

To:
All members of the
Licensing Committee

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Date: 22 July 2020

Supplementary Agenda

Licensing Committee - Wednesday, 22 July 2020

Dear Councillor,

I enclose a revised draft Policy in relation to the item below showing changes as a result of consultation responses received since the Policy was first published, on the agenda for the Licensing Committee meeting to be held on Wednesday, 22 July 2020:

6. Pavement Licensing Policy

3 - 18

To consider a report and Policy on Pavement Licensing arising from the Business and Planning Bill 2020 and make a recommendation to Cabinet.

Yours sincerely

Gillian Scott
Corporate Governance

To the members of the Licensing Committee

Councillors:

C.L. Barratt
R.O. Barratt
I.J. Beardsmore
A. Brar
S.M. Doran

S.A. Dunn
N.J. Gething
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Pavement Licensing Policy

Business & Planning Act 2020

Effective: (date)
Version 1 – First Policy Draft
July 2020

Spelthorne Borough Council Pavement Licensing Policy

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1. Introduction

The Covid-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

As the economy starts to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in the way.

The Business and Planning Act makes it easier for premises serving food and drink such as bars, restaurants and pubs to operate, as lockdown restrictions are lifted but social distancing guidelines remain in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from Spelthorne Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premise which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, tables and chairs permissions are granted as pPavement licences by Surrey County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a ~~time consuming~~ 28 day consultation period.

The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a quickly ~~timely~~ and cost effective manner aiding to their financial recovery.

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 certain purposes.

2.2 Eligible Businesses

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.

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.

2.3 Eligible Locations

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).

2.4 Type of Furniture Permitted

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, benches 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.

2.5 Planning Permission

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. Application and Determination of Pavement Licences

3.1 Submission of the Application

~~You can apply for a pavement licence by completing the application form available on our website on the licensing webpage and this should be submitted via email, together with the following to licensing@spelthorne.gov.uk. An application for a pavement licence must be made to the Council via the application form which is available on our website and this should be emailed, together with the below documentation to licensing@spelthorne.gov.uk:~~
• ~~a completed Application Form~~

- the required fee of £100, paid by credit or debit card, together with the receipt for the payment
- proof of the applicants identity and right to work
- 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 to be placed on the highway~~ 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.

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- a risk assessment demonstrating how the applicant will manage social distancing and the conflict between pedestrians using the footway, those using the tables and those queuing to access the premises;
- 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);
- (upon grant of licence) 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.

Commented [CL1]: I have consulted with legal on this and it's not a requirement and they do not think it is necessary

3.2 Fees

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.

Application fees must be paid by debit/credit card at the time the licence application is submitted to the council and the receipt must accompany the application in order for the application to be considered valid and for the consultation period to commence.

The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

3.3 Consultation

Applications are consulted upon for seven (7) days, with the first day of consultation being the day after a valid application was made to the Council.

The Council will publish details of the application on its website.

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:

- Spelthorne Borough Council Economic Development
- Spelthorne Borough Council Environmental Health Service
- Spelthorne Borough Council Asset Management
- Spelthorne Borough Council Planning
- Neighbourhood Services
- Spelthorne Borough Council Town Centre Management
- Surrey Fire & Rescue Service
- Surrey Police
- The appropriate Local Ward Councillor(s)
- The Spelthorne Business Improvement District

- From time to time Spelthorne Borough Council's Anti- Social Behaviour Team

Members of the public and others listed above can contact the Council to make representations at licensing@spelthorne.gov.uk

The Council must take into account representations received during the public consultation period and consider these when determining the application.

3.4 Site Notice

On the day an application for a pavement licence is made, the applicant must 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 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 and email (licensing@spelthorne.gov.uk) to which representations should be sent during the consultation period; and
- the end date of the consultation (5 working days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix 1.

3.5 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 – for example, ensuring that uses 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 and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
 - 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 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 so take any issues around noise, and nuisance into consideration as part of the proposal.

3.6 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.

3.7 Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

On approving the application, the Council will issue a pavement licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions, which will be attached to all pavement licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit pavement licences to apply between 09:00 and 21:00.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

3.8 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.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2021.

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.

3.9 Refusal of Applications

If the site is deemed unsuitable for a pavement licence to be granted, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory appeal process against decision to refuse an application.

4. Conditions

The Council's standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis. If the application is deemed approved the conditions will apply to the approval

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

However, this is not the case for the statutory no-obstruction condition which is as applies to all licences. The national statutory 'no obstruction' condition is shown in Appendix 3.

5. Enforcement

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, social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

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 and the authority can take action to cover any costs.

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 and 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.

6. Policy Review

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This Policy 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 the Spelthorne Borough.

Appendix 1

Site Notice Template for display by an applicant for a Pavement Licence.

[Section x] 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 Spelthorne 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:

Environmental Health
Spelthorne Borough Council
Council Offices
Knowle Green
Staines-Upon-Thames
TW18 1XB
licensing@spelthorne.gov.uk

by: *(last date for representations being the date 5 working 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.spelthorne.gov.uk/article/19292/Licensing-applications-open-to-representations>

Signed

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

Appendix 2

Standard Pavement Licence Conditions

1. The licence holder will undertake a risk assessment (submitted as part of the application) ~~and this must include and put in place~~ suitable and sufficient control measures to prevent the transmission of Coronavirus (COVID-19). The licence holder must document this risk assessment, keep it under review and make it available upon the request of Spelthorne Borough Council. The positioning of the furniture must allow for social distancing to take place. The licence holder must comply with the guidance issued by central government for working safely during coronavirus (COVID-19).
2. Permission to operate a pavement licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Spelthorne Borough Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement ~~licence café~~ will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
3. Spelthorne Borough Council requires evidence that the licence holder has Public Liability Insurance for the operation of the pavement licence. This must indemnify Spelthorne Borough Council and Surrey 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 £10 million in respect of any one incident.
4. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
5. Spelthorne Borough Council and/or Surrey County Council are empowered to remove and store or dispose of furniture from the highway, at the cost to the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.
6. The licence holder is not to make or cause to be made any claim Spelthorne Borough Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
7. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions issued by the Secretary of State.
8. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
9. Emergency routes to the premises and adjacent buildings must not be obstructed by the ~~pavement licence~~, furniture set up in connection with this licence, which should not, in normal circumstances, extend beyond the width of the premises frontage.

10. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Spelthorne Borough Council's Licensing team.
11. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
12. The licence holder shall ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.
13. The operation of the area must not interfere with highway drainage arrangements.
14. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
15. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) must be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
16. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by Spelthorne Borough Council or the Highway Authority.
17. The licence holder of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the pavement licensed area.
18. The licence holder of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the pavement licensed area ~~Facility~~ outside the hours in force for the premises itself.
19. The licence must be displayed on the premises with a plan of the agreed layout of the pavement licence
- ~~20. The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The licence holder is to~~

Commented [CL2]: Moved to the end (no.32)

~~use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.~~

~~24-20.~~ The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.

~~22. Spelthorne Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.~~

Commented [CL3]: Deleted as repeated below under 'notes'

~~23-21.~~ The licence holder must make sure the licensed area is regularly monitored to ensure that customers are not causing a noise disturbance or other forms of anti-social behaviour.

~~24-22.~~ The licence holder will ask customers causing a disturbance e.g. noise, anti-social behaviour to behave in an orderly manner and if they do not do so after warning then they will be asked to leave.

~~25-23.~~ The licence holder will display a sign/s in a prominent position to remind customers to be considerate towards neighbours

26. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio or television receiving sets whilst exercising privileges granted by this permission, that is audible outside the premises. ~~This must not be permitted.~~

~~26-24.~~ The licence holder will only take orders/serve customers who are seated and must ensure that customers are not standing in the licensed area with food or drink.

~~27-25. The licence holder will not permit customers to stand in the seating area.~~

~~28-26.~~ The licence holder will cease taking orders / serving customers 30 minutes prior to the time the licence permits the use of the seating area in order to ensure that the seating area is closed ~~by 9.00pm;~~ by the closing time specified on the pavement licence.

Commented [CL4]: Changed condition 26 and 27 to: 'closing time' instead of 9pm as we will normally grant until 9pm but we may grant later on a case by case basis (it could also be earlier if they for example only apply until 7pm)

~~29-27.~~ The licence holder is to encourage customers to leave ~~at 9.00pm~~ by the closing time specified on the pavement licence and also to leave quietly.

~~30-28. The licence holder will remove from the pavement all tables and chairs when the seating area ceases to be used.~~

Commented [CL5]: Deleted as repetition

~~31-29. The licence holder will ensure that there is an adequate number of bins for rubbish.~~

Commented [CL6]: Deleted as repetition and decided with EH not necessary and plus its extra furniture

30. Where the location of the premises is in a residential area, the licence holder shall provide rubber feet to chairs and tables to reduce noise when furniture is moved

31. The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.

NOTES

These conditions should be read in conjunction with any mandatory national conditions concerning pavement licences, if the premises is licenced under the Licensing Act 2003, any relevant conditions attached to the premises licence, the latest government requirements concerning coronavirus and social distancing and any other relevant requirement of the Business and Planning Act 2020.

The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.

Should the licence holder not be on the premises then they must make arrangements for a responsible person to be on site who can ensure compliance with the conditions.

Spelthorne Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

Appendix 3

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.

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