

Business and Planning Act 2020 - Draft Pavement Licence Policy

Blackpool Council



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1. Introduction

The Business and Planning Act 2020 was passed to promote economic recovery and growth in response to the economic impacts of the global Covid-19 pandemic. The Act included urgent provisions designed to make it easier for premises in England serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

Sections 1 to 10 of the Act create a temporary regime for the issuing of “pavement licences” by appropriate local authorities.

This new process introduces a streamlined and cheaper route for businesses such as cafes, restaurants and bars to secure a licence to place furniture on the highway. The aim of the legislation is to support businesses to operate safely while social distancing measures remain in place. The aim is to provide much needed income over the summer months and protect as many hospitality jobs as possible.

The temporary licensing regime is due to be in place until 30 September 2021 when these provisions are due to expire in accordance with section 10 of the Act.

2. Scope of Policy

2.1 Definition of pavement licence

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 purpose

Licences can only be granted in respect of highways listed in section 115A (1) Highways Act 1980.

Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicular access is restricted or prohibited. Highways maintained by Network Rail or over Crown land are exempt (so a licence cannot be granted).

2.2 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 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.

2.3 Type of furniture permitted

The furniture which may be used is:

- 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 this 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.

2.4 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.

2.5 Existing tables/chairs

The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.

Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

2.6 Public Space Protection Orders

The Business and Planning Act 2020 does not override or suspend any provision of a public space protection order (PSPO) that bans the consumption of alcohol in a public place. The Public Space Protection Order (Blackpool Borough Council) – Town Centre and Promenade prohibits the drinking of alcohol in any public place in the restricted area. If your premises is located within this area and you would like your customers to be able to consume alcohol outside you should apply for a street café licence under section 115E Highways Act 1980. A map of the area covered by the PSPO can be found at Annex 1.

3. Application and determination

3.1 Application for a Pavement Licence

An application for a Pavement Licence must be made to the Council, and the following will be required to be submitted with the application:

- A completed Application Form
- The required fee of £100
- 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 they wish 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,
- Evidence of the right to occupy the premises (e.g. the lease);
- Photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- Evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- 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.

3.2 Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council.

The Council will publish details of the application on its website at www.blackpool.gov.uk.

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are no detrimental effects to the application the Council will consult with:

- The Blackpool Council Corporate Leadership Team excluding the Director of Community and Environmental Services who will make the decision
- Blackpool Council Neighbourhood Environmental Action Team
- Blackpool Council Planning Team
- Blackpool Council Health and Safety
- Blackpool Council Community Safety
- Blackpool Council Trading Standards
- Blackpool Council Environmental Protection
- North West Ambulance Service
- Lancashire Fire and Rescue Service
- Lancashire Constabulary

Members of the public, local representatives and those listed above can contact the Council to make representations.

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

3.3 Advertising the 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 must be constructed and secured so that it remains in place until the end of the public consultation period.

Evidence of the site notice requirement must be supplied to the Council.

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; and
- The end date of the consultation (7 days starting the day after the application is submitted to the authority).

A template Site Notice is available from the Council Website.

3.4 Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- Public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- Public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour 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:
 - 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 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 3.1 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 Council and so take any issues around noise and nuisance into consideration as part of the proposal.

3.5 Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation. If the local authority determines the application before the end of the determination period the local authority 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.

If the local authority does not determine the application within the 14 day period, the application will be deemed to have been granted.

3.6 Calculation of Days

In deciding the public consultation period or the determination period, as referenced above, no account will be taken of a bank holiday, nor of Christmas Day or Good Friday. In all other instances the period shall be calendar days.

3.7 Approval of applications

The Council may approve applications meeting the criteria contained within these guidelines.

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 Annex 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement Licences between 09:00 and 21:00.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

3.8 Duration

The Council will normally grant applications until 30 September 2021.

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 a year.

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

3.9 Refusal of Applications

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

There is no statutory appeal process against a decision to refuse an application.

A business may apply again after refusal but will have to make a new application and address the concerns raised in the original application.

3.10 Conditions

Any licence which is granted, or deemed to be granted, will be subject to:

- The Council's standard conditions at Annex 2;
- Any additional conditions which the Council imposes as a result of the individual circumstances of the case; and
- The National Conditions.

The Council's standard conditions are set out at Annex 2. In some cases, extra measures may be required. This will be determined when assessing any application, 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 where there is reasonable justification to do so.

However, this is not the case for the statutory no-obstruction and smoke free conditions which apply to all Licences. These conditions are shown in Annex 3.

4. Enforcement and Revocation

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. It remains the case 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.

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Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health and Safety at Work, Food Hygiene, alcohol and entertainment licensing, social distancing controls and applicants must ensure that all permissions are in place prior to applying for a pavement licence.

If a condition imposed on a licence either by the Council or via a National Condition 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 authority may revoke or suspend for a fixed period 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 and 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.

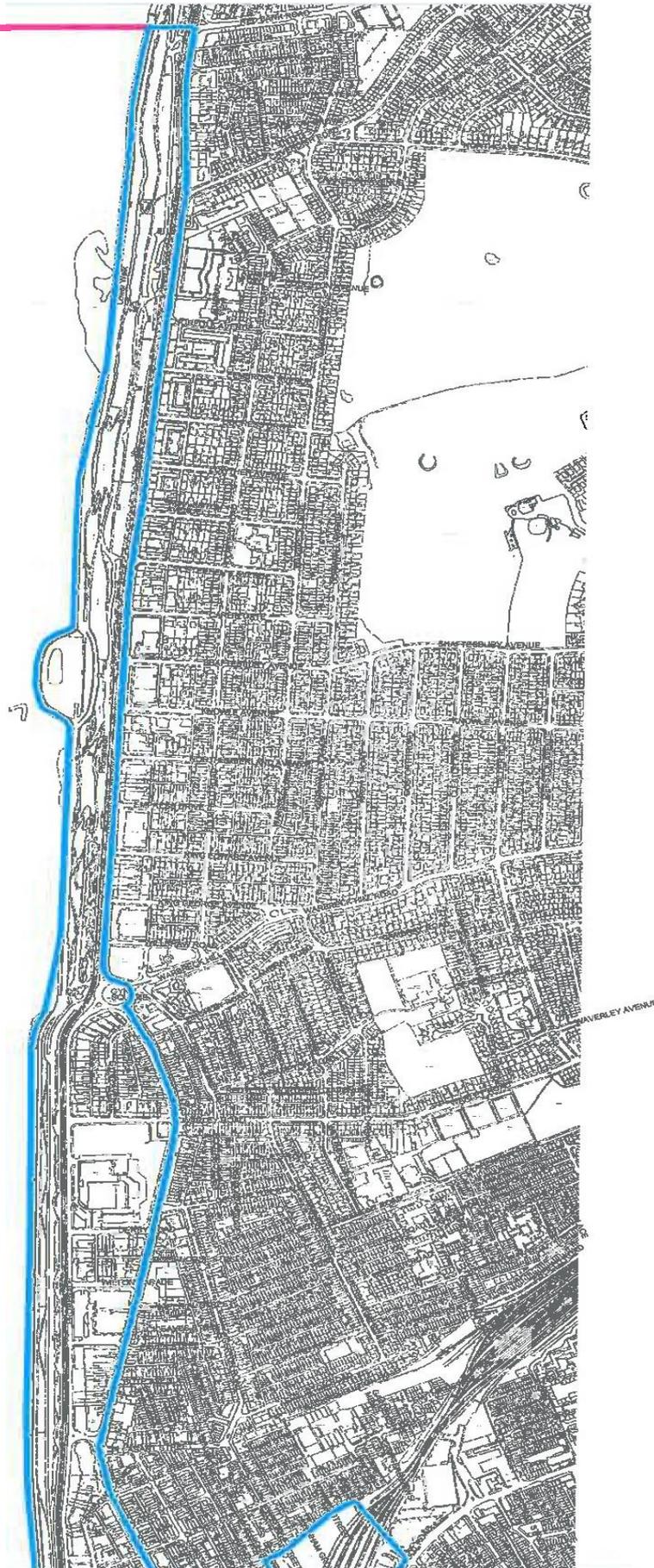
3. The Council may also revoke or suspend for a fixed period the pavement licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or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

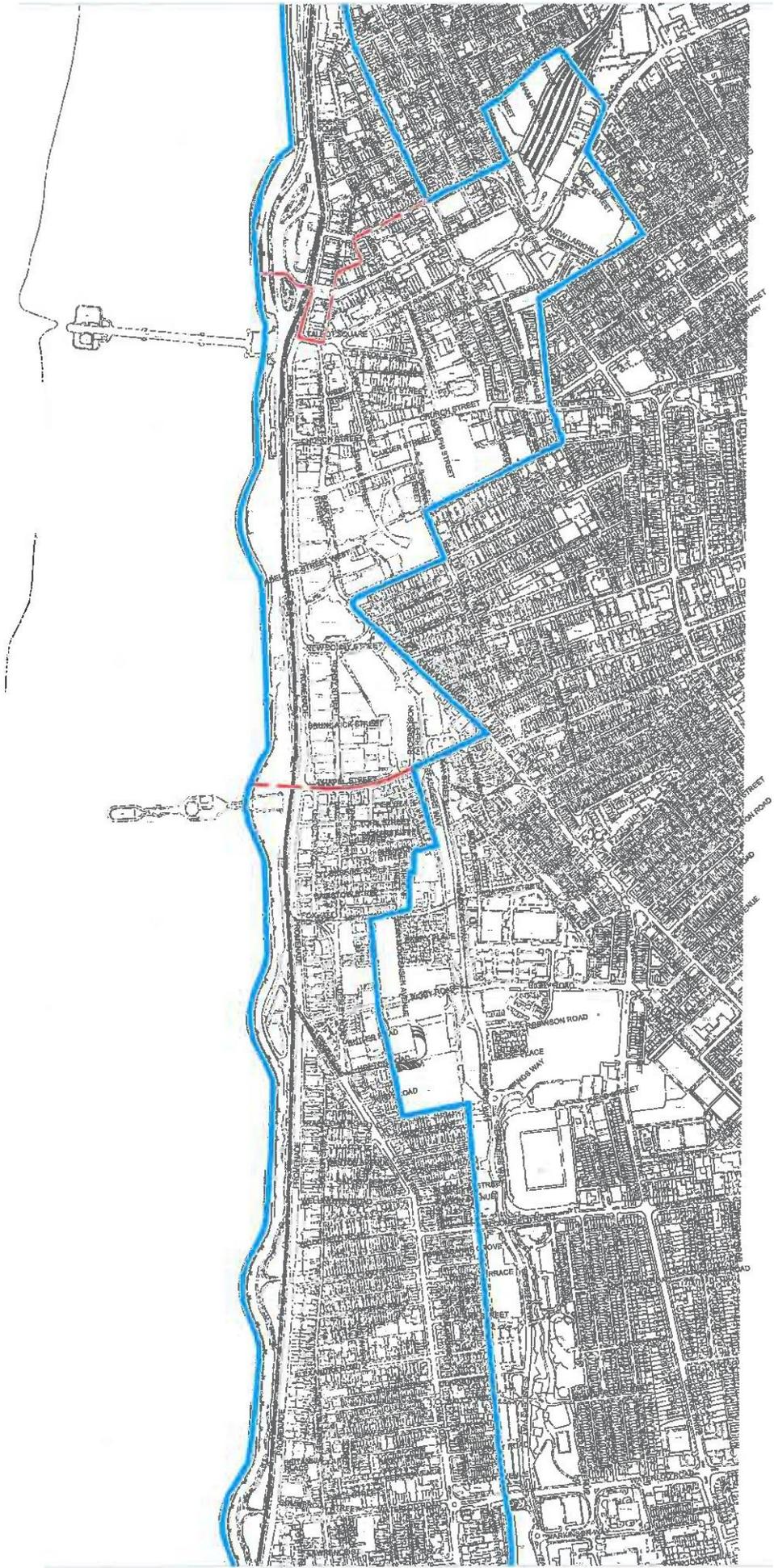
5. Review Procedures

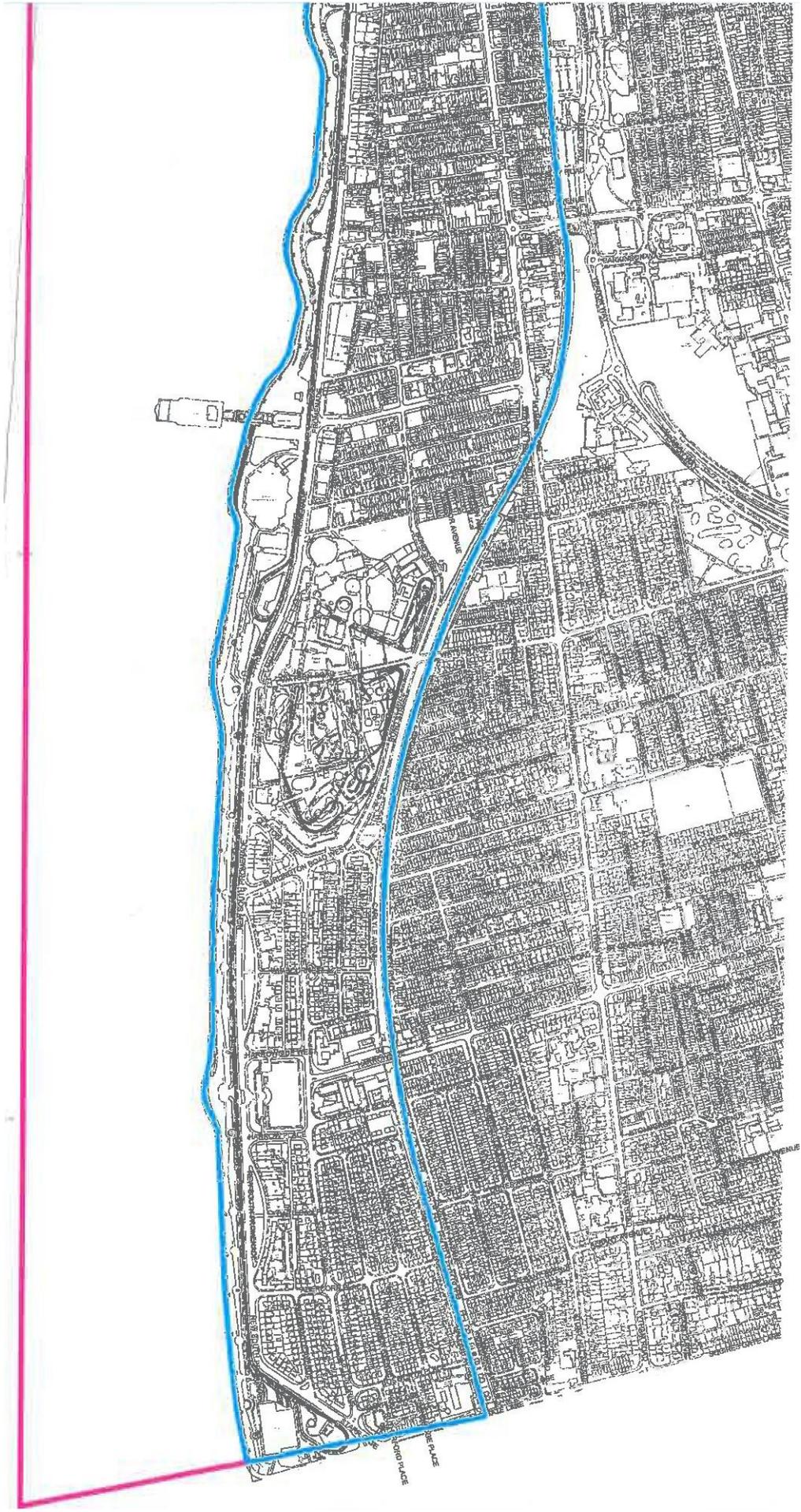
This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licences generally, relevant social distancing measures or as a result of local considerations.

Annex 1 – Areas covered by PSPO







Appendix 2 – Standard conditions

The Licence

1. The licence will remain in force until 30 September 2021 unless surrendered, suspended or revoked.
2. The licence must be displayed on the premises in clear view.

The Site

3. A well-designed physical barrier of approximately 1.0 metre must be erected around the site during the designated hours in order to guide persons with a sight disability around the site. Such barrier must not be permanently fixed and must be removed from the site immediately after the end of the designated hours.
4. Only tables, chairs and umbrellas associated with tables shall be placed within the licensed area. No other furniture other than receptacles shall be placed within this area.
5. Tables and chairs shall be durable and suitable for outside use. No damaged furniture should be used. The design of all chairs, tables, umbrellas, etc. shall be subject to the approval of the Council's Licensing Department
6. During the hours of darkness 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 Authority.
7. When the licence is not in use all tables, chairs and other furniture must be stored securely away from the highway. Any items not so removed may be remove, stored or disposed by Blackpool Borough Council and any costs incurred will be re-charged to the licence holder. Blackpool Borough Council accepts no liability for loss or damaged to items removed
8. The licence holder must cease to use the pavement licence area and remove all furniture and barriers if so requested, if access is required by Blackpool Borough Council, the Emergency Services, Statutory undertakers or the operator of electronic communication equipment in the case of an emergency, special event or for installation, maintenance, improvements, etc. or for any other reasonable cause. On such occasions no compensation will be paid for loss of business,
9. A clear walkway of 2 metres must be maintained for the use of pedestrians.
10. Emergency routes to the premises and adjacent buildings must not be obstructed by the pavement furniture.
11. A boards or other signs must not be erected or permitted to be erected within the confines or adjoining the site.
12. The licence holder must arrange for the placement of sufficient litter receptacles for the purpose of smoking related and fast food litter.
13. 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.

Operation of the licence

14. The licence holder must ensure that a minimum of 50% of the outside area is set aside as a non-smoking area.
15. The licence holder must ensure that all persons consuming food and drink are seated within the boundaries of the site and do not take refreshments out of the site
16. Alcohol must not be consumed on the site unless the licence holder has an authorisation issued by the Licensing Service under the Licensing Act 2003.
17. No amplified music or loudspeaker equipment must be used on or in the vicinity of the site

18. The licence holder supervise the licensed area to ensure that it is operated in a safe and orderly manner and that customers do not cause a nuisance or cause annoyance to users of the highway or tenants of adjoining properties.
19. The licence holder must ensure that regular checks of the Site are made at not less than 30 minute intervals to remove empty/abandoned drinks, crockery, cutlery and litter
20. The licence holder is required to maintain the licensed area within acceptable cleanliness standards during licensed hours. The area should be maintained to a standard to the following principles:
 - a. Grade A: No litter or refuse
 - b. Grade B: Predominately free of litter and refuse apart from some small items. **Acceptable. To be returned to Grade A within 4 hours**
 - c. Grade C: Widespread distribution of litter and/or refuse with minor accumulations. **Unacceptable Standard; Must be returned to a Grade A within 1 hour**
 - d. Grade D: Heavily affected by litter and/or refuse with significant accumulations. **Unacceptable Standard. Must be returned to Grade A within 15 minute**
21. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the site, for a distance of up to 5 metres from the boundary of the site. 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.

Alcohol Licences Only

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

Miscellaneous

23. The licence 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 £1,000,000 in respect of any one accident or series of accidents arising from one incident unlimited during the period of the insurance
24. 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 whatsoever.
25. Upon expiry or revocation of the permission the licence holder 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 licence holder.

Annex 3 - Statutory No Obstruction and Smoke-Free Conditions

No-Obstruction Condition – anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence must not have an effect specified in section 3(6):

1. Preventing traffic other than vehicular traffic
 - entering the highway at a place where the traffic could otherwise enter it;
 - Passing along the relevant highway
 - Having normal access to premises adjoining the relevant highway
2. Preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order
3. Preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway
4. Preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purpose of that network under, in, on or over the highway

When considering whether the furniture has/would have the effect referred to in 1 above the authority must have regard 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

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 whether the licence holder has made reasonable provision for seating where smoking is not permitted, the local authority must have regard to guidance issued by the Secretary of State