****

Pavement Licensing Policy

2025 - 2030

**westmorlandandfurness.gov.uk**

# Document Version Control

|  |  |
| --- | --- |
| Organisation | Westmorland and Furness |
| Document Title | Pavement Licensing Policy 2025 - 2030 |
| Filename |  |
| Document Status | Draft |
| Author | Sean Hall, Donna McCarthy |
| Document held by (name/section) | Licensing |
| Contact | PavementLicence@southlakeland.gov.uk |
| Date of publication |  |
| Next review date |  |
| Version Number | 1.0 |
| Approval date and by who (delegated / committee) | TBC |
| For internal publication only or external also? | External |
| Document stored on Council website or Intranet? | Website |

# Change History

|  |  |  |  |
| --- | --- | --- | --- |
| **Version** | **Date reviewed** | **Reviewed by** | **Description of revision** |
|  |  |  |  |
|  |  |  |  |

NB: Draft versions 0.1 - final published versions 1.0

# Contents

1 Introduction 4

2 Purpose 6

3 Scope 6

Definition of Pavement Café 6

Eligible Business 6

Eligible Locations 7

Type of Furniture permitted 7

Planning Permission 8

4 Application process and Determination of Pavement Licence applications 9

Fees 10

Consultation 10

Site Notice of Application 11

Site Assessment 12

Ensuring the needs of disabled person 13

Determination of applications 14

Approval of applications 15

Licences deemed to be granted 16

Licence duration 16

Refusal of applications 17

5. Conditions 17

Local Conditions 17

National Conditions 18

National No Obstruction Condition 18

National No Smoking Condition 18

6. Enforcement 19

General Principles of Enforcement 19

Breaches of Pavement Licence Conditions 19

Removal of Unlicensed Furniture 20

7. Review Procedures 21

[Appendix 1 – Site Notice](#_Toc173504988)

[Appendix 2 – Westmorland and Furness Standard Conditions](#_Toc173504989)

[Appendix 3 – National Conditions](#_Toc173504990)

# Introduction

* 1. Welcome to Westmorland and Furness Council Pavement Licensing Policy. This policy will apply for a maximum of five years and will be kept under review during that period. The policy may be revised in light of experience or revisions to national legislation or guidance.
	2. This Policy document is the first Pavement Licensing Policy for the newly formed Westmorland and Furness Council, as Licensing Authority. It replaces Pavement Licensing Policy for the former sovereign Councils of Barrow Borough (2020), Eden District (2020), and South Lakeland District (2020).
	3. Westmorland and Furness Council covers an area of approximately 1500 square miles and is situated in the South and East of Cumbria. To the South, the Council borders Morecambe Bay, and covers the Cartmel and Furness peninsulas. Large portions of the Lake District National Park and the Yorkshire Dales National Park are located within the authority area, and the boundary follows the Eden valley and as far North as Alston.
	4. The largest town is Barrow in Furness which, along with the market towns of Ulverston, Kendal, and Penrith form the main populated areas. A number of smaller towns and villages are key tourist destinations and experience high volumes of visitors, especially in the summer months.
	5. Westmorland and Furness has a strong vibrant and diverse economy driven by cutting edge advanced manufacturing, tourism, agriculture and food production. We have a growing cluster of creative industries which thrive on the inspiration of our environment and our excellent artistic and cultural institutions.

1.6 The Business and Planning Act 2020 successfully introduced a mechanism for premises serving food and drink such as bars, restaurants and pubs, to place furniture on the pavement to help the hospitality industry recover from the coronavirus lockdown and social distancing restrictions.

1.7 The Levelling Up and Regeneration Act 2023 makes permanent the provisions, set out in the Business and Planning Act (BPA) 2020, that streamlined the process to allow businesses to secure these licences quickly.

1.8 The Business and Planning Act process provides a cheaper, easier, and quicker way for businesses to obtain a licence. The fee for applying for a licence under the Business and Planning Act process is capped at £500 for first time applications and £350 for renewals. The public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to the authority.

* 1. The new Act also confirms that applications for Pavement Licences should where possible be made under these provisions as opposed to Pavement licences granted by The Highways Authority, under Part 7A of the Highways Act 1980.

If you require further clarification on our Pavement Licensing Policy please contact our Licensing Team:

PavementLicence@southlakeland.gov.uk

Telephone: 0300 373 3300

# Purpose

* 1. This policy statement has amongst other things, four main purposes:

* To provide Members of the Regulatory Committee with a decision-making framework. The policy will be taken into account at any appeal hearing.
* To inform applicants of the parameters within which the Authority are able to make pavement licence decisions and allow them to take this into account when making applications.
* To provide guidance to local residents and businesses of the boundaries within which the Licensing Authority will make decisions. This will assist those parties when making representations in relation to various applications.
* To support the Licensing Authority if it has to demonstrate in a court of law how it reached its licensing decisions.
	1. The policy will be kept under review and the Licensing Authority will, if necessary after appropriate consultations, make such revisions to it as may be considered appropriate. Any amendments will be incorporated in the policy after each review.
1. **Scope**

3.1 **Definition of pavement café**

A pavement licence is a licence granted by the local 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.

3.2 **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.

Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food and/or drink and allow it to be used by people for consumption of food and/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 salons, are ineligible. Though they can apply for permission to place furniture on the pavement under the Highways Act 1980.

3.3 **Eligible Locations**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required. Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

3.4 **Type of furniture permitted**

The furniture which may be placed on the pavement include:

* + 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
	+ 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 of an evening.

The Council would also expect the type of furniture to be ‘in keeping’ with the local area.

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence.

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

Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

3.5 **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.

Interaction with Part 7A of the Highways Act 1980 Part 7A of the Highways Act 1980 already provides a mechanism for local authorities to grant businesses permission to place objects or structures on the highway for any of the following:

* for a purpose which will result in the production of income;
* for the purpose of providing a centre for advice or information; or
* for the purpose of advertising.

However, the Levelling Up and Regeneration Act 2023 Schedule 22, Paragraph 11 now sets out that if a Business can apply for a Pavement Licence from Westmorland and Furness Council then they cannot apply for a permission under the Highways Act 1980.

1. **Application process and Determination of Pavement Licence applications**

4.1Applications must be made electronically using the application form available on the Councils website (insert link).

4.2 **The following information is required to be submitted with the application:**

* + a completed Application Form
	+ the required fee, paid by credit or debit 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 the applicant wishes 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,
	+ the proposed duration of the licence (this will usually be for a 2 year period unless otherwise specified).
	+ photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied for;
	+ (if applicable) reference to an existing pavement licence currently under consideration by the local authority;
	+ (if applicable) evidence of consent from neighbouring properties to use footway space outside their property
	+ evidence of the right to occupy the premises e.g. the lease; and
	+ 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 Council’s local conditions, and any national conditions will be satisfied.

4.3 **Fees**

The fee for applying for a licence under the Business and Planning Act process is capped at £500 for first time applications and £350 for renewals.

The fees will be reviewed annually, following approval by Council.

Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.

The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

4.4 **Consultation**

Once a valid application has been submitted, a 14 day consultation period begins, starting with the day after the day on which the application was received.

The Council will publish details of the application on its website at [Pavement licence | Westmorland and Furness Council](https://www.westmorlandandfurness.gov.uk/business-and-licensing/licensing/pavement-licence)

The Council is required by law to consult with the **Highways Authority**. In addition, to ensure that there are no detrimental effects from the issuing of a pavement licence the Council will consult with:

* Westmorland and Furness Council Public Protection Team (including Environmental Protection and Food and Safety Teams)
* Westmorland and Furness Council Development Control Team.
* Cumbria Fire & Rescue Service
* Cumbria Police (including Police Licensing Officer and Designing Out Crime Officer)
* The appropriate Parish or Town Council
* Disability groups and any other stakeholders

Members of the public can contact the Council to make representations within the 14 day consultation period.

The Council must take into account representations received during the public consultation period and consider these when determining the application.

4.5 **Site Notice of Application**

An applicant for a pavement licence must on the day the application is made, fix a notice of the application to 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 that must be used is attached at appendix 1 of this policy. It must be constructed and secured so that it remains in place until the end of the public consultation period.

Photographic evidence of compliance with the site notice requirement must be supplied to the Council on the first day of the consultation period. This must be emailed to PavementLicence@southlakeland.gov.uk

The Council would also expect the applicant to serve a copy of the site notice on immediate neighbours to make them aware of the application.

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 Council during the public consultation period and when that period comes to an end;
	+ state the Council’s 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;
	+ the end date of the consultation (14 days starting the day after the application is submitted to the authority).

**A template of the Site Notice which must be used is shown as Appendix 1**

**4.6 Site Assessment**

The following matters will be taken into account by the Council in considering the suitability of the proposed application:

* + public health and safety – including 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 public spaces. Additionally, the impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people.
	+ public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise 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, taking account of:
* considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people, see section 4.7 below,
* 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 of access and egress to the premises
* 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 3.2 of Inclusive Mobility, and other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and take any issues around noise, and nuisance into consideration as part of the proposal.

4.7 **Ensuring the needs of disabled persons**

When determining whether furniture constitutes an unacceptable obstruction the Council must consider the needs of disabled people. In order to do this, the Council will consider the following matters when setting conditions, determining applications and when considering whether enforcement action is required:

* + Section 3.2 of Inclusive Mobility - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of **2000mm** is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters.
	+ barriers to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users will be required. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers.. Advertising boards are not included in the definition of furniture within the pavement licensing regime, therefore, should not be used as a barrier;
		- 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 or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded with tables and chairs;
		- the cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people;
		- 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, the local authority 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 a duty on the Council 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 do not and foster or encourage good relations between people who share a protected characteristic and those who don’t.

4.8 **Determination of applications**

Once an application has been submitted, the Council has 28 days from the day after a valid application is made (excluding public holidays) to consult on and determine the application.

This consists of 14 days for public consultation, and then 14 days to consider and determine the application after the consultation period has ended.

If the local authority determines the application before the end of the determination period, Westmorland and Furness Council 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,
		- impose conditions on any licence granted, or
		- refuse the application.

If the local authority does not determine the application within the 28 day period, the application will be deemed to have been granted subject to any published local or national conditions.

Applications will normally be determined by an Officer with the appropriate delegation.

4.9 **Approval of Applications**

Westmorland and Furness Council supports the aims of the Business and Planning Act and wishes to help promote economic growth and a ‘café culture’ in its area and will therefore seek to grant applications for licences where possible.

However, this aim has to be balanced with the need to ensure that the issuing of pavement licences does not put public health or safety at risk, does not lead to antisocial behaviour or public nuisance and ensures that the public, particularly those with disabilities such as sight impairment are unhampered when walking along streets.

The Council will consider the criteria contained within these guidelines in determining applications and will treat each case on its merits.

On approving the application, the Council 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 Council’s standard conditions, which will be attached to all Pavement Licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council will only permit Pavement licences between 09:00 and 22:00.

The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

4.10 **Licences Deemed to be Granted**

The Council aims to determine all applications within the determination period provided by the Act. That means that applications will be granted or refused within the period of 14 days beginning with the first day after the public consultation period. If the Council does not make a determination by the end of the determination period, the Act provides that the licence is deemed to have been granted for two years and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

4.11 **Licence Duration**

If the Council determines an application before the end of the determination period (which is 14 days, beginning with the first day after the end of the public consultation period, excluding public holidays) the duration of the licence will be specified. The expectation from the Guidance is that local authorities will grant licences for two years unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space.

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 two years.

4.12 **Refusal of Applications**

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

The Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to antisocial behaviour or public nuisance or unreasonably hamper pedestrian’s ability to move freely.

The Council will notify applicants of the reasons for refusal following determination.

There is no statutory appeal process for these decisions, however, any decision may be appealed to the Senior Manager with responsibility for the licensing service. A request to appeal a decision must be made in writing to: (Kendal address) and received within 7 days of the determination date. The senior manager will review the application and decision and provide a written response within 21 days.

**5. Conditions**

5.1 **Local Conditions**

The Council’s standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application and representations received on a case by case basis.

Where a local authority sets 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 to the extent that it is inconsistent with it.

5.2 **National Conditions**

The national conditions relating ‘no obstruction’ and provision of ‘no smoking’ areas applies to all Licences. The National conditions are shown in Appendix 3.

5.3 **National No Obstruction Condition**

Section 4.7 above provides guidance on ensuring the needs of disabled persons and consequently the no-obstruction condition.

5.4 **National No Smoking Condition**

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.

It is important that businesses can cater to their customers’ preferences. The National Conditions impose a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been placed on the 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. The Council will not prescribe how businesses will wish to cater for their customers, however 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.
* 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 2m distance between non-smoking and smoking areas, wherever possible.

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.

**6. Enforcement**

6.1 General Principles of Enforcement

The Council aims 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 the Highways Authority or the Police. The Council will normally seek to rectify any issues arising as a consequence of the activities authorised by a pavement licence by engaging in informal discussions with the licence holder in the first instance.

Obtaining a Pavement Licence 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 and Entertainment Licensing, and Social distancing controls, and applicants must ensure all such permissions are in place prior to operating.

All enforcement activity will be undertaken in line with the principles set out in the Regulator’s Code and the Council’s Enforcement Policy.

6.2 **Breaches of Pavement Licence Conditions**

If the Council considers that a licence-holder has breached any condition of the licence, the authority may:

* revoke the licence, or
* 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.

If a licence-holder on whom an enforcement notice is served fails to comply with the notice, the Council may:

* revoke the notice, or
* take the steps itself and recover the costs of doing so from the licence holder.

The Council may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued), or

2. Where:

* There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
* the highway is being obstructed (other than by anything permitted by the licence);
* there is anti-social behaviour or public nuisance – for example, the use is increasing
* the amount of noise generated late at night or litter is not being cleaned up;
* 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 for the relevant period.

3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

6.3 **Removal of Unlicensed Furniture**

The Levelling Up and Regeneration Act introduces a new provision allowing the Council to deal with unlicensed Pavement Café facilities. 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, The Council 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, the Council 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 Council can dispose of the furniture by sale or other means and retain the proceeds.

**7. Review Procedures**

This Policy has been drafted in consultation with the consultees listed in section 4.4 and the appropriate lead councillors.

This Policy will be reviewed from time to time should changes occur in relevant legislation or guidance, or the nature of Pavement licences generally, or as a result of local considerations within the district of Westmorland and Furness. In any case the Policy will be reviewed after a period of 5 years following adoption

Appendix 1

**Application for a Pavement Licence**

*Part 1 of the Business and Planning Act 2020.*

|  |  |
| --- | --- |
| I/We  | ***(name of applicant),*** |

***(date of application)***

do hereby give notice that on [I/we] have applied to

Westmorland and Furness Council for a ‘Pavement Licence’for:

|  |  |
| --- | --- |
| Premises name: | ***Premises business name known as*** |
| Address: | ***Postal address including postcode or a description of the location if no postal address available.***  |

The application is for:

|  |
| --- |
| ***(brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink specifying the days and times requested)*** |

Any person wishing to make representations to this application may do so by writing, preferably by email, to:

Licensing Authority email address: licensing@westmorlandandfurness.gov.uk

Licensing Authority postal address: Westmorland and Furness Council, The Town Hall, South Lakeland House, Lowther Street, Kendal LA9 4DQ

|  |  |
| --- | --- |
| The deadline for any representations for this application is: | **(*last date for representations being the date 14 days after the date the application is submitted to the local authority (excluding public holidays))*** |

The application and information submitted with it can be viewed on the Council’s website at westmorlandandfurness.gov.uk

|  |  |
| --- | --- |
|  Signed ...................................................................... | **Date: (*date the notice was placed which must be the same date as the date of application)*** |

Appendix 2

**Westmorland and Furness Council**

**Standard Pavement Licence Conditions**

1. Being the licence holder of a Pavement Licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Westmorland and Furness Council and others (for example, police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, 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. The licence holder will have in place Public Liability Insurance for duration of the operation of the pavement licence to a minimum value of £5 million in respect of any one incident.

3. The licence holder will indemnify Westmorland and Furness 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.

4. Tables and chairs 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.

5. Westmorland and Furness Council are empowered to remove and store or dispose of furniture from the highway, at the cost to the licensee, if it is left outside the permitted hours, or should any conditions of the licence be breach. The Council will not be responsible for its safekeeping.

6. The licence holder is not to make or cause to be made any claim to Westmorland and Furness Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.

7. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway.

8. The method of marking the boundary of the licensed area must be agreed between the licence holder and the licensing department. Whatever method is agreed, a 2 metre clear walkway must be maintained for the use of pedestrians.

9. Suitable and sufficient barriers must be used to prevent furniture from straying beyond the licensed area. Barriers must include a low tap rail, or similar to aid those with visual impairments to negotiate the licensed area.

10. Emergency routes to the premises and adjacent buildings must not be obstructed by the pavement furniture which should not, in normal circumstances, extend beyond the width of the premises frontage.

11. Tables and chairs should 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 and the use of these should not prevent access of the footway. Alternative items may not be used without first seeking the written permission from the Council.

12. All potential obstructions must be removed from the public highway when the premises are closed to prevent a hazards to pedestrians, particularly during the hours of darkness, or 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 and Licensing Authority.

13. The licensee should 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.

14. The operation of the area must not interfere with highway drainage arrangements.

15. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) must be 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 premises, for a distance of up to 10 metres from the boundary of the premises. 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.

16. 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 Westmorland and Furness Council.

17. 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 alcohol within the licensed area.

18. The licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within the premises outside the hours in force for the premises itself.

19. 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.

20. 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.

21. The licence holder must publicly display this licence, or a copy of it, in clear view with a plan of the agreed layout, at the premises so that it can easily be seen from the street to allow inspection by an authorised officer of the Police or other officer authorised by the Council.

22. The licence holder must comply with any instruction given in relation to the use of or access to the street or public place by an authorised officer of the Council, Highways Authority or Police.

23. In the event of the licence being deemed to be granted the hours of use of the pavement/highway will be limited to 09.00 – 22.00 daily, and the licence will be granted for two years starting with the first day after the determination period

24. Westmorland and Furness Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and/or maintained.

Appendix 3

**National Conditions**

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

1. The holder of a pavement licence must do nothing that would have an effect of:

a) preventing traffic, other than vehicular traffic

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

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

d) preventing 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.

Condition relating to clear routes of access for disabled people:

2. 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

National Smoke Free Condition

3. Where the furniture to be put on the relevant highway consists of seating to be used by persons for the purpose of consuming food or drink, the licence holder must make 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 by reducing risks of COVID transmission.

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.

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. Public Health England has published guidance for smokers and vapers during the COVID pandemic

https://www.gov.uk/government/publications/covid-19-advice-for-smokers-and-vapers/covid-19-advice-for-smokers-and-vapers