

## **Pavement Licence Conditions Business and Planning Act 2020**

Unless stated otherwise in the granted Pavement Licence, (“the Licence”), each Licence granted by Sunderland City Council under the Business and Planning Act 2020 will be subject to the following Conditions, (National Conditions, Local Conditions and Premises Specific Conditions, as appropriate), with the “Licensed Area” referring to that part of the highway on which permission has been granted to put removeable furniture in accordance with the Licence.

### **National Conditions:**

1. 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 :

[www.gov.uk/government/publications/inclusive-mobility](http://www.gov.uk/government/publications/inclusive-mobility)

2. The “No-Obstruction Condition” applies to the Licence. It is a Condition of the Licence that anything done by the Licence-holder(s) pursuant to the Licence, or any activity of other persons which are enabled by the Licence must not have an effect which is set out below:-

- To prevent traffic, other than vehicular traffic, from: entering the relevant highway at a place where such traffic could otherwise enter it, (ignoring any pedestrian planning order, or traffic order made in relation to the highway); passing along the relevant highway; or having normal access to premises adjoining the relevant highway; or
- To prevent any use of vehicles which is permitted by a pedestrian planning order, or which is not prohibited by a traffic order; or
- To prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway; or
- To prevent the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway; and

3. The “Smoke Free-Seating Condition” applies to the Licence. It is a Condition of the Licence that where furniture to be used in the Licences Area consists of seating for use by customers to consume food or drink the Licence-holder(s) is required to make reasonable provision for seating where smoking is not permitted. The Secretary of State can issue guidance about whether “reasonable provision for seating where smoking is not permitted” has been made. Ways in which a Licence-holder(s) may comply with this “Smoke Free-Seating Condition” includes:-

- Having clear “smoking areas” and “non-smoking areas” with signage displayed in accordance with Smoke-Free (Signs) Regulations 2012 in designated “smoke-free zones”;

- Ensuring that no ash trays, or similar receptacles are provided, or permitted to be left on furniture in “non-smoking areas”; and
- By providing a minimum of 2000mm distance between “smoking areas” and “non-smoking areas”, where this is possible.

### **Local Conditions:**

1. The Licence-holder(s) is responsible for the operation of the Licence and compliance with the issued Conditions;
2. The Licence-holder(s) is responsible for complying with all statutory requirements that apply to the Premises and / or the Licensed Area, including relevant Food Hygiene Regulations, Health and Safety Regulations, the provisions of the Business and Planning Act 2020 and the applicable licensing laws;
3. The Licensed Area is required to be adjacent to, and visible from, the interior of the Premises;
4. Licensed Areas in pedestrian streets, or on exceptionally wide streets are required to be enclosed by barriers of a type and sturdiness to the satisfaction of the Council, so that the visually impaired can navigate around the furniture, including colour contrast and a tap rail for long cane users;
5. No advertising, except the name of the Premises, or its trading name is allowed on the barriers;
6. A clear pedestrian route of not less than 2000mm wide is required to be maintained and all furniture used within the Licensed Area is required to be a minimum of 450mm from the edge of carriageways used by vehicular traffic;
7. Emergency exits from the Licensed Area and adjacent buildings, and emergency service vehicle access along all streets, must be obstruction free at all times;
8. The Licensed Area is required to provide adequate access and circulation space for all customers, especially for wheelchair users;
9. Unless determined otherwise by the Council, the Licensed Area is permitted to operate between the hours of 9.00am to 9.30pm on those days for which a License was sought in the submitted Application Form, with an additional “drinking and eating up period” of 30 minutes, meaning that the Licensed Area is required to cease operating by 10.00pm.
10. The Premises is required to provide access to adequate toilet and washroom facilities for those customers using the Licensed Area;
11. A-board and advertising signs are not permitted in the Licensed Area, or on the highway adjacent to the Licensed Area;
12. The Licensed Area can only be used to put removeable furniture adjacent to the Premises for the purposes specified during the Operating Period as detailed on the Licence;
13. Unless agreed otherwise, and save for waste receptacles, only those items of furniture detailed in the Application Form for a Licence can be put on the Licensed Area;

14. The Licence-holder(s) will ensure that the Licensed Area is maintained in a clean and tidy condition by way of, :-

- Ensuring that tables / spillages are immediately cleared when customers have finished eating and / or any spillages will be cleaned-up as soon as they are aware of them, whichever is the sooner;
- Ensuring that there is minimal contamination of the Licensed Area by birds roosting on buildings, or in trees adjacent to the Licensed Area;

15. Waste from their operations must not be disposed of in the permanent litter bins provided by the Council which are located in, or around the highway, or any other part of the highway;

16. The whole of the Licensed Area will be thoroughly cleaned at the close of each day's trading;

17. Ash trays, or similar receptacles provided, or permitted to be left on furniture in "non-smoking areas" within the Licensed Area are required to be emptied each time the table is cleared; and

18. Providing refuse bins within the Licensed Area at all times of operation. If the Council are of the reasonable opinion that the bins are not suitable, or inadequate then it may direct that alternative bins be provided;

19. The Licence-holder(s) will ensure that appropriate precautions are taken to prevent the highway in the vicinity to the Licensed Area from becoming littered as a result of their trading activities by way of, :-

- Keeping the Licensed Area clean and litter free at all times and any litter blowing from the Licensed Area will be collected immediately; and
- Refuse and litter deposited on the highway in the vicinity of the Licensed Area must be removed each day, or at more frequent intervals as may be required by or under the Environmental Protection Act 1990 at their own expense;

20. The Licence-holder(s) are responsible for the conduct of customers who use the Licensed Area. Such customers must not cause, or risk being caused anti-social behaviour, or public a nuisance, or annoy users of the highway, or the occupiers of adjoining premises. Nor should customers obstruct the highway;

21. Furniture placed on the Licensed Area must not be positioned to obstruct sight lines for drivers of vehicles at junctions;

22. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with furniture, such as tables and chairs;

23. Furniture placed on the Licensed Area must be durable and suitable for outside use. No damaged furniture is permitted to be used. Where possible, furniture is required to be non-reflective in nature and cannot be easily pushed, or blown over by the wind, thereby cause obstruction. For example, unless measures have been taken to ensure it is kept in place, the Council could refuse the use of plastic patio furniture;

- 24.No amplified speakers, music, or other entertainment is permitted in the Licensed Area, or is to be placed adjacent to the Licensed Area for the purposes of entertainment of customers using the Licensed Area;
- 25.The Licensed Area must be used solely by the Licence-holder(s) for the purposes of selling, or serving food, or drink from, or in connection with the Premises and be used by customers for the purpose of consuming food, or drink supplied from, or in connection with the Premises, with such food, or drink being available throughout the operational hours of the Licence;
- 26.All furniture must be removed at the end of each trading day from the Licensed Area;
- 27.A waiting service will be provided for all customers using the Licensed Area;
- 28.All alcoholic and soft drink beverages consumed in the Licensed must be served in glasses of toughened, or tempered glass;
- 29.No electrical cables serving the Licensed Area are permitted to be run along the ground in such a way that they create a tripping hazard, or are susceptible to mechanical damage;
- 30.The Licence-holder(s) may be required to take immediate action to remove all furniture, or other items being used in connection with the Licensed Area and Licence from the highway and to vacate the area immediately if requested to by the Council, the Police, other emergency service, or statutory undertaker without any liability for compensation, refund of Application fee, or damage arising;
- 31.No canopy, or umbrella will be lower than two metres in height and will be adequately secured at all times. Such items will not oversail an unlicensed area of the highway;
- 32.During periods of strong winds, or other adverse weather conditions, umbrellas should be removed and canopies should be appropriately secured. All furniture and other items should be removed if they present a danger during adverse weather conditions;
- 33.The Licence is required to be clearly displayed in the window of the Premises to which it relates;
- 34.The granting of a Licence does not remove the need for appropriate licensing consents, or other consents, or approvals to be obtained. For the avoidance of any doubt, other regulatory frameworks still apply, such as the need for alcohol licences and the need for food business registration. If the Premises has a licence to sell alcohol on the Premises, then temporary amendments to the Licensing Act 2003 under the Business and Planning Act 2020 will generally allow the sale of alcohol for consumption off the Premises without the need to apply for a variation of the licence. However, the granting of the Licence does not alter permitted hours on an associated planning permission and / or a premises licences for the Premises;
- 35.The Licence is personal to the Licensee and is non-transferable. The Licence-holder(s) may surrender the Licence at any time before it expires by giving written notice to the Council to the following e-mail address : [licensing@sunderland.gov.uk](mailto:licensing@sunderland.gov.uk). The notice is required to include the following matters:-

- Name of the Licence-holder(s);
- Address of the Premises to which the Licence relates;
- The name that the Premises is also known by; and
- The final date on which the Licence is to be operated, ie. the surrender date of the Licence;

36.The Licence-holder(s) will indemnify the Council against all proceedings, actions, claims, demands, or costs whatsoever, (including, but not limited to personal injury), or for loss, or damage to property arising out of, or incidental to, or in connection with the right granted by this Licence which is not attributable to the negligence of the Council;

37.The Licence-holder(s) will not make any claim, or charge against the Council in the event of the furniture, or other items being used in connection with the Licensed Area and Licence are lost, stolen, or are in any way damaged;

38.If the Council considers that the Licence-holder(s) has breached any Condition of the Licence the Council may revoke the Licence, or may serve on the Licence-holder(s) a notice requiring them to take such steps to remedy the breach as specified in the notice within the stated time. If the breach is not remedied following the service of the notice, the Council may revoke the notice, or take the steps itself identified in the notice to remedy the breach and the Council can recover the costs of doing so from the Licence-holder(s);

39.The Licence may also be revoked if the Council considers that, :-

- If some, or all of the part of the relevant highway to which the Licence relates has become unsuitable for any purpose in relation to which it was granted;
- As a result of the Licence : (i) there is a risk to public health, or safety; (ii) anti-social behaviour, or public nuisance is being caused, or risks being caused; or (iii) the highway is being obstructed, (other than by anything done pursuant to the Licence);
- Anything material stated by the Licence-holder(s) in their Application was false, or misleading; or
- On the day that the Licence-holder(s) submitted their Application to the Council they did not comply with the Notice of Application duties a required by Section 2(5) of the Business and Planning Act 2020;

40.The Licence-holder(s) is required to have in place public liability insurance in the sum of no less than £5 million in respect of the Pavement Licence; and The operation of the Licensed Area in accordance with the License is required to be subject to a risk assessment, which includes measures to be undertaken to address COVID-19 to keep workers and customers safe. This risk assessment should form part of the risk assessment that should have been undertaken in respect of the Premises to which the Licence relates, with the risk assessment being subject to ongoing review.

### **Premises Specific Conditions:**

The Council may also apply other Conditions that it considers to be reasonable taking into account the individual circumstances of each submitted Application. These are referred to as Premises Specific Conditions. These could arise from matters that have been raised during the course of the public consultation period.

For example, subject to reasonable justification being provided by the Council, such Premises Specific Conditions could include the following matters:-

1. A limit on the maximum number of chairs and tables permitted within the Licensed Area;
  - The type of furniture to be permitted within the Licensed Area;
  - The extent of the Operating Period, including the time by which furniture is required to be removed from the Licensed Area; and
  - The width of clear space that is required between an obstacle and the edge of the footway;
  
2. In the event that a single Pavement Licence is granted in respect of two, or more different Premises following the submission of a joint Application, then the following Conditions will apply:-
  - The public liability insurance that the Licence-holders are required to have in place in the sum of no less than £5 million in respect of the Pavement Licence must be provided by the same insurance company; and
  - The Licence-holders must have in place a management policy governing the use of the single Pavement Licence. This is required to cover the following matters : how entry to the single Pavement Licence is to be controlled; whether specified furniture will be reserved for one particular Premises; and the lay out of the Licensed Area must have due regard to the “Smoke Free Seating Condition”; and
  - As appropriate, the Council may seek to agree with the Licence-holder(s) new, or modified Premises Specific Conditions that are sought to apply under the Licence from an agreed date. The purpose of this approach is to try to address issues relating to the Licensed Area and the Licence, as opposed to the Council seeking to revoke the issued Licence. The Council will exercise discretion in deciding whether, or not it is appropriate to seek to agree new, or modified Premises Specific Conditions.