

Applications for use of the Highway under The Business and Planning Act 2020

Under The Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021, temporary pavement licences can be issued for a period of not less than three months and can have effect until 30 September 2024.

This temporary process provides a streamlined route for businesses such as cafes, restaurants, and bars to apply for a licence to place furniture on the Highway.

How can I make an application?

Applications must be made on the application form provided on the Council's website and must be supported by the provision of the following documents/information:

- A location plan which clearly shows the location of the premises and the part of the pavement to which the application relates (please indicate this in red on the plan). Smart phone or google street view images are acceptable.
- A separate, detailed, plan clearly showing the proposed pavement café area. We are happy to accept drawings which are not to scale or professionally drawn by measurements must be clearly shown, and you must include the proposed layout/positioning of the tables and chairs and other furniture.
- Enclose a copy of suitable Public Liability Insurance that covers the proposed pavement café area – please note cover must be no less than £5,000.000.
- Provide photos or brochures (if appropriate) of the proposed furniture.
- You must actively seek consent from adjoining premises if your proposed area crosses across any other premises/property.
- On submission of all required paperwork, an Officer will call you to take payment of £100.00. Please note, the fee is non-refundable regardless of whether the application is ultimately successful.

In order the Council can assess your application as quickly as possible, please complete all relevant sections of the application form and provide as much relevant detail as possible. Your application will not be deemed to be complete until a correctly completed application form is received, along with required supporting documents/information and the fee.

What happens after I make a complete application?

- The day after the application is submitted to the Council, you must put place a Notice at or on the premises concerned for the period of 5 consecutive working days. The Notice must be

sited in a prominently position, so that it can be easily seen by passers-by. A template notice is provided on the Council's website: Apply for temporary use of highway land - Torbay Council.

- You are required to take a photograph of the Public Notice once in place and email to the Licensing Department at: tempopenspace@torbay.gov.uk.
- During the period specified on the Notice, representations may be made to the Council.

Should the Council become aware that your Notice was not put in place in accordance with Regulations, or where it is in receipt of representations about the proposed pavement café area during the consultation period, or once permission is granted, it reserves the right to immediately withdraw any consent to use the Highway.

Will my Licence be subject to conditions?

The Business and Planning Act 2020 sets out two conditions: a no-obstruction condition and a smoke-free seating condition which apply to pavement licences which are granted or deemed to be granted. For more information, please see the Ministry of Housing, Communities and Local Government' Guidance: Guidance: pavement licences (outdoor seating) - GOV.UK (www.gov.uk).

The Council expects Applicants to have carefully considered how they will satisfy these two requirements and to have regard to impacting local requirements, which are explained in more detail below.

Each application for a licence under The Business and Planning Act 2020 will be assessed on its own merits in accordance with Torbay Council's 'Pavement Café Policy', though with shorter timescales being applied. The Council's Pavement Café Policy can be found here: Pavement Licence - Torbay Council.

The Council when assessing your application will want to be sure that your proposed furniture is fit for purpose, that customers and your staff can move safely and comfortably within the proposed pavement café area, that the visual impact of the furniture is in keeping with the area and that your plans do not pose any risk to the public. While not an exhaustive list of considerations, Applicants are advised to note the following.

- A minimum 2m width of unobstructed footway must usually remain available to passing pedestrians (considering street furniture, streetlights etc.) In areas of high foot fall more than 2m of unobstructed highway may be required to allow for the safe distancing of pedestrian traffic.
- It is the Applicants' responsibility to assess the layout of the customer seating area in relation to any government social distancing guidelines which may be in place at the time.
- Plastic garden furniture or picnic benches are not permitted. Tables and chairs should be selected to ensure:
 - that you can store them securely on your premises
 - that their visual impact is in keeping with the area
 - they are easy to clean, and are kept clean
 - they do not pose any risk to the public

- Gazebos or any type of canopy covering are not permitted except for parasols. Parasols need to be securely fastened. They must be high enough (minimum 2.1m) not to injure pedestrians and must not overhang the Highway beyond the consent area.
- Patio heaters may be allowed but applicants will be asked to provide additional safety documentation.
- Furniture must not be stored on the Highway outside of the times specified on the licence or when the premises is closed.
- A-boards, while permitted, must be kept within the temporary consent area or if applicable in your existing consent area.
- Amplified music, either live or recorded, is not permitted on the Highway.

If the holder of a permission granted under the Business and Planning Act 2020 does not comply with the terms and conditions of the consent, it will be withdrawn. Any furniture or other articles placed on the Highway will be removed by the Council and the owner charged for removal and storage.

Changes to existing licences

Businesses who have existing pavement café licences and wish to consider expanding the area to accommodate additional customers may apply under this process.