# **Pavement Licence Conditions**

# General Information

This Pavement Café Licence is granted under The Business and Planning Act 2020 as amended by the Levelling Up and Regeneration Act 2023.

This licence is issued to the individual(s) or Company named on it and is non-transferrable. Granting of the licence permits the placing of tables and chairs and associated furniture (as permitted) only and does not absolve the holder(s) from any requirements under any other legislation e.g. a Premises Licence in respect of the sale or supply of alcohol and/or late-night refreshments or planning consent where this may be required.

This Pavement licence is granted only for the period shown on the Licence.

Pavement Licences are subject to conditions; rules that have to be followed by the licence holder. It is important that all conditions are complied with. Where the Council considers that one or more have been breached, it has the power to take enforcement action, which includes complete revocation of the licence.

There are two **compulsory**, or ‘**national**’ conditions that all licences will have (further details below), along with **local conditions** which will apply to all licences, including those that are deemed to have been granted. In addition to this, the Council can also attach any conditions that it thinks are reasonable in any particular case.

# National conditions

**1. No-obstruction condition**

Nothing must be done by the licence-holder (or any other person which is enabled by the licence) to:

a) prevent traffic, other than vehicular traffic, from:

(i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),

(ii) passing along the relevant highway, or

(iii) having normal access to premises adjoining the relevant highway

b) prevent any use of vehicles which is permitted by a pedestrian planning order, or which is not prohibited by a traffic order,

c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or

d) prevent the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.

Particular regard must be had to the needs of disabled people, and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State. This ‘Inclusive mobility’ guidance can be found here: <https://www.gov.uk/government/publications/inclusive-mobility/inclusive-mobility>

Section 3.1 of the ‘Inclusive mobility’ guidance sets out a range of recommended widths which would be required, depending on the needs of particular pavement users and states that: ‘a *clear width of* ***2000mm*** *allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints* ***1500mm*** *could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another’.*

**2. Smoke-free seating condition**

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.

In considering for any purposes whether a licence holder has made reasonable provision for seating where smoking is not permitted, a local authority must have regard to the [guidance issued by the Secretary of State.](https://www.gov.uk/government/publications/pavement-licences-guidance)

# Local conditions

Use and Maintenance of the Highway

1. The Licence Holder/s shall not make any excavations or indentations of any descriptions whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
2. The Licence Holder/s retains responsibility for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the Pavement Café activity. The permanent surface reinstatement shall be carried out to the satisfaction of Torbay Council, at the applicant's expense and guaranteed for a minimum period of two years.
3. The Licence Holder/s shall indemnify Torbay 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 and for this purpose must take out at the Licence Holder’s expense a policy of insurance approved by the Council in the sum of at least £2,000,000 in respect of any one event (£5,000,000 total cover) and must produce to the Council on request the current receipts for the premium payment and confirmation of the renewals of the policy.
4. The Licence Holder/s shall not place on the highway any furniture or equipment or advertisement other than as permitted by Torbay Council and must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.
5. Notwithstanding the specific requirements in Condition 6 above, the Licence Holder/s shall not do or suffer anything to be done in or on the highway which in the opinion of Torbay Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the said Council or the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
6. The Licence Holder/s shall suspend the operation of the Pavement Café at the request of an Authorised Officer of the Council to enable any street works to be carried out on or near the permitted location. Such works (unless due to an emergency or unforeseen circumstance) shall be notified to the licence holder(s) in advance.
7. Where repair or maintenance of the pavement/highway is to be undertaken, Torbay Council will not be liable for any loss of trade and/or income whilst repair/maintenance is carried out and cannot reimburse the fee paid or any part of it. The Licence Holder/s must allow the Council reasonable access for such works.
8. The Licence Holder/s recognise that Torbay Council shall be entitled to suspend the licence on a temporary basis on the occurrence of a special event, as a result of police intelligence to avoid instances of disorder or the potential for disorder, or for any other circumstance which the Council deems necessary. Torbay Council shall not in any circumstances whatsoever be liable for any loss of trade and/or income or refund any fees (or part thereof) to the Licence Holder/s in respect of such a suspension.

Delineation of Pavement Cafe Area & Use of Furniture

1. The Licence holder/s shall, before exercising the privilege granted by this licence, place removable physical barriers within the perimeter of the area so indicated on the attached plan to the Licence which must be to the satisfaction of Officers of the Licensing Team and shall ensure that such barriers must remain in place during all times that the Pavement Café is in use and the licence holder(s) shall ensure that such barriers are removed at the end of each daily period of use and at the expiry, surrender or revocation of this Licence.
2. Tables and chairs shall not be affixed to the highway and should not be stored on the highway when they are not in use, e.g. before or after the Pavement Café is open. When not in use, tables and chairs must be stored in the premises, or in a private outdoor area, such as a garden.
3. Furniture should be safely stored away from public areas at the end of each daily period of use in such a location where it is safe, secure and unable to be accessed by members of the public.
4. If planters are being used as delineators, these should either be permanent highway street furniture which are either pre-existing or for which full planning permission/highways permission has been obtained or removable tub style ones. Unless permanent and benefitting from the appropriate planning/highways consent, these must not be left on the highway outside of permitted hours.
5. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis and not be exposed in such a way that they are a trip hazard. In cases where such heaters (or similar) are used, it will be expected that there will be an adequate risk assessment to cover such use, including (but not limited to) fire and public safety matters. The risk assessment must be produced to an authorised officer of the Council or any Police/Fire officer upon request.

Management of the Pavement Café

1. All customers using the Pavement Café will be required to be seated.
2. Where a Pavement Café Licensed Premises also holds a Premises Licence under the Licensing Act 2003, all conditions of the Premises Licence will apply to the Pavement Café area in addition to the Pavement Café Standard Conditions.
3. The licence holder/s shall ensure that all drinking glasses in which drinks are served shall be of strengthened glass and no drink shall be served in a glass bottle from which it is intended or likely that a customer shall drink.
4. The Licence Holder/s shall ensure that adequate supervision by means of a waiter/waitress service is provided over the permitted area during the times of operation.
5. The Licence Holder/s shall maintain the area shown on the plan attached to this Licence and the immediately adjacent area in a clean and tidy condition during the permitted hours and shall leave the same area/s in a clean and tidy condition and unobstructed at the end of each daily period of use and on revocation or surrender of this permission.
6. The Licence Holder/s shall provide litter bins or similar receptacles for the deposit of cartons, wrappers, containers and similar discarded items and ensure that bins/other receptacles are emptied daily or shall ensure that staff members regularly clear tables within the licensed area.
7. The Licence Holder/s shall remove all furniture or equipment, litter bins or other articles placed on the highway in accordance with this Permission at the end of each daily period of use and at the expiry, surrender or revocation of this Permission.
8. The Licence Holder/s shall ensure adequate and unobtrusive lighting is made available in the Pavement Café area.
9. The Licence Holder/s shall not prepare or store food or beverages outside the main business premises (i.e. not in the Pavement Café area). This Condition may be varied only with the written consent of an Authorised Officer of Torbay Council.

Duty to Display & Produce Licence

1. The Licence Holder/s shall ensure that a copy of the Pavement Café Licence and accompanying Conditions is at all times on prominent display within the Pavement Café premises.
2. The Licence Holder/s shall produce this Permission on demand when so required by an Authorised Officer of Torbay Council a Police Officer or a Police Licensing Officer.

Duty to Notify Council of Changes to Licence or Holder/s Information

1. If the named Licence Holder changes his/her/their personal details (e.g. name or address), the Licence Holder is obliged to notify Torbay Council in writing of the specifics of those changes within 5 working days of that change.
2. The Licence Holder/s must notify Torbay Council’s Licensing Team in writing of any changes to any part of the Pavement Cafe operation, including furniture, other items, and area or operating hours, prior to making any such change. Such changes may necessitate the Licence Holder/s to apply for a new licence.
3. If following revocation, surrender, suspension or lapse of a licence, any equipment, fixtures or furniture remains on the highway, this will be regarded as unauthorised obstruction of the highway and will be dealt in line with the Council’s Policy on unauthorised Pavement Café areas.
4. In cases where a Pavement Café Licence is revoked, surrendered or lapsed, permissions may only be reinstated following an application and subsequent granting of a new licence. Where a Pavement Café Licence is revoked, the Council will not refund the fee paid for that licence or any part of it.

**Unauthorised Pavement Cafes or breaches of the above conditions may result in revocation of the licence or the Local Authority may issue formal written Notice under the Business and Planning Act 2020 (see notes below). Failure to comply with such a notice may result in the forced removal of any obstruction of the Highway by authorised officers of the Council and offenders will be liable for the costs associated with removal and storage.**

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**Notes:**

Section 6 of the Business and Planning Act 2020, provides as follows:

#### **Enforcement and revocation**

(1) If the local authority by which a pavement licence is granted or deemed to be granted considers that the licence-holder has breached any condition of the licence, the authority may:

(a) revoke the licence, or

(b) serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.

(2) If a licence-holder on whom a notice is served under subsection (1)(b) fails to comply with the notice, the local authority may:

(a) revoke the notice, or

(b) take the steps itself and recover the costs of doing so from the licence-holder.

(3) A local authority by which a pavement licence is granted or deemed to be granted may also revoke the licence if it considers that:

(a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,

(b) as a result of the licence:

(i) there is a risk to public health or safety,

(ii) anti-social behaviour or public nuisance is being caused or risks being caused, or

(iii) the highway is being obstructed (other than by anything done by the licence- holder pursuant to the licence),

(c) anything material stated by the licence-holder in their application was false or misleading, or

(d) the licence-holder did not comply with the duty in section 2(5).

(4) A local authority by which a pavement licence is granted or deemed to be granted may, with the consent of the licence-holder, amend the licence if it considers that:

(a) the condition in subsection (3)(a) or (b) is met, or

(b) a no-obstruction condition of the licence is not being complied with.

#### **7A Enforcement**

(1) The following provisions of this section apply where:

(a) a person puts removable furniture on a relevant highway for a purpose specified in subsection (2) and

(b) the person is not authorised to do so.

(2) The purposes referred to in subsection (1)(a) are:

(a) use of the furniture by the person to sell or serve food or drink supplied from, or in connection with relevant use of, premises which are adjacent to the highway and are used or proposed to be used by the person;

(b) use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of, such premises.

(3) The local authority may by notice require the person:

(a) to remove the furniture before a date specified in the notice, and

(b) to refrain from putting furniture on the highway unless authorised to do so.

(4) If the person leaves or puts removable furniture on the relevant highway in contravention of the notice, the local authority may:

(a) remove the furniture and store it,

(b) require the person to pay the authority’s reasonable costs in removing and storing the furniture, and

(c) refuse to return the furniture until those reasonable costs are paid.

(5) If within the period of three months beginning with the day on which the notice is given the person does not pay the reasonable costs, or does not recover the furniture, the local authority may:

(a) dispose of the furniture by sale or in any other way it thinks fit, and

(b) retain any proceeds of sale for any purpose it thinks fit.

(6)In this section “authorised” means authorised by:

(a) a pavement licence,

(b) permission under Part 7A of the Highways Act 1980, or (c) permission granted under any other enactment.