



Walsall Council

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING AND SAFETY COMMITTEE

12 AUGUST 2020

POLICY ADOPTION AND INFORMATION ON THE BUSINESS & PLANNING ACT 2020

1. Summary of Report

- 1.1 On the 22nd July 2020 the Business & Planning Act 2020 received Royal Assent and its provisions came in to effect immediately. The Act refers to a licence to permit businesses 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.
- 1.2 Walsall Council's Licensing Service have introduced an application process, set out in detail within the report, to manage pavement café licences, in response to the Act.

2.0 Recommendations

- 2.1 Licensing and Safety Committee are asked to:-
1. Note that the Licensing Authority has adopted a Pavement Café Policy, as set out in **APPENDIX 3**;
 2. Note that, due to the very short timeframes within which to make a decision, applications for pavement café licences shall be determined (and if necessary revoked) by the Regulatory Services Manager (Resilient Communities) and that any refusals shall be determined by the Director of Resilient Communities (or their nominees) in line with their delegated powers;
 3. Establish a Licensing (Pavement Café Licence) Sub Committee to hear any appeals against refusal consisting of 7 members of the Licensing and Safety Committee noting that other sub committees established have followed political balance as follows:-
X4 Conservative
X3 Labour
 4. That a Chair and Vice Chair be appointed to the sub committee.

3. Background

- 3.1 The Business & Planning Act 2020 received Royal Assent on the 22nd July 2020. The new Act provides for a quicker process for dealing with Pavement Café licences. Businesses such as pubs, bars and restaurants have been adversely affected by Covid-19. Many have been closed for an extended period and as they re-open, social distancing guidance will significantly affect their capacity to accommodate customers. Measures within the Business & Planning Act 2020 form part of a package designed to make it easier for businesses to make use of outdoor space for dining and the sale of alcohol, helping the hospitality sector get back on its feet again through the busy summer months. A brief overview of the changes are listed below:
- 5 working day consultation period.
 - A cheaper, easier and quicker way for businesses to obtain a licence.
 - Local authorities to be able to determine a pavement café licence application within 5 working days (from the end of consultation period).
 - Premises with on sales of alcohol will automatically be allowed to have off sales.
 - Off sale of alcohol limited to 11pm.
 - Authorities must have regard to the needs of disabled people when considering whether to grant a pavement licence.
 - Licence holders must make reasonable provision for outside seating where smoking is not permitted.
 - Local authorities can delegate decisions about pavement licences to sub-committees or to officials (it is not responsibility of authority's executive).
 - Secretary of State may specify conditions but they now have to be by Regulations laid before Parliament, which can reject them by resolution (and not simply published by SoS as before).
 - Any new permissions for offsales do not apply to times when the premises licence does not allow sales of alcohol for consumption in outdoor areas of the premises.
 - Any extension to the provisions by Secretary of State can be made only when it is reasonable, necessary or appropriate for a purpose linked to the coronavirus pandemic.
- 3.2 In order for Walsall Council to manage and process applications effectively and efficiently, an application form has been developed which can be found at **APPENDIX 1**.
- 3.3 The fee that will accompany the application will be set at £100, which is the statutory maximum as set out in the Business & Planning Act 2020.
- 3.4 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 including where such uses

form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

- 3.5 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 Crown land are exempt (so a licence cannot be granted).
- 3.6 It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.
- 3.7 As part of the application process the applicant is required to affix a notice to the premises on the day the applicant submits their application to the local authority. To help applicants, the Licensing Authority have developed a template notice which can be found at **APPENDIX 2**.
- 3.8 The Licensing Authority have also adopted the Pavement Café guidance and incorporated this in to the Council's Policy for Business & Planning Act 2020. Attached as **APPENDIX 3** is a copy of the Policy.
- 3.9 The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.
- 3.10 **Appendix 4** is a copy of the proposed local conditions that will form part of any licence upon grant.

Establishing a sub committee

- 3.11 Under Section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority.
- 3.12 The Licensing & Safety committee are requested to establish a Pavement Café Sub-committee to deal with any appeals for Refusals or Revocation of licences noting that any appeal must be submitted to the Licensing Authority within 21 days of the notification of the Refusal or Revocation.
- 3.13 The sub committee would be called on an ad hoc basis as and when required at a time to be agreed by the Chair.

4. **Resource Considerations**

4.1 **Financial:** The fee set by the government (£100) will not cover the cost of licensing and administration of the function introduced. Licensing authorities will be required to use existing budgets in order to meet the requirements of the new legislation. As there is no appeal to magistrates on a refusal or revocation of this application, there could be a possibility that the Licensing authorities processes and policy could be subject to judicial review.

4.2 **Legal:** The Council can exercise its functions by way of committees or officers. When exercising delegated authority both committees and officers are bound by natural justice, human rights, the legal framework and any statutory guidance, in addition to any policies the Council may have.

4.3 The Business & Planning Act 2020 does not allow for a right of appeal to a public court in the event of a refusal or revocation of a licence. However the Guidance states

‘There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing committee.’

4.4 The process adopted by Walsall Council will be as follows

Where an applicant feel that a decision taken by the Regulatory Services manager or Director of Resilient Communities including the refusal of a licence under this legislation is unreasonable or administratively or technically incorrect they may appeal against the decision to the Licensing and Safety Committee for a hearing and final determination.

This escalation route has been determined appropriate based on

1. No right of appeal to a public court being available in the Business and Planning Act.
2. Licensing and Safety Committee has trained and experienced elected members who ordinarily deal with Licensing matters for which this regime is similar.
3. Licensing and Safety Committee members are elected members of the Borough and represent the views of their communities in any and all decision-making.
4. The applicant has opportunity to challenge the decision made by officers in an open, fair and transparent quasi-judicial forum being represented by a legally qualified person should they so wish.

- 4.3 **Staffing issues:**
None

5. Citizen Impact

- 5.1 None

6. Community Safety

- 6.1 The Conditions adopted as part of this licensing regime will assist in the protection of public safety. Where conditions are not adhered to and public safety is compromised there will be a reasonable expectation of enforcement including the possibility of the revocation of the licence.

7. Environmental Impact

- 7.1 None

8. Performance and Risk Management Issues

- 8.1 Decisions by the committee are taken in line with legislation. One of the overwhelming priorities of the Licensing Authority is to ensure public safety. It is important that the scheme of delegations enable appropriate decisions to be made by the right person or body at the right time.

9. Equality Implications

- 9.1 Nothing arising from this report.

10. Consultation

- 10.1 None required.

11. Contact Officer

- 11.1 Sayful Alom
Licensing Team Leader
Telephone: 01922 652742
Email: sayful.alom@walsall.gov.uk



BUSINESS AND PLANNING BILL 2019 - 2021

Application for a Pavement Café Licence

Section A: Applicant Details (<i>ALL sections <u>must</u> be provided</i>)		
Full name of applicant		
Previous names(s)		
Address of applicant		
	Postcode:	
Date of birth		
National Insurance No.		
Telephone		
Email address		

Section B: Business Details (<i>ALL sections <u>must</u> be provided</i>)		
Business Name		
Business Registered Address		
Registered number		
Nature of business		
Trading Name		
The premises has a current premises licence authorising the sale of alcohol under the Licensing Act 2003	Yes <input type="checkbox"/>	No <input type="checkbox"/>
The Premises Licence Number is:	WS/PRL/	
If a food business – is it registered with Walsall Council?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Section C: General description of intended use of outside area

Section D: Details of all pavement furniture applied for *(photograph/image required)*

(Note: you must include everything you wish to have on the highway within the pavement area, e.g. tables, chairs, heaters, canopies or parasols)

Section E: Details of proposed barriers *(photograph or image required)*

(Describe the type of barriers you propose to use below).

Section F: Servicing, staffing and supervisory arrangements

(Please explain how you intend to service the additional business area below)

Section G: Hours of proposed use of pavement area *(Please use 24hr clock)*

Monday	Start	:	End	:
Tuesday	Start	:	End	:
Wednesday	Start	:	End	:
Thursday	Start	:	End	:
Friday	Start	:	End	:
Saturday	Start	:	End	:
Sunday	Start	:	End	:

Section H: Location, site and area plans

All applications must be accompanied by plan A or B; **and** C below:

A. Premises location plan – *showing the location of your premises; **or***

B. Open space plan - *where the application relates to an open space and not a premises, please provide an ordnance survey map showing the OS reference or similar grid reference detailing the specific location;*

and

C. Plan of proposed licensed area. This must be to scale and show the arrangement of all the items listed in sections D and E above.

Note: the plan of the licensed area may be hand drawn, but must be clearly labelled, legible and must show accurate measurements of each item of furniture and the accurate measurement of spaces in between.

Application Checklist	Please tick
I have read and understood the Pavement Licence Conditions:	<input type="checkbox"/>
I have attached the following written risk assessments:	
Management of social distancing requirement	<input type="checkbox"/>
Prevention of anti-social behaviour	<input type="checkbox"/>
Prevention of nuisance – litter	<input type="checkbox"/>
Prevention of nuisance – noise	<input type="checkbox"/>
I have completed all sections of the application	<input type="checkbox"/>
I have provided photographs or images of the furniture I wish to use:	<input type="checkbox"/>
I have provided photographs or images of the barriers I wish to use:	<input type="checkbox"/>
I have attached location Plan A or B (as appropriate)	<input type="checkbox"/>
I have attached Plan C:	<input type="checkbox"/>
I understand that Public Liability Insurance for up to £5M must be provided prior to the issue of a licence:	<input type="checkbox"/>
I have enclosed the application fee (or)	<input type="checkbox"/>
Please call me to take payment over the telephone on	Tel No:

DECLARATION

I declare that, to the best of my knowledge and belief, the information on this form is true and correct. I understand that the information provided may be used within Walsall Council and shared with other regulatory agencies administering public funds for the prevention and detection of fraud.

I hereby confirm that I have read the Walsall Council pavement licence conditions; I understand that I must comply with them at all times and that failure to comply with these conditions could result in non-issue or revocation of my licence.

Signed	
Date	

Note: Please ensure all requirements in the checklist are submitted with your application, as incomplete applications will be returned.

Return to: Licensing Unit, Civic Centre, Darwall Street, Walsall, WS1 1TP

WALSALL COUNCIL
BUSINESS AND PLANNING ACT 2020
NOTICE OF APPLICATION FOR A PAVEMENT CAFE
LICENCE

Premises	Insert name & address
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I/We **NAME OF APPLICANT**, do hereby give notice that on **DATE OF APPLICATION**, [I/we] have applied to Walsall Council for a 'Pavement Cafe Licence'.

Description of Application
Number of tables, chairs, barriers etc.
Hours of operation.

Any person wishing to make representations to this application may do so by writing to: Licensing@walsall.gov.uk.

Representations must be received no later than: **CLOSING DATE**.

The application and information submitted with it can be viewed on the Council's website:

https://go.walsall.gov.uk/street_cafe_licences

Signed _____

Dated _____



Pavement Café Licence Policy

Application Timescale

The prescribed application consultation period, of 5 working days excluding bank holidays, will commence on receipt of a complete application accompanied by payment of the appropriate fee.

Qualifying Businesses

All businesses that use, or propose to use, premises for the sale of food or drink, whether for consumption on or off the premises, may apply for a pavement café licence.

Eligible businesses include, but are not limited to: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

The premises in effect must be adjacent to a relevant highway. If it is not, this does not debar the making of an application, but no effective licence may be granted as a result.

This is because the geographic limit of an authorisation under a premises licence is “part of a relevant highway adjacent to the premises.

Removable furniture that can be included with permission:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters, and other articles used in connection with the outdoor consumption of food or drink.

To accommodate the provision of using outside areas, any premises already authorised to sell alcohol for consumption on the premises will receive an automatic authorisation to sell and serve alcohol for consumption off the premises.

No additional planning permission will be required for the use of pavement furniture under this provision.

The licensing authority may attach specific conditions to licences where it is reasonable, necessary and appropriate to do so (e.g. in protection of the health and safety of the public).

The licensing authority may grant a licence for a period between 3 – 12 months.

All licences granted under this provision will automatically expire by the 30th September 2021.

Application Criteria

Applications to the local authority for a pavement cafe licence must:

- clearly specify the premises and the part of the relevant highway to which the application relates;
- clearly specify the purpose, or purposes, for which the furniture will be used; either to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied by, or in connection with, the relevant use of the premises;
- specify the days of the week and the hours on which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the proposed Number of tables and proposed number of chairs, stalls and/or barriers.
- specify the proposed number of staff on duty during opening hours.
- specify the date on which the application is made;
- contain, or be accompanied by, such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require;
- provide a plan detailing the location of the premises, clearly marked by a red line, so the application site can be identified (note: this may include an OS map reference);
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown;
- evidence of the right to occupy the premises e.g. the lease;
- photographs of the type of furniture, stalls and/or barriers to be used;
- demonstrate there is sufficient space for public access to the surrounding or adjacent road/pavement;
- demonstrate, by way of a written risk assessment, how the applicant/premises operator will maintain social distancing;
- provide written risk assessments demonstrating how the applicant/premises operator will manage or minimise the likelihood of anti-social behaviour and the prevention of public nuisance; and
- Contain, or be accompanied by, such other information or material as the local authority may require.

Where an application is made for the use of crockery or drinking vessels of a material otherwise than those permitted in the Walsall Council pavement café licence conditions, the Licensing Authority will consult whichever regulatory authorities or

agencies it considers appropriate (e.g. West Midlands Police, NHS Primary Care Trust).

Refusal to Grant & Revocations

The Licensing Authority is expected to refuse or revoke a licence if it can reasonably be presumed that the grant of such an application would cause:

- risks to public health or safety e.g. encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
- the highway to be obstructed - other than by anything permitted by the licence;
- a risk of anti-social behaviour or public nuisance, e.g. is likely to increase noise levels late at night and/or is the cause of an increase in litter.
- where all, or any part, of the relevant area of the highway to which the licence relates, has become unsuitable for the 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.

A licence may also be revoked if the applicant:

- is found to have 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
- fails to comply with the prescribed advertising requirement to affix the notice to notify the public for the relevant period;
- operates otherwise than in accordance with the licence and conditions.

Where, after careful consideration of the application or existing licence, the Licensing Authority decides it is appropriate to revoke or refuse the grant of a licence, full reasons will be provided to the applicant in writing.

The applicant may then wish to appeal to the Licensing Safety committee for any refusals.



Walsall Council

Pavement Café Licence Standard Conditions

1. A pavement Café Licence will only be granted in circumstances where a minimum width of 2m of clear and unobstructed pavement remains available for the normal use of wheelchair users and pedestrians.
2. The licence holder must ensure social distancing measures are in place, that they are maintained at all times and reflect current government guidance.
3. The licence holder must take reasonable steps for the prevention of anti-social behaviour and littering inside and directly outside of the licensed area.
4. Where a premises lies within the close proximity of residential buildings, the licence holder will be required to demonstrate the measures they will take, and maintain, to prevent public nuisance.
5. The licence holder must comply with the government's national conditions relating to clear routes of access.
6. Any licensed area covered by the Pavement Licence must remain a smoke free area at all times.
7. Any tables/chairs or furniture granted under the pavement café licence must be removed from the highway by 23:00 each day or as granted under the permission if less.
8. The licence holder must produce, update as necessary, and make available for inspection at the reasonable request of an authorised officer, written risk assessments in relation to: social distancing, prevention of public nuisance and anti-social behaviour.
9. Only crockery and drinking vessels made of paper, cardboard or metal alloys, plastic, polycarbonate, or other material approved for use by the Local Authority may be used in connection with the licence.
10. When the licensed area is in use, the premises licence holder must ensure it is cordoned/enclosed by a barrier, or other appropriate means, approved by the Council.

11. The licence holders must take responsibility for maintaining the cleanliness, safety and amenity of the licensed area and all furniture being used.
12. No amplified music or sports commentary may be played in, from or to customers using, the licensed area.
13. If requested to do so, by a Police Officer, authorised Officer of the Council, Fire, Civil Defence Authority or the Regional Health Authority's ambulance service, the licence holder must without delay, remove all the items from the site.
14. The use of the licensed area, or any adjacent area, for the placement or display of 'A' boards, unauthorised advertising notices or signs is prohibited.
15. The licensed area must not be used for cooking by means of barbeques, flambé, blowtorch, fire-pits, char-grills or other unspecified naked flames.
16. The site must, at all times it is used under the authorisation of a Pavement Café Licence, be kept in a clean and tidy condition and the licensee shall ensure that activities conducted therein cause no unreasonable nuisance or annoyance .
17. No article shall be placed on, or remain in, and no trade or business shall be conducted in or from the licensed area or any other part of the Highway outside the hours permitted.
18. All items used in connection with a Pavement Café Licence must remain contained within the curtilage of the specified licensed area.
19. The licensee shall indemnify the Council against all costs claims and Proceedings for injury, including injury resulting in death to any person or any damage to property howsoever arising from the granting of this licence other than injury or death to persons attributable to negligence or wilful default on the part of the Council, its employees or agents.
20. The licence holder must maintain Public Liability insurance of at least £5m and a copy of the public liability insurance must be produced prior to the issue of the licence.
21. Where a premises licence issued under the Licensing Act 2003 is in force, the operation of the outside area must be consistent with the operation inside the premises. All conditions attached to the premises licence will be deemed to include the outside area under the control of the premises licence-holder.

