



ADUR DISTRICT C O U N C I L

29 August 2024

Adur Licensing Committee	
Date:	9 September 2024
Time:	7.00 pm
Venue:	QEII Room Shoreham Centre

Committee Membership: Councillors Paul Mansfield, Robina Baine (Vice-Chair), Tony Bellasis, Jude Harvey, Julia Watts, Carson Albury, Pauline Higgins, Nigel Jenner, Adrienne Lowe, Carol O'Neal (Chair) and Gerry Thompson

Agenda

Part A

1. Declaration of Interests / Substitute Members

Members and officers must declare any disclosable pecuniary interests in relation to any business on the agenda. Declarations should also be made at any stage such an interest becomes apparent during the meeting.

If in doubt contact the Legal or Democratic Services representative for this meeting.

2. Public Question Time

So as to provide the best opportunity for the Committee to provide the public with the fullest answer, questions from the public should be submitted by **midday** on **Wednesday 4 September 2024**.

Where relevant notice of a question has not been given, the person presiding may either choose to give a response at the meeting or respond by undertaking to provide a written response within three working days.

Questions should be submitted to Democratic Services - democratic.services@adur-worthing.gov.uk

(Note: Public Question Time will last for a maximum of 30 minutes)

3. Members Questions

Pre-submitted Members questions are pursuant to rule 12 of the Council & Committee Procedure Rules.

Questions should be submitted by **midday on Wednesday 4 September 2024** to Democratic Services, democratic.services@adur-worthing.gov.uk

(Note: Member Question Time will operate for a maximum of 30 minutes.)

4. Minutes

To approve the minutes of the Licensing Committee meeting held on **11 March 2024** and the Sub-Committees meetings held **26 February, 29 April** and **14 August 2024**, which have been emailed to Members.

5. Items Raised Under Urgency Provisions

To consider any items the Chairman of the meeting considers to be urgent

6. Levelling Up & Regeneration Act 2023 - Schedule 22: Pavement Licensing (Pages 5 - 36)

To consider a report by the Director for Sustainability & Resources, attached as item 6.

Recording of this meeting

Please note that this meeting is being audio live streamed and a recording of the meeting will be available on the Council's website. This meeting will be available on our website for one year and will be deleted after that period. The Council will not be recording any discussions in Part B of the agenda (where the press and public have been excluded).

For Democratic Services enquiries relating to this meeting please contact:	For Legal Services enquiries relating to this meeting please contact:
Katy McMullan Democratic Services Officer 01903 221006 katy.mcmullan@adur-worthing.gov.uk	Shelley-Ann Flanagan Solicitor 01903 221095 shelley-ann.flanagan@adur-worthing.gov.uk

Duration of the Meeting: Three hours after the commencement of the meeting the Chairperson will adjourn the meeting to consider if it wishes to continue. A vote will be taken and a simple majority in favour will be necessary for the meeting to continue.



ADUR & WORTHING
COUNCILS

ADC Licensing Committee

09 September 2024

Ward: N/A

Levelling Up & Regeneration Act 2023 - Schedule 22

Pavement Licensing

Report by the Director for Sustainability & Resources

Since 2020 Adur & Worthing Councils have been responsible for the processing and determination of applications for Pavement Licences under temporary legislation introduced in response to the Covid-19 pandemic - the Business & Planning Act 2020. With the passing of the Levelling Up & Regeneration Act 2023 this has now become a permanent licensing function of the Councils which now must determine locally set fees, the duration of licences and appropriate conditions.

1 Recommendation

1.1 Members of Adur District Council's Licensing Committee and Worthing Borough Council's Licensing & Control Committee are requested to:

- consider the licensing provisions of the Levelling Up & Regeneration Act 2023 - Schedule 22 (the Act) and the implications for the Councils
- consider a draft joint Adur & Worthing Councils' Pavement Licensing Policy, that sets out the conditions of licence, and the table of proposed pavement licence fees.

1.2 That the respective Licensing Committees consider and adopt the proposed fees, set the licence duration and the conditions of licence.

2 Introduction

2.1 The Levelling Up & Regeneration Act 2023 received Royal Assent on 26 October 2023 and came into effect on 23 April 2024. The main intention of the Act is to speed up the planning system, hold developers to account, cut

bureaucracy, and encourage more councils to put in place plans to enable the building of new homes.

- 2.2 However, the Act is not limited to modernising the planning system and among the many other measures it introduces is Schedule 22 of the Act which establishes a new national licensing regime for Pavement Licences. It includes a number of new duties that are assigned to local authorities, who become the Licensing Authority.
- 2.3 Adur District Council and Worthing Borough Council as licensing authorities, will have the responsibility for issuing, administering and enforcing pavement licences that allow food & hospitality businesses to place removable furniture over designated areas of public highways adjacent to the premises for the use of their customers to consume food and/or drink.

3 Background

- 3.1 Historically, tables and chairs permissions were granted as pavement licences by West Sussex County Council's Highways Authority, under Part 7A of the Highways Act 1980. The fee varied and involved a time consuming 28 day consultation period.
- 3.2 The Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months while others had to significantly modify their operations. This particularly affected the food & hospitality industry. As a response to the pandemic, and the resulting restrictions imposed on the industry, HM Government encouraged food & hospitality businesses to trade outside where the risk of transmission was recognised as significantly reduced.
- 3.3 The Business & Planning Act 2020 was temporary legislation introduced to relax planning and licensing legislation to facilitate this. Among other measures this temporary legislation placed the responsibility for administering a new fast track pavement licensing scheme with local councils. Accordingly, Adur & Worthing Councils have been successfully issuing pavement licences under the temporary legislation since July 2020.
- 3.4 Despite the lifting of the Covid-19 restrictions the popularity and success of the new pavement licensing regime resulted in HM's Government repeatedly extending the timescale of the temporary legislation. The current licences issued under the act will continue in force until the end of September 2024. Three years later than first intended.
- 3.5 Schedule 22 of the Levelling Up & Regeneration Act 2023 consolidates and makes permanent the pavement licensing regime introduced as temporary

legislation under the Business and Planning Act 2020. It also makes a number of significant changes including:

- Permanently removing the responsibility for issuing pavement licences and enforcement from WSCC Highways Authority and placing it with the local Licensing Authority (Adur District & Worthing Borough Councils)
- Allowing Licensing Authorities to set sustainable licence fees (but introduces a standard fee cap for both new and renewals of licences)
- Allowing Licensing Authorities to determine the maximum duration of licences (up to 2 years)
- Incorporates increased authority & public consultation and determination periods.
- Provides Licensing Authorities with new powers to remove unlicensed furniture.

3.6 The new pavement licensing scheme will make it easy for premises serving food & drink such as bars, pubs, hotels, cafes and restaurants to seat and serve customers outdoors. This includes an already established but modified online fast-track application process for these businesses to obtain a permission from Adur & Worthing Councils enabling them to maximise their capacity, increase income, protect hospitality jobs and cater for the public's new found enjoyment of alfresco dining & socialising.

3.7 The Act contains a number of matters that A&W Councils will consider when determining the suitability of any application. These being:

- Public Health & Safety
 - Ensuring there is no conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs.
 - Ensuring that use conforms with latest guidance on crowd management, pedestrian access and traffic flow.
 - Ensuring adequate toilet & hand washing facilities are provided.
- Public Amenity
 - Ensuring the proposed use will not create a 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.

3.8 The Act does not require Licensing Authorities prepare and publish a pavement licensing policy but members and officers have expressed their opinion that a

formal Adur & Worthing policy would assist in administering the function and any future deliberations regarding street trading applications.

4 Consideration

Outcomes to be Achieved

- 4.1 The councils to comply with the new statutory duties to administer and enforce the various requirements contained within the Levelling-up Regeneration Act 2023 that amended the Business and Planning Act 2020.
- 4.2 To ensure that the placing of furniture on the public highway is undertaken in a safe, controlled, and consistent manner.
- 4.3 That fees are set at the appropriate level, this being that the reasonable cost of providing the service is fully recovered from the service user.

Policy & Conditions

- 4.4 A draft statement of A&W Councils' Pavement Licensing Policy, which includes the standard conditions and national conditions of licence, is attached to this report. The draft statement accords with the provisions of Schedule 22 of the Levelling Up & Regeneration Act 2023 has been compiled to reflect the national guidance published with the Act by HM Government. (Appendix A)
- 4.5 There is no statutory requirement for the Council to undertake any consultation with respect to the matters raised in this report. Accordingly, as the draft policy simply reflects the national guidance it is not considered necessary to undertake authority & public consultation.
- 4.6 However, should the recommendations be adopted, officers undertake to write directly to all current Pavement Licence holders making them aware of the impending changes. Officers will continue to support applicants in submitting either a new or renewal application.
- 4.7 Members will need to be satisfied that the policy is not fettering their discretion but simply setting out a general standard.

Licence Fees

- 4.8 In order to ensure that council tax payers are not subsidising work concerning licensing administration, compliance & enforcement, income is raised from licence fees with the aim of recovering the costs of each licensing regime within the constraints of regulation. Conversely, licence fees should not be used to raise surplus revenues.
- 4.9 The temporary pavement licensing scheme introduced by the Business & Planning Act 2020 and administered by A&W Councils was an emergency

provision introduced to assist food & hospitality businesses survive during the Covid pandemic. Many businesses were either forced to cease trading or had to significantly scale back their operations for several months.

4.10 Recognising the severe plight of these businesses Adur & Worthing Councils temporarily waived the fees for the Pavement licences issued between 2020 - 2024. Obviously such a measure was never considered sustainable.

4.11 Having delivered the function for several years free of charge, it is now essential that appropriate fees are charged which cover not only the cost of processing an application but also undertaking compliance checks and enforcing the legislation. The cost of providing the function must be paid for by the service user.

4.12 Under the new Pavement Licensing scheme introduced by Schedule 22 of the Act the Licensing Authority must set the licence fees but the fees are capped by the legislation at:

- £500 for a first time application
- £350 for renewals.

4.13 The Licensing Authority can issue a licence for a minimum of 3 months to a maximum duration of 2 years.

4.14 For the first 2 years under the new scheme it is proposed to charge businesses on a tiered scale:

	First Annual Fee	Renewal Fee
Small Businesses up to 2 tables & 8 covers	£350	£250
Large Businesses over 2 tables & 8 covers	£500	£350

and to issue licences for a maximum of 12 months.

4.15 Existing staff within the Licensing Team will be responsible for the administration and compliance checks associated with the various provisions. Resourcing will therefore need to be kept under review and may need adjustment dependent upon the number of applications and compliance issues that arise. Accordingly, it is proposed that these charges and timescales will be reviewed after 2 years to ensure that costs are not being subsidised by the A&W Councils and conversely the Councils are not raising surplus revenues.

5. Legal Implications

- 5.1 In determining this matter the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses given due weight.
- 5.2 Members must consider each licensing matter on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Local Government (Miscellaneous Provisions) Act 1982. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 5.3 All licensing matters, before a Licensing Committee, must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities.
- 5.4 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent crime and disorder in its areas.

6. Other Implications

- 6.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account.
- 6.2 There are no significant crime & disorder, equal opportunities, race relations or financial implications arising from this report. Crime & disorder, and environmental implications have been considered.

7. Recommendation

Members are requested to:

- 7.1 **Consider the pavement licensing provisions of the Levelling Up & Regeneration Act 2023 - Schedule 22 and consider the implications for A&W Councils.**
- 7.2 **Consider and comment on the attached draft statement of Pavement Licensing Policy and approve the adoption of the draft policy, with any amendments agreed at the meeting.**
- 7.3 **Approve the proposed Pavement Licence fee structure.**

Paul Brewer

Director for Sustainability & Resources

Principal Author and Contact Officer:

Simon Jones

Senior Licensing Officer - Tel: 01273 263191 or simon.jones@adur-worthing.gov.uk

Background Papers:

- Levelling Up & Regeneration Act 2023 - Schedule 22
<https://www.legislation.gov.uk/ukpga/2023/55/enacted>
- HM Govt Guidance to Pavement licences:
<https://www.gov.uk/government/publications/pavement-licences-guidance/pavement-licences-guidance>

Appendices:

- Appendix A - Draft A&W Statement of Pavement Licensing Policy

Town Hall, Worthing

Ref: SJ/Lic.U/A&WC Pavement Licensing Policy

Date: August 2024.

Schedule of other matters

1.0 Council Priority

1.1 Matter considered and no issues identified.

2.0 Specific Action Plans

2.1 Matter considered and no issues identified

3.0 Sustainability Issues

3.1 Matter considered and no issues identified

4.0 Equality Issues

4.1 Brought to the attention of members within the report otherwise no issues identified.

5.0 Community Safety issues (Section 17)

5.1 Matter considered and no issues identified

6.0 Human Rights Issues

6.1 Human rights concerns are brought to the committee's attention within the report.

7.0 Reputation

7.1 Matter considered and no issues identified.

8.0 Consultation

8.1 Consultation not required as policy simply reflects the legislation and national guidance.

9.0 Risk assessment

9.1 Matter considered and no issues identified.

10.0 Health & Safety Issues

10.1 Issues highlighted in report

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership working

12.1 Matter considered and no issues identified.



ADUR & WORTHING
COUNCILS

Adur District & Worthing Borough Councils'

Draft

Pavement Licensing Policy

Levelling Up & Regeneration Act 2023



Draft 2

Adur District & Worthing Borough Councils Pavement Licensing Policy

Levelling Up & Regeneration Act 2023

Contents

Section	Title	Page
1	Introduction	3
2	Scope	4
3	Application and Determination of Pavement Licences	6
4	Conditions	11
5	Disabled Access Considerations	12
6	Seating where smoking is not Permitted	13
7	Enforcement	14
8	Review Procedures	16
Appendix 1	Standard Pavement Licence Conditions	17
Appendix 2	National Conditions	21
Appendix 3	Local Sample Conditions/Criteria	22

1. Introduction

Adur District's area covers 4,159 hectares and comprises a light industrial coastal area with the sea and air ports at Shoreham. It has a population of 64,000 and the main residential centres are in Lancing, Sompting, Shoreham, Southwick and Fishersgate. To the north and north-west of the district, there are areas of open parkland and farmland stretching on towards the South Downs.

Worthing Borough is a compact urban seaside borough. It is one of the largest towns in West Sussex with a population of just over 110,000 covering an area of 3300 hectares.

Adur District Council and Worthing Borough Council are served by a single officer structure but remain separate Authorities.

1.1 Background

Historically, tables and chairs permissions were granted as pavement licences by West Sussex County Council's Highways Authority, under Part 7A of the Highways Act 1980. The fee varied and involved a time consuming 28 day consultation period.

The Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months while others had to significantly modify their operations. This particularly affected the food & hospitality industry. As a response to the pandemic and the restrictions imposed on the industry, HM Government encouraged businesses to trade outside where the risk of transmission was recognised as significantly reduced.

The Business & Planning Act 2020 was temporary legislation introduced to relax planning and licensing legislation to facilitate this. This temporary legislation placed the responsibility for administering a pavement licensing scheme with local councils and included a new fast track online application process allowing the use of public pavements by food & hospitality businesses to trade outside their premises with minimum delay and red tape. Despite the lifting of the Covid-19 restrictions the popularity and success of the pavement licensing regime resulted in HM's Government repeatedly extending the legislation. The current licences issued under the act will continue in force until the end of September 2024.

The Levelling Up & Regeneration Act 2023 - Schedule 22 consolidates and makes permanent the pavement licensing regime introduced as temporary legislation under the Business and Planning Act 2020. It makes a number of changes and introduces a standard fee cap for both new and renewals of licences, to make the scheme sustainable, as well as increased consultation and determination periods. It also

allows local authorities to lengthen the maximum duration of licences and provides them with new powers to remove unlicensed furniture.

The new pavement licensing scheme makes it easy for premises serving food & drink such as bars, pubs, hotels, cafes and restaurants to seat and serve customers outdoors. This includes an already established online fast-track application process for these businesses to obtain a permission from Adur & Worthing Councils enabling them to maximise their capacity, increase income, protect hospitality jobs and cater for the public's new found enjoyment of alfresco dining & socialising.

1.2 Statement of Pavement Licensing Policy

The Adur District Council & Worthing Borough Council, hereafter referred to as 'A&W Councils' or the 'Licensing Authorities', in pursuance of their duties and powers under Schedule 22 of the Levelling Up & Regeneration Act 2023, formally makes a statement as to their Policy in respect of Pavement Licensing.

The aim of the policy, which is written under the terms of Schedule 22 of the Levelling Up & Regeneration Act, is to secure the safety and amenity of residential communities while facilitating a sustainable food & hospitality industry.

This policy is to guide the Licensing Authorities in their decision making process. A&W Councils, in adopting the licensing policy, recognises both the needs of residents & visitors for a safe and healthy environment to live and work and the importance of safe and well run food & hospitality premises to the local economy and vibrancy of the District & Borough.

The policy provides guidance to applicants, objectors and interested residents on the general approach the Licensing Authorities will take in terms of licensing. Although each licence application must be considered separately on its individual merits, the Licensing Authorities in adopting the licensing policy are making it clear that wider considerations other than the fitness of the applicant and suitability of the premises can be taken into account.

2. Scope

2.1 Definition of a Pavement Licence

A pavement licence is a licence granted by the local licensing 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 and/or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, hotels, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use removable furniture placed on the highway in a designated area 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.

Businesses that do not use their premises for the sale of food or drink, for example hairdressers, salons, offices and other retail outlets are ineligible. Though they can apply to West Sussex County Council for permission to place furniture on the pavement under the Highways Act 1980.

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 and 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
- Sun 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 means it is not a permanent fixed structure, and is able to be moved easily, and stored away each evening.

The Councils expect the type of furniture to be 'in keeping' with the local area.

2.5 Type of furniture & equipment not permitted

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink is not permitted by a pavement licence. The storing of furniture on the street outside the authorised hours permitted by the licence will not be allowed. All furniture must be stored securely within the premises.

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

Businesses that wish to place non-removable furniture on the highway and or advertising boards must apply to WSCC for permission under the Highways Act 1980.

2.6 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

An application for a Pavement Licence must be made to the A&W Councils' Licensing Unit, via its online portal and the following will be required to be submitted with the application:

- A completed online application form
- Payment of the required fee by debit or credit card.
- A plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- A plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
- The proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- 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;
- Reference (if applicable) 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);
- A copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million, and
- Any other evidence needed to demonstrate how the Councils' local conditions, and any national conditions will be satisfied.

3.2 Fees

The fee required when applying for a licence under the new process is set by A&W Councils locally, but is capped at:

- £500 for a first time application
- £350 for renewals.

Initially licences will be issued for a maximum of 12 months in order to establish the costs and implications of running the new scheme.

3.3 Consultation

The public & relevant authorities will be provided with a 14 calendar day consultation period. This will exclude public holidays and will start the day after the application is sent electronically to the A&W Councils' Licensing Unit.

The Councils will publish details of the application on its website at:

<https://www.adur-worthing.gov.uk/licensing-consultations/>

A&W Councils are required by law to consult with the WSCC Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Councils will consult with:

- West Sussex Fire & Rescue Service
- Sussex Police
- A&W Councils' Place and Investment Team
- A&W Councils' Public Health & Regulation Team (incl. Environmental Protection, Health & Safety and Licensing)
- A&W Councils' Operational Waste Team
- Worthing Town Centre Initiative - Town Centre Management
- Any other authority deemed relevant to the application.

Members of the public and others listed above can contact A&W Councils' Licensing Unit to make representations. Representations must be made in writing and forwarded to the licensing unit at licensing.unit@adur-worthing.gov.uk or by post to: Public Health & Regulation - Licensing, Town Hall, Chapel Road, Worthing, BN11 1HA before the end of the consultation period. Representations received after the close of consultation cannot be considered.

A&W Councils must take into account representations received during the public consultation period and consider these when determining the application. Applications that receive no relevant representation will be deemed granted as applied for.

3.4 Site Notice

An applicant for a pavement licence must on the day the application is made, display a notice of the application outside 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 Councils.

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 Councils during the public consultation period and when that period comes to an end;
- State the Councils' website where the application and any accompanying material can be viewed during the consultation period;
- State the address to which representations should be sent during the consultation period; and
- The end date of the consultation (14 working days starting the day after the application is submitted to the authority).

A Site Notice is produced automatically by A&W Councils' application portal when the online application is made.

3.5 Site Assessment

The following matters will be used by A&W Councils and consultees in considering the suitability of the proposed application:

- Public Health & Safety

- o Ensuring that uses conform with latest guidance on crowd management measures needed as a result of a licence being granted;
- o Ensuring adequate toilet & hand washing facilities are provided to customers in accordance with the British Standard BS 6465
- Public Amenity
 - o Ensuring the proposed use will not create a nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- Accessibility
 - o 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](#)
 - Other users of the space, for example if there are high levels of pedestrian or cycle movements, and
 - The use of temporary barriers to separate the designated area from pedestrians to reduce the risk of accidents and avoid potentially causing obstruction of the footway for pavement users particularly for disabled people, older people and those with mobility needs.

Applicants are required to engage with neighbouring businesses and occupiers prior to applying to the licensing authorities and so take any issues around noise, and nuisance into consideration as part of the proposal. Applicants are also 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.

3.6 Determination

Once the application is submitted the Councils have 28 working days from the day after the application is made to consult on, and determine the application. This consists of 14 calendar days for public & authority consultation, and then 14 calendar days to consider and determine the application after the consultation.

Authorised officers of the Licensing Authorities may assess whether the site is deemed suitable for a Pavement Licence and if any representations received are

relevant and clearly show that the granting of a licence is likely to have an adverse effect on those making representation, the general public or the locality.

The authorised officer is empowered to determine the application based on the criteria set out in paragraph 3.5 above. He or she 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.

If the local authority does not determine the application within the 28 working day period, the application will be deemed to have been granted as applied for.

3.7 Approval of Applications

A&W Councils' authorised officers may approve applications meeting the criteria contained within these guidelines.

On approving the application, A&W Councils 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 Councils' standard conditions, which will be attached to all Pavement Licences, are shown at Appendix 1. Additional conditions may be attached if the authorised officer considers it appropriate in the circumstances of any particular case. A sample of these conditions/criteria can be found at Appendix 3.

The Councils generally will only permit the provision of Pavement furniture between 09:00 hrs and 22:00 hrs each day.

Applications outside these hours will be assessed in terms of the criteria detailed above. A&W Councils, however, retain the right to specify permitted hours of trading that are less or more than those specified above in appropriate circumstances.

3.8 Licence Duration

A&W Councils may determine an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the public consultation period, excluding public holidays).

The Councils will specify the duration of the licence. This will initially be for 12 months. However, it could be for a minimum duration of 3 months or up to 2 years.

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 12 months. 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.

3.9 Refusal of Applications

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

The decision of the authorised officer will be final. There is no statutory appeal process against a decision to refuse an application but A&W Councils may allow for internal review by referring appeals to the Head of Service or respective Licensing Sub-Committee.

3.10 Renewal Applications

Businesses who have a pavement licence under the previous regime and are seeking a new licence will be treated as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expiring licence.

Renewal applications will be subject to the same consultation requirements as a new licence application but the Councils will take a proportionate approach to information requirements for businesses seeking a new pavement licence where a licence exists, so that this is as convenient as possible for businesses and members of the public. An example of a proportionate approach could be allowing applicants to re-use application material from their original application, updating where relevant to ensure they still comply with local and national conditions.

3.11 Transfers

A pavement licence cannot be transferred. A new proprietor/operator, individual or company, is required to apply for a new licence.

4. Conditions

The Councils' standard conditions are set out at Appendix 1. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

Where A&W Councils have set 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 applies to all Licences. The National 'no obstruction' conditions are shown in Appendix 2.

The Secretary of State may specify conditions for pavement licences, in Regulations. This is in addition to the statutory 'no obstruction' condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 Act and 'smoke-free' seating condition.

A&W Councils may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a 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.

5. Disabled Access Considerations

The Councils will consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met.

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the Business and Planning Act 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that A&W Councils consider the needs of disabled people. In order to do this, the councils will consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances a minimum of 1.5m, but preferably 2.0m, clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- A need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, ideally a physical barrier with bollards & stretch canvas with a top rail for long cane users, or if this is not feasible, the use of hazard tape on the floor (with a colour contrast). In some cases, it may be appropriate to use one or more rigid, removable object(s) to

demarcate the area to which the licence applies, for example wooden tubs of flowers. However, 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

- 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. The available route must be entirely clear and not pass through an area with tables and chairs;
- 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, A&W Councils 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 licensing 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 don't, and foster or encourage good relations between people who share a protected characteristic and those who don't.

6. Seating where Smoking is Not Permitted

The requirement for 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 are able to sit outside, in order to protect public health.

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 which can be viewed here.](#)
- 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 2 metre distance between non-smoking and smoking areas, wherever possible.

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

7. Enforcement

7.1 Compliance with the terms & Conditions of a Pavement Licence

A&W Councils can enforce the terms of the licence or revoke the licence if a condition imposed on the licence (either by A&W Councils or nationally) is breached. An authorised Officer will be able to 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
- Take steps to remedy the breach and can take action to recover any costs of doing so.

A&W Councils Licensing Officers will regularly review licences and enforce any breaches.

A&W Councils may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

- 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.
- 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.

A&W Councils 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.

In all circumstances the Authorised Officer will provide the reasons these powers were used.

7.2 Furniture Removal

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, A&W Councils 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, A&W Councils may 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 licensing authority can dispose of the furniture by sale or other means and retain the proceeds.

7.3 Work with other Enforcement Agencies

A&W Councils aim 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 WSCC Highways Authority or Sussex 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 & Entertainment Licensing and applicants must ensure all such permissions, etc. are in place prior to applying.

When considering public health and safety, the Councils may 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 Councils will consult with Police Licensing Teams and Counter Terrorism Security Advisors for relevant advice.

8. Review Procedures

This Policy covers the Permission for Pavement Licences under the Levelling Up & Regeneration Act 2023.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licences generally or as a result of local considerations within the Adur District and Worthing Borough.

Paul Brewer
Director for Sustainability & Resources

Principal Author and Contact Officer: Simon Jones - Team Leader Licensing

Queries and advice regarding this policy and licensing in general can be accessed through:

- Website: <https://www.adur-worthing.gov.uk/licensing-and-permits/>
- Email: Licensing.unit@adur-worthing.gov.uk
- Telephone: 01273 263331

Information regarding applications can be found on the council's website at:

- <https://www.adur-worthing.gov.uk/licensing-consultations>

Adur & Worthing Councils' Public Health & Regulation - Licensing Team is based at:
Worthing Town Hall, Chapel Road, Worthing, BN11 1HS

Adur & Worthing Pavement Licence - Standard Pavement Licence Conditions

1. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that Adur & Worthing Councils and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, markets, improvements etc. or any other reasonable cause. This may mean that the pavement licence 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.
2. Adur & Worthing Councils requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Licence. This must indemnify Adur & Worthing Councils and West Sussex 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 £5 million in respect of any one incident.
3. Tables & Chairs must not be fixed and must be easily moveable and 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.
4. A-boards or any other advertising structure must not be placed at or near the premises if Tables & Chairs are provided.
5. The seating area should be 'enclosed' by a physical barrier so customers do not move chairs out into the thoroughfare and pedestrians do not inadvertently wander into the seating area. If not practical/possible the area should be clearly marked with contrasting tape (light/dark), hazard tape or road paint.
6. If no barriers are required/provided seating must be positioned so that users do not push back into the area occupied by pedestrians. Where barriers are required a clear gap should be provided between seating and the barriers around the seating area.
7. If umbrellas or awnings are provided they should not overhang the pedestrian 'safe zone' but if unavoidable they must provide at least 2.1m clearance.
8. Seating areas situated at or near road junctions must not interfere with driver and pedestrian visibility. A clear visibility splay must be maintained to allow

drivers of vehicles entering or exiting the junction. Their line of sight must not be impeded.

9. Adur & Worthing Councils and/or West Sussex County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Councils will not be responsible for its safekeeping.
10. The licence holder is not to make or cause to be made any claim against Adur & Worthing Councils in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
11. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
12. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Unit. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
13. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence, which should not, in normal circumstances, extend beyond the width of the premises frontage.
14. The licence-holder must 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 which can be viewed here](#).
 - 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 2 metre distance between non-smoking and smoking areas, wherever possible.
15. Tables and chairs must 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 Councils. Patio heaters may be used subject to a written risk assessment.

16. 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.
17. The licensee must 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.
18. The operation of the area must not interfere with highway drainage arrangements.
19. 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.
20. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc.) is 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 designated area, for a distance of up to 10 metres from the boundary of the designated area. 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.
21. 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 Adur & Worthing Councils or the WSCC Highway Authority.
22. The Licensee 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 licensed area.
23. The Licensee 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 Facility outside the hours in force for the premises itself.

24. The licence must be displayed on the premises with a plan of the agreed layout of the designated pavement area. Contact details including email and phone numbers of the responsible people must be on display so any issues can be appropriately referred. Details must include contact details of the A&W Licensing Unit must be included so issues can be reported.
25. The licensee 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.
26. 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.
27. Adur & Worthing Councils reserve the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

Draft

National Conditions

The Secretary of State publishes these conditions in exercise of his powers under section 5 of the Business and Planning Act 2020:

Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition:

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

Condition relating to smoke free seating:

Is a condition that, where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.

Guidance to ways of meeting this condition could include:

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

Adur & Worthing Pavement Licence – Sample of Further Conditions that may be applicable

Criteria	Explanation
Minimum 2.0 metre of footway to be maintained	A clear 2.0 metres must be maintained between the T&C area and the edge of the kerb or other highway infrastructure to allow pedestrians to safely pass. Where this is not clear, it must be marked with temporary tape or paint.
No A boards	A-boards or any other advertising structure must not be placed at or near the premises if T&C are provided as they are likely to be an obstruction.
Barrier is strongly recommended	It is recommended a barrier is provided between the seating area and the rest of the footway to provide partially sighted people something to assist them in passing the area safely. If not a barrier some other form of clear demarcation is required.
Chairs should not push out onto the pedestrian priority area	Seating must be positioned so that users do not push back into the area occupied by pedestrians. A clear gap should be provided between seating and any barrier around the seating area.
No seated or standing customers within 1 metre of a live carriageway.	To prevent users falling into a live carriageway no seating is permitted within 1 metre of the edge of the kerb / live carriageway. (applicable in areas where the seating is being provided with a minimum 2.0m gap between it and the establishment)
Hot food equipment to be segregated	Any equipment used to dispense / serve hot food should be segregated from pedestrians passing the establishment to avoid risk of burns.
Heating appliances	No heating appliances to be provided in these areas to avoid risk of burns
Public Liability Insurance	The minimum level of indemnity must be £5 million in respect of any one incident. However, where the seating area is adjacent to the highway £10 million cover will be required.
Visibility splays to be maintained.	At or near junctions a clear visibility splay must be maintained to allow drivers of vehicles entering or exiting the junction is not impeded.
Pedestrians to be appropriately directed if leaving the footway.	Where pedestrians are required to leave a footway to pass a pavement licence area this will be at an appropriate location. i.e. at a dropped kerb or where a suitable ramp has been provided at a full height kerb to ensure mobility impaired are not adversely affected. This will require highway authority approval.

Communal areas	Where the space allows, the seating should be considered for communal use between two or more establishments.
Contact details displayed	Contact details of responsible people must be on display so any issues can be appropriately referred.

Draft ↗

This page is intentionally left blank