

# OADBY & WIGSTON BOROUGH COUNCIL

## BUSINESS AND PLANNING ACT 2020

### TEMPORARY FAST-TRACK PAVEMENT CAFÉ PROCEDURE



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**Oadby & Wigston**  
BOROUGH COUNCIL

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## 1.0 Introduction

The Council has adopted a Pavement Café Policy to help promote vibrant and diverse areas of the town for people to enjoy.

Many businesses have had to cease trading for several months, and others have had to significantly modify their operations. The Business and Planning Act 2020 introduces a number of urgent measures to help businesses selling food and drink to recover and to temporarily ease some of the legislative requirements in relation to planning and licensing. Social distancing guidelines remain in place.

The measures are designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a "pavement licence" for the placement of furniture such as tables and chairs on the public highway outside their premises. Permission is not required for private land not on the highway.

To support local businesses, and in line with the Government position, the Council has introduced a temporary pavement café procedure. This will help businesses to use outdoor space, which forms part of the public highway, provided that the area is available and suitable for them to do so.

## 2.0 National Position

The Government has set out guidance on the temporary pavement café process:

<https://www.gov.uk/government/publications/pavement-licences-draft-guidance/draft-guidance-pavement-licences-outdoor-seating-proposal>

A copy of the Business and Planning Bill is available:

<https://services.parliament.uk/Bills/2019-21/businessandplanning.htm>

Regard should be given to the legislation and Government guidance.

## 3.0 Use of the Public Highway

It is a standard 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. This will be included as a condition of the licence.

The Council will look to proactively engage with businesses around the use of the public highway. It is important that we also use the public highway to enable people to move safely around, whilst respecting social distancing. We will endeavour to work with businesses to help them to identify suitable areas of the public highway, where this is possible.

Enquiries can be sent to [licensing@oadby-wigston.gov.uk](mailto:licensing@oadby-wigston.gov.uk).

## 4.0 Who Can Apply?

A business which uses (or proposes to use) premises for the sale of food or drink for consumption can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

## 5.0 I Have an Existing Licence – Can I Alter or Extend it?

Businesses that are requested to move their existing area to allow the Council to maintain pedestrian flow and social distancing, and where alternative locations exist, will be allowed to temporarily modify their licence subject to determination by the Licensing Officer.

Businesses who have existing pavement café licences and who wish to consider expanding the area to accommodate customers, whilst following social distancing guidelines, will be able to follow the same process as a new Temporary Pavement Café Licence (TPCL). It is strongly recommended that you seek pre-application advice.

## 6.0 How to Apply

Businesses will be able to apply for a free TPCL or to vary their existing licence. This should be submitted only to [licensing@oadby-wigston.gov](mailto:licensing@oadby-wigston.gov). Areas not on the public highways do not require a TPCL but you will require the permission of the land owner.

Businesses will be asked to confirm their agreement to the conditions of the licence in the application form. Evidence of public liability insurance must also be provided and a suitable site plan. The business must also be registered as a food business.

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority. When counting 'working days' public holidays are not included. Applicants are encouraged to keep evidence of this. A draft notice is available on our website.

## 7.0 Do I Need to Amend my Alcohol Licence?

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence. The default hours in which off-sales will be permitted will be the same as those in which on-sales are permitted. Licensees who have had an application for an off-sales

permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension.

## 8.0 Determining the Application

Once the information is submitted the Council has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

We aim to determine all applications within this period. However, if the application has not been determined within the 10 working day period, the application will be deemed to have been granted.

The designated officer 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 (there is no right of appeal for a temporary licence).

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.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

## 9.0 Respecting Residents

We are keen to support businesses to recover but it's important that we respect residential amenity and that nearby residents are not unduly disturbed by the use of TPCLs. The business in seeking a TPCL is therefore required to agree to the TPCL conditions, which include steps to protect residential amenity; including: hours restrictions, no vertical drinking, defined areas, the need to remove tables and chairs at the end of the trading period and the need to keep areas free of litter.

We will respond to any complaints received and liaise with the business to address any undue disturbance.

## 10.0 How can Members of the Public make Representations?

Members of the public can make representations to [licensing@oadby-wigston.gov.uk](mailto:licensing@oadby-wigston.gov.uk).

We will consider relevant representations during the consultation period, which is the period of 5 working days starting the day after the application is submitted (excluding public holidays). The application will be determined on its relative merits having regard to the relevant representations.

We will publish the application and the deadline for representations on our website.

## 11.0 Enforcement

If a condition imposed on a licence is breached, the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The Council reserves the right to revoke a licence for the following (this is not an exhaustive list):

- A breach of condition
- Risk to public health and safety
- Obstruction of the highway
- Anti-social behaviour or public nuisance
- False or misleading statements in the application and failure to affix the notice for the relevant period.

The Council also reserves the right to revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable.

Applications are to be made via our website.

# Appendix 1: Conditions

## **NATIONAL CONDITION**

### **Annex A: National condition**

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] 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](#).

## **LOCAL CONDITIONS**

### Use of the area.

1. The licence holder will be responsible for ensuring that the designated area is set out and managed in a way that maintains appropriate levels of social distancing during Covid-19 restrictions as defined by Government Guidance.
2. A minimum 2m width of unobstructed footway must remain available to passing pedestrians (taking into account street furniture, street lights etc.) In areas of high foot fall more than 2m of unobstructed highway may be required to allow for social distancing of pedestrian traffic.
3. All customers using the pavement café will be required to be seated.
4. It will be the responsibility of the licence holder to keep the licensed area clean and free of litter, during licensed/operational hours. Commercial waste from the licence holder's operations must not be disposed of in the litterbins provided by the Council or in the litterbins provided by the licence holder in the licensed area.
5. Licence holders will be required to remove any umbrella or parasol if it obscures CCTV coverage and interferes with the detection and prevention of crime and disorder.
6. The licence holder shall ensure that the pavement café area is properly supervised by a member of staff at all times the pavement café is open.
7. Alcoholic drinks must be served in polycarbonate or shatterproof glasses where available.
8. No amplified music is allowed in the pavement café area.



9. Use of the Pavement Café area must cease by 22.00hrs in a mixed residential area and 23.00 hours in all other areas.
10. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis.
11. Applicants shall seek to maintain a smoke free environment.

#### Management of the highway.

12. Tables and chairs shall not be affixed to the highway.
13. Furniture should be safely removed at the end of the specified trading period and be stored away from public areas in such a location where it is safe, secure and unable to be accessed by members of the public.
14. The area should be demarked by suitable barriers that protect the safety of pedestrians and users. A tapping rail (of at least 150mm depth) fixed at a height no more than 200mm above ground level shall be provided.
15. Where repair, maintenance or alteration of the pavement/highway is to be undertaken, the Council will endeavour to give the licence holder notice unless it is urgently required as a Covid 19 control measure. The Council will not be liable for any loss of earnings whilst repair/maintenance is carried out. The licence holder must allow the Council reasonable access for such works.
16. The licence holder will be responsible for any damage, including stainage, to the highway.

#### Compliance and Enforcement.

17. The Council reserves the right to suspend/revoke the licence in the event of a breach of any term or condition, or when it deems that the area is no longer suitable. The granting of a temporary licence does not convey any ongoing legal entitlement to use the highway.
18. The Council shall be entitled to suspend the temporary licence on the occurrence of a special event, as a Covid 19 control measure, or any other circumstance, which the Council considers to necessitate a temporary suspension.

#### Legal

19. The licence holder shall indemnify the Council against all actions, proceedings, claims, demands and liability which may at any time be taken, made or incurred in consequence of the use or presence of the chairs and tables and other objects.
20. The licence does not authorise any unlawful interference with the convenience of persons using the highway or affects the rights of owners of the premises adjoining the highway or the rights of the Utility Companies. You must give access to emergency services.



21. The subletting of the permission granted by the licence is prohibited.

22. Licence holders are required to obtain public liability insurance covering the business for up to £5,000,000 at all times the pavement café is operational. It is the responsibility of the licence holder to forward up to date copies of insurance certificates as and when they expire. Failure to comply with this condition can constitute an offence under the pavement café policy and enforcement action can be taken.

23. The grant of a pavement café licence shall not be deemed to give any approval or consent which may be needed under any byelaw, enactment or regulation other than cafes under section 115c of Part VIIA of the Highways Act 1980. For the avoidance of doubt this includes the requirement to seek and obtain planning permissions and/or advertisement consent.

