officer, Basingstoke and Deane Borough Council

Civic Offices

London Road

Basingstoke

RG21 4AH

APPENDIX 2 – local conditions

HIGHWAYS ACT 1980 SECTION 115E

STANDARD LICENCE CONDITIONS

TABLES AND CHAIRS ON THE HIGHWAY

The following conditions will be applied to every licence granted under the above Act:

- 1 This licence is granted in accordance with compliance with the advice given in the guidance notes issued at the time of application.
- 2 The tables and chairs placed on the highway after the granting of a licence must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval of the Council.
- 3 All tables and chairs authorised by the licence must be removed by midnight on the day the licence expires unless a renewal licence has been applied for and granted. Renewals must be applied for at least 2 months prior to expiry to allow sufficient time for the application to be considered.
- 4 The Licensee shall maintain a public liability insurance policy up to the value of £10m against any liability, loss or damage, claim or proceeding whatsoever arising under Statute or Common law in respect of the placing and maintaining of the tables and chairs on the highway or their removal there from.
- 5 The Licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times. Under your duty of care you must ensure that any waste produced is handled safely and in accordance with the law. You must keep all waste safe, prevent it from escaping from your control and ensure that it is only handled or dealt with by persons that are authorised to deal with it.
- 6 The Licence may be suspended where necessary to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence. A reasonable period of notice will be given to the licensee where possible. The Council will not be liable for any loss of earnings arising out of the suspension of a licence.
- 7 Any umbrellas provided must not protrude beyond the designated boundary of the licensed area. They shall be kept in good condition so as not to detract from the appearance of the street.
- 8 The placing of speakers or any other equipment for the amplification of music within the licensed area is strictly prohibited unless authorised by a premise licence issued under the Licensing Act 2003. Any such authorised music must not cause a nuisance or annoyance to others.
- 9 Any sales of alcohol within the licensed area must be authorised by a premises licence issued under the Licensing Act 2003. Areas of alcohol consumption only must be included on the premise licence.

- 10 Any material alteration to the Means of Escape, which affects people using the Means of Escape, inside or in the immediate vicinity outside the premises must be recorded in the premises' Fire Risk Assessment as a significant finding. Control measures should be put in place to reduce risk within the area as well as recording them. A review of the hazards and risks should be ongoing throughout the period the premises are in use.
- 11 Facilities provided in accordance with the licence are for seated customers only. Vertical consumption of food and drink is prohibited and the designated area must be used solely for the purpose of consumption of refreshments.
- 12 No additional charge shall be made to customers for the use of the tables and chairs within the licensed area.
- 13 The licensee may only use the land for the placing of tables and chairs in the course of his business only during the hours permitted by the licence and only within the defined area applied for.
- 14 The use of the land is personal to the licensee only.
- 15 The licensee may only use the area for the purpose of consuming refreshments in connection with the business only and not for any other purpose whatsoever.
- 16 No tables and chairs or barriers may be placed in the area until a licence has been granted.
- 17 No other items may be placed on the highway within the licensed area other than that approved in accordance with the application and the licence when granted.
- 18 The licence is granted for a period of 12 months. This licence will not be renewed automatically. Compliance with the terms of conditions of any previous licence will be taken into account at any application for renewal. The Council reserves the right to refuse renewal applications where appropriate.
- 19 The licensee is responsible for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the activity. The permanent surface reinstatement shall be carried out to the satisfaction of the Council.
- 20 The license is issued to the applicant only and is not transferable.
- 21 These conditions may be varied where appropriate to reflect any changes in local circumstances.
- 22 The fee is for the administration and grant of the license. No refunds will be made in the event of a surrender of the license before expiry.

Should an application be considered for refusal, the applicant will be given an opportunity to make representation regarding the refusal to the Head of Governance in writing.

There is no automatic right to appeal against refusal of consent. However, any applicant may appeal to the Head of Governance in writing and within 21 days of the refusal.

APPENDIX 3 – National conditions under 2020 Act

National Conditions

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

Condition relating to clear routes of access:

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 on the effect of this condition

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to 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](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

Condition relating to smoke free seating:

Tables and chairs licences issued under this provision are to be smoke free areas. Separate smoking areas must be established for customers.

Appendix 4

**Site Notice Template for display by an applicant for a Pavement Licence.
Section 2 of the Business and Planning Act 2020.**I/We *(name of applicant)*,do hereby give notice that on *(date of application)* [I/we] have applied to Basingstoke and Deane Borough Council for a 'Pavement Licence' at:*(postal address of premises)*

known as

(name premises known by)

The application is for:

(brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink))

Any person wishing to make representations to this application may do so by writing, preferably by email, to:

Licensing Team

Basingstoke and Deane Borough Council

London Road

Basingstoke

Hampshire

RG21 4AH

licensing@basingstoke.gov.uk

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*The application and information submitted with it can be viewed on the Council's website at: <https://www.basingstoke.gov.uk/licensing-act-applications>

Signed

Dated *(date the notice was placed which must be the same date as the date of application)*