

Burnley Borough Council's Pavement Licence Guidance and Conditions

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1. Introduction

Alfresco eating is becoming a more widespread aspect of urban life and the presence of tables and chairs on the pavement can make a positive contribution by adding vitality, colour, life and interest to an area. Burnley Borough Council supports and encourages the provision of pavement cafes in the borough as they can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people who visit, live, and work in Burnley.

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

As the economy starts to re-open, the Government has announced measures to help the hospitality industry recover from the coronavirus lockdown.

The Business and Planning Act makes it easier for premises selling food and drink for consumption on or off the premises, such as cafes, bars, restaurants and pubs, to temporarily seat and serve customers outdoors whilst social distancing guidelines remain in place

Currently, tables and chairs permissions are granted as Pavement Café Licences under Part 7A of the Highways Act 1980, and there is a time consuming 28 day consultation period.

The new temporary measure introduces a new 7 day consultation period and a 7 day determination period, ensuring that businesses can obtain licences in a timely and cost-effective manner aiding to their financial recovery.

Without a licence, tables and chairs placed on the highway without permission could amount to an obstruction.

Any furniture placed on the highway must be properly located and managed. Furniture must not obstruct the highway nor create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.

The area to be used must take into account other needs in the immediate vicinity e.g. kerbside parking, bus stops and pedestrian crossings. Pedestrians' needs must be paramount. The expanse of the pavement cafe must not conflict with any access or dropped crossings that are required for free passage of normal road users. Barriers and tapping rails should be positioned and maintained to the satisfaction of Burnley Council and should be removed outside the permitted hours of operation of the cafe, restaurant or bar.

The pavement cafe is normally expected to be in an area directly in front of and be visible from the existing premises. Emergency exit routes, including those of adjacent buildings, should not be obstructed by the pavement cafe and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets. In general, all parts of the highway may be used, assuming all safety and non-obstruction requirements are met. The exceptions are:

- Any carriageway or 'shared use surface'

- Any highway verge
- Where width of the pavement makes it impractical.
- Where authorised street furniture makes it impossible.

Licences will not normally be granted where;

- A significant effect on road safety would arise either from the siting of the tables and chairs, or from customers visiting or leaving the licensed area, or
- Where there are concerns over the recorded level of personal injury accidents in the locality where the tables and chairs will be sited, or
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes, or
- There is a conflict with Traffic Orders, such as waiting restrictions, or Hackney Carriage Ranks, or
- The site obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use, or
- The furniture obstructs the safe passage of users of the footway or carriageway, or
- The area to be licensed interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- The site does not allow the licence holder, staff and customers to park in a safe manner, or
- The trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
- The existing toilet and washing facilities are not adequate to accommodate an increased number of customers using the pavement cafe, or
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business or
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage of all tables and chairs off the highway without impeding any access or egress from the premises.

In considering the above matters, the standard guidance will be that a licence will only be issued if an unimpeded pedestrian route can be maintained at all times. The route shall ensure that all pedestrians and particularly those with a disability can maintain their normal path where feasible. All applications will be considered on their own merits.

The Council will carry out periodic inspections to make sure that all the terms and conditions of the licence are being observed.

2. Legal Framework and Controls

Permissions to use the highway for pavement cafes are granted by the issue of licences by Burnley Borough Council (the Council) under the Business and Planning Act 2020.

Tables and chairs placed on the highway without permission are an illegal obstruction and the Highway Authority will take enforcement action in such cases. A fine of up to

£1,000 can be levied by a Magistrates' Court for committing an offence of obstructing the highway.

Granting a licence to operate a pavement cafe does not imply an exclusive right to the area. The operator of the cafe should be aware that the Council reserves the right to gain access to the cafe area for street cleaning, repairing and maintaining the highway or street furniture. Other statutory organisations may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the licence temporarily if, for any reason, it becomes necessary.

If it appears to the Council that a person to whom they have granted a permission under the Business and Planning Act 2020, has committed any breach of the terms of that permission, they may serve a notice requiring that such steps are taken to remedy the breach as are specified in the notice within such time as is so specified.

If a person who is served a notice fails to comply with the notice the Council has the power to take whatever steps are necessary, themselves. Where the Council has incurred expenses in the exercise of the power, then those expenses, together with interest at a reasonable rate, may be recovered by the Council from the Licence holder.

The Pavement Cafe must operate in accordance with the conditions of the licence. Any breach of the conditions may lead to action by the Council to revoke or refuse a licence in the future.

The Council will not permit any wheeled refuse containers, beer kegs, bottle crates on or adjacent to the pavement cafe area.

The barriers, table, chairs, and layout shall meet government COVID-19 secure guidance and shall conform to the approved plan at all times.

The premises should not place A boards or advertising signs or any other unsightly or unapproved items adjacent to the area.

The Licence holder shall make no claims or charge against the Council in the event of the furniture etc being lost, stolen or damaged in any way from whatever cause except where the same is attributable to negligence on the part of the Council or any of its officers.

If for whatever period or reason a public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.

The licence holder shall not cause or undertake any alterations to the highway surface.

The licence holder shall not assign, sub-let or part with his interest or possession of a licence.

The Council may suspend or terminate a licence if any of the conditions of the licence are breached.

The licence does not take precedence over Police powers to preserve public order.

3. Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence.

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

A pavement licence does not exempt the business from requiring any other relevant authorisations such as food safety registration, premise licence (if alcohol is to be served), planning permission for permitted use of the premise etc.

4. Private Land

Pavement Licences can only be granted in respect of areas of the public highway.

5. Planning Permission

Once a licence is 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.

6. Right of Access

Authorised Officers of the Council and Police Officers shall have access to a pavement cafe at all reasonable times.

7. Advertising

Advertising of alcoholic or smoking products or their manufacturers will not be permitted on the barriers or furniture within the Pavement Cafe area. Advertising may only relate to the premises or business and will require the approval of Burnley Council.

8. Designing the Pavement Cafe

Pavement space will only be suitable for use as a café in situations where pedestrian traffic can safely be maintained.

The size and layout of the proposed Pavement Cafe will be dependent upon the characteristics of the site outside of the premises particularly the space available taking into account the needs of other users and it is not appropriate for this guidance to set a standard size for the Pavement Cafe.

Plans will need to be submitted with an application and shall be drawn to scale and must include:

- Site layout plan (1:100 or 1:50 scale) showing the proposed boundary, kerb and building lines, enclosure barriers, points of access, table and seating layout, location of parasols, etc.

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.

The Pavement Cafe should:

- occupy an area directly in front of the Applicant's premises;
- be visible from these premises; and
- Not extend beyond the width of its frontage (unless in exceptional circumstances and granted by the Council).

Emergency routes from adjacent buildings and the Applicant's premises should not be obstructed by the Pavement Cafe. If the emergency services object to the proposal on safety grounds, it is very likely that the Council will refuse it.

9. Minimum Unobstructed Space Criteria

On a normal street, there must remain at least 1.8 metres of unobstructed space between the carriageway and the front of the pavement cafe to allow pedestrians to pass by safely.

On streets with high pedestrian usage, there must remain at least 2.75 metres of unobstructed space.

Each case will be judged on its merits and the unobstructed space will be set between 2.0 and 2.75 metres according to the frequency of pedestrian usage and other relevant parameters. This requirement may however be waived by the Council in certain locations but ultimately, the decision will be made on safety grounds.

10. Mandatory Conditions Imposed by the Secretary of State

It is a National 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](#).

It is a National Condition that where smoking is permitted there is requirement to make reasonable provision for smoke-free seating.

11. Lighting

The Applicant for a pavement cafe licence should, if intending to open beyond dusk, carefully consider the level of lighting in the proposed pavement cafe area. Whilst street lighting may be perfectly adequate for a public highway, it may need supplementing to allow the pavement café to operate safely. Any additional lighting equipment and supply must be specified in the application to enable its impact upon the highway to be considered and not cause nuisance to neighbours.

12. Tables and Chairs

Tables, chairs and other furniture shall be spaced to meet government COVID-19 secure guidance and contact points should be thoroughly cleaned and sanitised before each customer use. Furniture should be of a neutral colour scheme e.g. chrome, brushed

aluminium, black, brown, beige, grey or white, with natural or neutral stained timber or wicker detailing; all must be fitted with rubber feet to reduce noise when moving and damage to paved surfaces.

The Council reserves the right to reject applications where inappropriate furniture is proposed. When choosing furniture regard needs to be had of the highway surface on which it will stand uneven or sloping surfaces may require more sturdy styles of furniture and tables and chairs with narrow or thin legs may cause damage to certain paving.

13. Parasols

If parasols are to be used, then their metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan. Gazebos will not be permitted.

Parasols, when opened, should be safely secured and contained entirely within the boundaries of the pavement cafe to ensure they do not cause an obstruction or present a danger to any user of the pavement cafe or any other users of the highway.

The design and colour of parasols will not be restricted to a particular type but they should be made of high quality materials and fabric and be of a uniform design and colour. The base of the parasol must not cause a trip hazard in the pavement cafe area. No canopy shall be lower than two metres in height.

The only advertising permitted on parasols is the name of the cafe/ business. Such advertising must not be too dominant and should not detract from the appearance of the building and its setting, especially in conservation areas. Parasols advertising alcohol or tobacco will not be allowed.

14. Space Heaters

In accordance with the resolution of Full Council on 30th July 2020, outside heaters are prohibited within the pavement café area. This decision was taken due to concerns about their impact on the environment.

15. Barriers

Barriers or other means of enclosure are required in order to ease/ guide pedestrian movement, guide the visually impaired, protect users of the facility and mark the boundary of the licensed area.

The agreed pavement cafe boundaries shown on the plan that will be attached to the licence must be adhered to at all times. The boundaries are required to be enclosed by either barriers or planters. These must be portable.

It is essential that the means of enclosure is fit for purpose and suitable for the terrain in which that the pavement cafe operates. Should the Council deem barriers unsafe, we may ask that the tables and chairs be removed until suitable barriers are provided.

The means of enclosure must:

- Be stable and sturdy for all weather conditions the pavement cafe will operate in, including windy conditions. Additional weights may be necessary to ensure barriers remain stable and secure;
- Not contain protruding parts;
- Have a tapping rail along the bottom of the barrier that visually impaired pedestrians can use to navigate around the pavement cafe using a stick;
- Only display the name of the cafe/ business. They must not be used to advertise products or services. No alcohol advertising or tobacco is permitted. Proposed details of means of enclosure must be provided with the application.
- Hoops or post and chain type barriers and low-level objects will not be acceptable.

Barriers must not be permanently fixed to the ground where this is public highway

16. Managing the Licensed Area & Insurance

The licensee will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the highway under the permission granted. The Council will, therefore, require the licensee to take out third party public liability insurance in the sum of at least £2,000,000.

17. Hours of Operation

Hours of operation will be determined on the merits of the individual application, but will not normally exceed the maximum period of 9:30hrs to 21:00hrs. All furniture should be removed outside of the licensed period.

Licences are granted for a maximum of one year and are renewable annually. Licences for new sites will be subject to a three-month probationary period.

The Licence shall be displayed in the window of the premises to which it relates.

A copy of plan must be kept on the premises at all times and be available for inspection. When the area covered by a pavement licence has been agreed, a definitive plan of the area showing the boundaries and the dimensions will be attached to, and form part of, the Licence.

18. Granting of a licence

A Pavement Licence ('the Licence') is granted by Burnley Borough Council ('the Council') as the licensing authority for the Burnley Borough.

Applications should be submitted by the prospective Licensee.

A pavement cafe licence permits the approved Licensee to operate a pavement cafe serving food and beverages within a defined area ('the Licensed Area') and to a defined list of general conditions regarding use as set out at Appendix 1 of this document.

Notice of any application for a new licence shall be displayed in the window of the premises to which it relates for a period of no less than 7 days.

These notices set out details of the proposals and invite representations to be made by people who may be affected. The Council must make a determination of the application within 7 days following the last date for representations.

There is no right of appeal against the refusal of a licence.

Appendix 1

Conditions Attached to a Pavement Licence

Please note that these conditions are not an exhaustive list, and each application will be considered on its own merits and individual, specific conditions may be attached where deemed appropriate.

General

- 1.0 The Licence will have effect for 12 months unless surrendered or revoked earlier.
- 2.0 The issue of a Licence does not give or imply any permission to supply intoxicating liquor in the street.
- 3.0 The Licence shall be displayed in the window of the premises to which it relates.
- 4.0 The Licensed Area shall be vacated immediately if requested by the Council, Lancashire County Council as Highway Authority, Lancashire Constabulary or other emergency service, statutory undertaker etc. without any liability for compensation, refund of application fee, or damage arising.
- 5.0 The Council reserve the right to request the clearing of the Licensed Area if required for special one-off events for public safety.
- 6.0 The Licence shall be rendered invalid, should the Licensee cease to own the premises or cease employment.
- 7.0 The Licensee shall indemnify the Council and shall produce to the Council's Licensing Manager for inspection a policy of insurance indemnifying himself and the Council against any injury or damage to any person or property and against any claim liability expense or damage arising by reason or in consequence of the permission granted. The policy shall provide cover of not less than £2,000,000 in respect of any one accident or series of accidents arising from one incident unlimited during the period of the insurance.
- 8.0 Where the Council has received representation from the Lancashire Constabulary or an authorised officer of the Council, and believes that any breaches of conditions are serious enough in nature to warrant it, and could lead to public disorder, or affect public safety, revocation or suspension of the permission may take immediate effect.
- 9.0 Upon expiry or revocation of the permission the Licensee shall remove any structures from the highway and reinstate the highway to its former state and condition and in default thereof, the Council will be empowered to carry out such work of reinstatement and recover the expense in so doing from the Licensee.

Operational

- 10.0 A Covid-19 risk assessment should be in place.
- 11.0 Cleaning, handwashing and hygiene procedures should be in place.
- 12.0 All customers using the area must be seated except for the purpose of access and egress.
- 13.0 For streets with footways and carriageways, the maximum width of any licensed area shall not exceed one third of the usable width of the footpath. A minimum unobstructed footpath width of 1.8 metres must be provided for safe and convenient pedestrian movement. This distance being, measured from the edge of the licensed area to any significant amount of street furniture (such as lamp posts, bollards, parking meters etc.). Where there is a heavy pedestrian flow additional footpath space may be required.
- 14.0 For pedestrianised streets a minimum width of 1.8 meters or two thirds of the total width of the public highway, whichever is the greater, must remain free and unobstructed to facilitate pedestrian movement. This figure may be increased where there is a heavy pedestrian flow. The unobstructed route shall fall equally either side of the centre line of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street.
- 15.0 A clear direct pathway of at least 1.2 metres wide shall be maintained to allow entry and exit from building premises.
- 16.0 Only the Licensed Area shall be used for trading.
- 17.0 Where tables and chairs are proposed directly outside a shop front, a well designed and constructed physical barrier or roped area of approximately 0.8 metres in height is required to designate the area and to guide persons with sight disability around the use. Such barriers must not be permanently fixed to the ground and must be of a style, design and type to be agreed by the Councils Planning Department.
- 18.0 Only tables, chairs, parasols and articles associated with the outdoor consumption of food and drink shall be placed within the licensed area. Space heaters are expressly forbidden.
- 19.0 Tables and chairs etc shall be durable and suitable for outside use. No damaged furniture should be used.
- 20.0 The design of all chairs, tables, parasols, etc. shall be subject to the approval of the Council's Planning Department, and such street furniture together with associated outdoor and pavement areas including an area of 1 metre around the Licensed Area must be regularly cleansed and floor debris and other'

waste immediately removed to the satisfaction of the Council's Head of Streetscene.

- 21.0 Tables, chairs and parasols shall not be positioned so as to obstruct sight lines for drivers of vehicles at junctions.
- 22.0 No canopy or parasol shall be lower than two metres in height and shall be adequately secured.
- 23.0 All furniture should be removed outside of the licenced hours which will be 09.30hrs to 21.00hrs unless expressly indicated otherwise on the licence.
- 24.0 Suitable storage for pavement cafe furniture shall be identified by the applicant at the time of application for a licence.
- 25.0 There must be adequate provision made for the collection and containment of litter and, where directed, the Licensee must provide suitable litter bins.
- 26.0 The Licensee will ensure that the designated area is maintained in a clean and tidy condition. The Licensee shall also take appropriate precautions to prevent the immediate highway from becoming littered as a result of trading activities.
- 27.0 The Licensee shall at all times when the pavement cafe is in operation make available for customers toilets and hand washing facilities, to wheelchair accessible standards where it is practicable and reasonable to do so.
- 28.0 The Licensee will be responsible for the conduct of customers. They must not be a nuisance or annoy users of the highway or tenants of adjoining premises. The licence holder must take all reasonable steps to mitigate issues affecting the amenity of adjacent business and residential occupiers.
- 29.0 No speakers or playing of music shall be permitted.
- 30.0 No lighting shall be sited so as to be to the detriment of highway users or neighbours.
- 31.0 No electrical cables shall be run along the ground in such a way that they create a trip hazard or are susceptible to mechanical damage.

Alcohol licenses only

- 32.0 Where intoxicating liquor is permitted to be served or consumed in the licensed area polycarbonate glasses must be used at all times.