

Permanent Pavement Licensing Policy

VERSION NUMBER	DATE
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NORTH
NORFOLK
DISTRICT
COUNCIL

Executive Summary

A pavement licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people to enjoy food or drink supplied in connection with the use of the premises.

The Business and Planning Act 2020 provided a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to obtain a licence to place removable furniture on the highway. This provided much needed income for businesses, particularly during times of increased living costs.

The Levelling Up and Regeneration Act 2023 made permanent the provisions set out in the Business and Planning Act (BPA) 2020 that streamlined the process to allow businesses to secure these licences quickly.

The Levelling Up and Regeneration Act 2023 made permanent the pavement licensing regime, with several changes. There is a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods and local authorities now have powers to remove unlicensed furniture. The duration of licences was also extended.

The permanent pavement licensing regime and changes provided for in Levelling Up and Regeneration Act came into effect on 31 March 2024 (the commencement date).

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

Under section 101 of the Local Government Act 1972 the council delegates this function to officers of the Environmental and Leisure service.

Scope - Eligible businesses

A business which uses premises within the district of North Norfolk 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, or similar, where the furniture is ancillary to the main business, for example: supermarkets, or entertainment venues which sell food and drink.

Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible. Though they can apply for permission to place furniture on the pavement under a different law - Highways Act 1980.

A pavement licence does not licence the activity, only permission to place removable furniture. The pavement licence is issued to a person or incorporated body. If there is a change to the business, the licence lapses and a new application shall be made under the new business details.

Policy Statement

Permission to place objects or structures on the highway are otherwise granted primarily under Part 7A of the Highways Act 1980. The fee for the Highways Act process varies between local authorities, and there is a minimum 28 calendar day consultation period. The Business and Planning Act process provides a cheaper, easier, and quicker way for businesses to obtain a licence. The fee for applying for a licence under the Business and Planning Act process is capped at £500 for first time applications and £350 for renewals and the public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to the authority.

If the local authority does not determine the application before the end of the determination period (which is 14 days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for two years and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

Roles & Responsibilities

NNDC is responsible for determining applications before the end of the determination period.

The applicant is responsible for submitting a complete application, and abiding by any conditions attached to the licence.

An NNDC authorised officer can take action against any licence holder that breaches the conditions of their licence, under the NNDC Scheme of Delegation.

Review Process

First draft

Distribution & Amendment

Licensing committee

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0.01	Elisa Pendered	Legislative change	19/12/2024

1. Cost of applications

Fees will be set locally, and it is for NNDC to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.

Current fees are displayed on our website or available on request. The fees are set on a cost-recovery basis.

2. Furniture

The furniture which may be placed on the pavement include:

- 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
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable and related to service, sale and consumption of food or drink. It is expected that the style of furniture would be 'in keeping' with the local area.

Picnic benches and plastic tables and chairs designed for domestic use are not permitted. The furniture must be fit for purpose, designed for commercial use and comply with all relevant BS and CRIB standards.

NNDC defines removable furniture as a non-permanent structure, that is able to be moved easily and stored away at night.

2.1 Permitted furniture

Permanent structures and furniture are not permitted by a pavement licence.

Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007.

Applicants that wish to place non-removable furniture onto the highway must apply to Norfolk County Council for permission under the Highways Act 1980.

Any form of gazebo or enclosed shelter with one or more sides, is not permitted.

2.1.1 Barriers

A standard barrier consisting of a fabric banner and associated post and rail system shall be used. The function of the barriers is to demarcate and contain the tables and chairs, give clear warning to visually impaired pedestrians and other highway users.

The barriers shall be secured by purpose designed posts with weighted bases to prevent collapse. The barriers shall be between 800 - 1000mm in height to prevent obstruction of view.

The business branding can be applied to any banners.

2.2. Times of operation

Furniture can be placed on the highway only when the premises are open and not before 7am.

Where nuisance is likely to be caused when premises are open for business late at night, the furniture shall be removed before the close of business and before 11pm.

3. Exclusions

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways 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).

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.

4. Alcohol licensing

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Pavement licence holders still need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

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 relevant to the licence while the licence is valid, but not for any other purpose.

6. Duration of licence

If a local authority determines an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the end of the public consultation period, excluding public holidays), the authority can specify the duration of the licence. To help support local businesses, we will grant licences for a maximum of 2 years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

If a licence is 'deemed' granted because the authority does not decide on an application before the end of the determination period, then the licence will be valid for two years starting with the first day after the determination period. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

7. Applications

- 7.1 What information does an applicant need to provide?
An application to the local authority must:
- specify the premises and, the part of the relevant highway to which the application relates
 - specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence-holder 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 from, or in connection with relevant use of the premises
 - specify the days of the week on which and the hours between 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 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
 - contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

Our application form for pavement licences will be available on the council's website, or on request by email to licensing@north-norfolk.gov.uk, or by telephone to customer services.

- 7.2 What other information may the local authority require?
The council may require the applicant to provide other information or material to help us make a swift determination. We will publish our requirements on our website and on the application form. Any additional requirements will be reasonable and kept as minimal as possible. Examples of the information we require include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map)
- 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 proposed duration of the licence (2 years or less.)
- evidence of the right to occupy the premises (e.g. the lease, mortgage statement)
- contact details of the applicant
- photos or brochures showing the proposed type of furniture and proposed location of it within the area applied
- evidence that the applicant has given notice of the application (such as a photograph)
- (if applicable) reference of existing pavement licence currently under consideration by the council
- any other evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and or other appropriate measures)
- any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' national condition.

7.3 Can licensable activities still be granted under the Highways Act? Any licence applications for activities in England licensable under pavement licensing legislation in the Business and Planning Act 2020 must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980.

Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.

8. National conditions

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. Full national and standard conditions can be found at Annex A.

8.1 Considering the needs of disabled people
The no-obstruction condition is a condition that the licence must

not have the effects set out in section 3(6) of the 2020 Act.

When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.2 of [Inclusive Mobility](#) - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, as these are not necessary for the consumption of food, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway. Advertising boards are not included in the definition of furniture within the pavement licensing regime, therefore, should not be used as a barrier
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded with tables and chairs
- the cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction - for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not and foster or encourage good relations between people who share a protected characteristic and those who do not. Therefore, we will take all complaints against licensees seriously and may revoke a pavement licence where equality of opportunity is raised as an issue.

8.2 What is reasonable provision for seating where smoking is not permitted?

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers can sit outside.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted.

This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (Signs) Regulations 2012.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

8.3 Where an authority has set a local condition covering the same matter as a national condition, which take precedence?

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

9. Applicant consultation

9.1 Engaging with the community

The applicant must display a notice at the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice

remains in place for the duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority. When counting days, public holidays are not included. Applicants are encouraged to keep evidence of this.

Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example: care home or disability organisations nearby where individuals may be at particular risk.

9.2 What must a notice contain?

The notice must:

- be in the form which the council prescribes, which is available on our website, or on request
- state that the application has been made and the date on which it was made
- indicate that representations relating to the application may be made to NNDC during the public consultation period and give the date that period comes to an end
- contain such other information or material as required on the council's template

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority and consider noise and nuisance issues as part of the proposal.

9.3 Information required on the site notice

The council may require that other information is included in the notice such as:

- the statutory provisions under which the application is made
- description of the proposed use of the furniture
- address of the premises and name of the business
- website for the council where the application and any accompanying material can be viewed during the consultation period
- address (which might be an email address) to which representations should be sent during the consultation period

A template site notice local authorities may wish to adapt is contained in Annex A.

9.4 NNDC consultation

We will consult with:

- Norfolk County Council Highways Department.
- NNDC Public Protection teams
- NNDC planning department
- Norfolk Police Licensing
- Ward councillors
- Local town and parish councils

For security advice, we may consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. We will also consult with any other persons we believe to be relevant.

9.5 How can members of the public make representations about the application?

Members of the public can contact the council to make representations. Local authorities must consider representations received from members of the public during the public consultation period, which is the period of 14 days starting the day after the application is submitted. To promote accessibility to those unable to access printed notices, we will use digital methods of publicity. We will print copies on request for those who may find it more difficult to access online.

9.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?

We are required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

We are also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. We will publicise this information on our website: north-norfolk.gov.uk and make it available at reception.

10. Determining the application

10.1 What happens once an application is submitted to the local authority?

Once a valid application is submitted to NNDC, we have 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application.

This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

If we do not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

10.2 What will NNDC consider when deciding whether to grant a pavement licence?

The council will need to consider several factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

We will consider:

- public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings, and its users, taking account of
- considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people
- any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles
- whether there are other permanent street furniture or fixed structures in place on the footway that already reduce access
- other users of the space, for example if there are high levels of pedestrian or cycle movements

10.3 Security

When considering public health and safety, the council will seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces. The impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people. Local authorities should factor this into the security planning process and ensure the [overall security arrangements for an area are adapted as appropriate](#). Examples of appropriate measures could include increased CCTV surveillance, manned guarding, vehicle security barriers and ACT (Action Counters Terrorism) training for businesses. Find more information about [ACT Awareness Products](#).

We may consult with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

10.4 Miscellaneous conditions

Yes. When we grant a licence, we may add reasonable conditions whether or not they are published upfront. We will give clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this. Conditions imposed by NNDC will be proportionate and tailored to the applicant's premises.

10.5 Outcomes

If NNDC determines the application before the end of the

determination period, we 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, and impose conditions, or
- refuse the application

To the extent that conditions imposed on a licence by the council do not have the effects specified in the statutory conditions (see paragraph 4.1 and paragraph 4.2) the licence is granted subject to those requirements.

10.6 Appeals

We will provide reasons for refusal of an application. There is no statutory appeal process for these decisions, however, applicants can appeal in writing to the Assistant Director of Environment and Leisure Services, who may refer the matter to Licensing Sub-Committee for review of determination. The applicant will have the opportunity to present their reasons for appeal. The committee's decision is final and cannot be appealed.

11. Enforcement

11.1 In what circumstances can the local authority enforce or revoke a licence?

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

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

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

or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up.

We may revoke a licence in the following circumstances:

- For a breach of condition, (whether a remediation notice has been issued or not) or
- It comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

We will give reasons in writing where these powers are used.

11.2 When can furniture be removed?

In cases where furniture has been placed on a relevant highway without the required licence, NNDC can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

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

11.3 Recovering furniture following removal

It is the responsibility of the owner of the furniture to pre-arrange for the collection of the furniture, with the Licensing team. Collection must be during normal office hours.

Annex A - Template Site Notice

Notice of application for a pavement licence

Section 2 Business and Planning Act 2020

Notice is given that on this date (dd/mm/yyyy):

1. Name of applicant:
applied for a pavement licence at the location below:

Premises name and address:
2. The application is for (provide a brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink]):
3. Any person wishing to make representations regarding this application may do so by email to: licensing@north-norfolk.gov.uk, or in person/by post to:
North Norfolk District Council
Holt Road
Cromer
Norfolk
NR27 9EN
4. By this date: (14 days after the date of application)
5. The application, and information submitted, is published on the council's website at north-norfolk.gov.uk and available to view at the council offices.

Signed