



Borough Council

Policy for temporary furniture on the highway 2019

Document Status: Approved

Document Reference:

Originator: Licensing & Compliance Manager, Licensing Service

Owner: Service Director, Public Protection, Place & Infrastructure

Version: 01

Date: 01.04.2019

Approval Status: Approved Administration and Regulation committee 01.04.2019

Document

History

Date

01.04.2019

Notes

Approved

Prepared By

AW

Checked By

Legal

Definitions

<u>Appeal</u>	<p>a review of our decision. You appeal to the Licensing Committee.</p> <p>The committee may uphold our decision (they agree with us) or overturn it (agree with you)</p>
<u>District</u>	<p>the area covered by the local council e.g. Luton.</p>
<u>Luton Council</u>	<p>Luton Borough Council</p>
<u>Temporary furniture</u>	<p>the permission given by us to allow you to use an area outside your premise.</p> <p>For the purposes of this policy temporary furniture is defined as:</p> <ul style="list-style-type: none">• Tables and chairs;• Display of goods on the highway <u>(this means the sale of goods directly associated with the current premises);</u>• A Boards;• Barriers which may be used to highlight a licensed area or part of it.
<u>Public nuisance</u>	<p>noise disturbance or other nuisance caused to residents or neighbouring businesses.</p>
<u>We</u>	<p>Luton Borough Council</p>
<u>You</u>	<p>the licence holder granted the permission for the temporary furniture</p>

Introduction

“Café Culture” is a growing trend within the Borough`. There is a demand for eating and drinking outdoors, and many pubs, restaurants and cafes want to provide facilities to meet this demand by using the pavement.

Many more pubs, restaurants, shops and cafes may wish to make use of the pavement for temporary furniture. However, if the use of the pavement areas is not carefully controlled they can lead to pedestrians, in particular those with disabilities, being unable to use the pavement safely.

To regulate the number and location of pavement licences, all premises must have a licence under section 115 of the Highways Act 1980 to place temporary furniture on the highway.

Our policy and procedure explains the requirements and standards we expect of the applicant for a pavement licence.

Our powers and duties

Our duty to regulate such licences within the borough comes from the Highways Act 1980 (section 115), however some local councils also have this responsibility under an agency agreement.

How will we use the policy?

The policy provides guidelines on the factors we consider when making our decision to grant or refuse a licence application.

Is the area you want to use suitable for a temporary furniture licence?

Temporary furniture can be sited on the public highway; however areas that are sited on privately owned land or land which is to the rear of buildings or other courtyard areas may not require a licence in certain situations. We still advise you clarify this in each individual case.

The area in which you would like to place the temporary furniture must be defined as *highway* by section 115 Highways Act 1980:

- A highway in relation to which a pedestrian planning order is in force;
- A restricted byway;
- A bridleway;
- A footpath (including a walkway as defined in section 35(2) of the Highways Act 1980);
- A footway;
- A subway constructed under section 69 of the Highways Act 1980;
- A highway whose use by vehicular traffic is prohibited or restricted or regulated by such an order

Planning permission may be necessary if any permanent fixtures are proposed that constitute development. You should contact the planning department for advice. The duty planning officer details; email: developmentcontrol@luton.gov.uk or by telephone 01582 546317.

How we decide your application?

We will grant an application only if we decide there are no issues and no valid objections have been made. Each application shall be considered on its own merits and we shall normally follow the policy, unless there is any reason not too and if so this shall be explained.

You must provide the following items when you apply:

- The completed original application with full details of the proposed use
- The correct fee
- Plans (see below for details)
- A copy of your public liability insurance (min £5 million) showing insured for public liability.
- A copy of any other associated permissions i.e. Planning and any appropriate licences under the Licence(s) under the Licensing Act 2003 (if required)

Our standard conditions will be applied to all temporary furniture licences. In addition to the standard conditions we may also impose special conditions on individual licences where we feel appropriate, proportionate and necessary.

- Considerations for access to underground apparatus such as water valves, stopcocks, fire hydrants and meter chambers.
- Confirmation of notice sent to any person(s) residing above and to the side of the proposed location.
- Confirmation of display of public notice.
- Indemnity and insurance details (minimum public liability cover for £5 million).
- A copy of the licence to serve alcohol and / or late night refreshment in the area (if applicable).

Plans

Location Plan

Please supply an A4 plan clearly outlining the premise and the location of the proposed outdoor seating area. This should be an accurate Ordnance Survey plan outlining the application site in red and the land in the applicant's ownership in blue (1:1250 or 1:500 scale plan as appropriate). The location plan may be included as part of a larger site plan.

Site Plan

Please supply a site plan of at least 1:200 showing the precise location and proposed setting out of the temporary furniture you are requesting a licence. You should ensure that your plan has the following information:

- Access points
- Building lines
- Kerbs
- Dimensions of seating area and other furniture proposed with the application
- Furniture arrangement
- Other furniture/items layout
- Plan and elevation (1:50) of barriers/ enclosure – example of the plan(s) required can be found within the application pack at www.luton.gov.uk .

Supplementary information on plans

These plan requirements are taken direct from the legislation.

For the purposes of this policy, if plan(s) cannot be drawn to scale, we would consider alternative formats if the request is put in writing and meets all the necessary requirements.

We would consider plan(s) not in colour on the basis that all areas can be easily identified in another format, for example, bold lines to be drawn to highlight the specific areas listed above.

Advertising

You must complete the public notice and display it on or near the premises. It should be in a location that is easily visible from the street for a period of at least 28 days from the date your application is accepted. The notice must be visible whether the premises are open or closed. As an example we would not expect the notice to be

positioned behind a window shutter.

Consultations

You must publish a notice in accordance with the Highways Act 1980 and consult with those listed in Appendix A. We will take into consideration all representations made to us in deciding your application.

Properties either side and above of the premises in question will be consulted as part of the application process.

The licence applied for is covered by Section 115E of the Highways Act 1980.

The licence may be applied for directly by you or by your solicitor on your behalf.

Hours

The maximum hours that you can operate a table and chairs or other furniture defined in this policy licence is up to midnight.

An application made for timings after midnight will be assessed on a case by case basis.

This may include but not wholly, assessing against the business operation and needs.

Please note requests for such timings may require further evidence being provided to the council.

Cost

The fees for a licence are enclosed within the application pack at www.luton.gov.uk . Fees are set in line with the council's scale of charges annually.

Refund of Fees

If you cease trading or surrender your licence we will not refund any fees, the fee is non-refundable on payment.

This is also the situation if your application for any reason is refused and not granted.

Insurance

You will be required to hold Public Liability Insurance to a value of £5 million cover. You must provide proof with your application.

We will consider the following factors in determining your application:

- **Protecting the Public**

We will consider our duty to protect the public as a key factor when we decide whether to grant or renew such a licence.

- **Size and Layout**

An absolute minimum unobstructed width of 2.0 metres of the highway measured from the boundary line of the premise must be available before a proposal will be considered. Additional widths may be required in certain locations.

Licensed areas will normally be situated directly outside the main premises leaving an unobstructed 2.0 metre clear gap between the highway and the designated area. The area used must take into account other needs and uses in the vicinity, for example, pedestrian crossings, loading bays, disabled bays and street furniture, this list is not exhaustive and may include other considerations not listed.

Consideration to the size and layout must be given to allow customers with disabilities and pushchairs for example to access and move around within the licensed area.

- **Safety**

Applications will not be granted if pedestrians are forced to cross a pavement in a dangerous manner. Applications may be refused if there is insufficient space between temporary furniture to enable disabled persons, particularly those in wheelchairs, to use the facilities, or if the proposed facility poses a risk to disabled persons on the pavement. Applications will not be granted where health and safety risks may arise that cannot otherwise be avoided.

Furniture must be suitable for the outside use. All items contained within the enclosure must be portable enough to be brought in at the end of the licensed period of each working day and can be moved quickly in the event of an emergency.

- **The Licensed Area**

Applicants must submit details of the types of furniture that are to be used. Where it is necessary to use barriers to show where the licensed area is, the types of barriers

proposed must be agreed by officers.

Furniture and barriers must be of a high quality and be in keeping with the characteristics of the area in which it will be used.

In considering applications for temporary furniture, particular consideration will be given to the location and environment and whether your request falls within a conservation area. As part of the consultation process for any application, there are a number of relevant services and departments which we will seek the views of. In relation to areas which may fall within conservation areas of the borough, this will be considered by the planning service.

When the licensed area is not in use, any barriers have to be removed. The only exception will be where planning permission has been sought and arranged for permanent/ semi-permanent barrier systems.

Licences will not be granted where access to local authority or utility company plant and equipment will be restricted.

- **Crime and Disorder**

In considering such applications the borough council will give particular consideration to section 17 of the Crime and Disorder Act 1998. Therefore, prior to granting any consent for tables and chairs, A boards, display of goods on the pavement/ highway, the council will give significant weight to the views of the local police.

- **Public Nuisance**

Applications will be refused if they are likely to cause excessive amounts of litter, noise, disturbance, smell or other nuisance to users of the pavement/ highway or adjacent properties, particularly residential properties.

How long will I be able to operate under my licence?

We will normally grant a licence to operate between 8.00am and midnight.

Applications outside of those hours will be considered on a case-by-case basis, and only granted in the absence of objections or once such objections have been resolved or withdrawn. We reserve the right in considering such applications outside of this policy.

We shall issue a licence for a maximum period of up to (1) one year, which can be renewed by submitting a completed application and by paying the fee providing we

are satisfied there are no reasons not to renew it.

We reserve the right and will not renew if you have failed to comply with one or more of the authorities, and / or licence conditions, or if there are highways works planned that will affect your licensed area.

Additional Information

- **Licensed Premises – Licensing Act 2003**

If you intend to carry out any licensable activity i.e. the sale of alcohol and or late night refreshment within the licensed area you should contact Licensing Service **prior to submitting** your application, in order to find out if you need to apply or vary your current premises licence to include the licensed area.

Enforcement / Compliance

We may revoke the licence if you breach the conditions attached to it. We may also revoke/ suspend the licence if the land is required for other purposes, or for any other reason. We will give you 28 days' notice of our intention to revoke the licence. You can make representations to persuade the council not to revoke the licence.

The Council will consider any breach of licence on its facts and own merits, the factors will be dependant on the severity of the breach(es) and previous compliance history.

A first breach will usually result in a written warning being issued, further breaches or breaches of a more serious type may result in revocation.

Where businesses do not apply for a licence and persistently operate without a consent the business owner may be issued with a community protection notice (CPN).

Appendix A – Consultees

It is your responsibility and you have to send a copy of your application to each of the consultees set out in the table below.

<p>Fire Service - Fire Authority Chief Fire Officer Bedfordshire and Luton Fire and Rescue Service c/o Southern Area Office Studley Road Luton LU1 3BB</p> <p>SAOfiresafetyadministration@bedsfire.com</p>	<p>Police Luton Licensing officer Bedfordshire police Headquarters Woburn Road Kempston Bedford MK43 9AX</p> <p>licensingluton@bedfordshire.pnn.police.uk</p>
<p>Planning Authority Head of Planning and Transportation Planning Service Business and Consumer Services Luton Borough Council Town Hall George Street Luton LU1 2BQ</p> <p>developmentcontrol@luton.gov.uk</p>	<p>Highways Services Place & Infrastructure Public Realm Highways Services Engineering and Maintenance Luton Borough Council 1st Floor Central Depot Kingsway LU4 8AU</p> <p>Highways@luton.gov.uk</p>
<p>Health and Safety Department Environmental Health Manager Business and Consumer Services Luton Borough Council Clemitson House 2nd Floor 44 – 48 Gordon Street Luton LU1 2QP</p> <p>environmentalhealth@luton.gov.uk</p>	<p>Public Health Arndale House 37 The Mall Luton Bedfordshire LU1 2LJ</p>

If you have any queries about the application process or completing the form, you can contact the Licensing Team by email: licensing@luton.gov.uk or by telephone on 01582 546040 between 09.00am and 4.00pm monday to friday.

Appendix B - Enforcement Procedure

Obstructions on the Highway

When an officer receives a complaint, they will firstly assess whether the obstruction(s) is causing a danger or nuisance to the users of the highway.

Dangerous items

If the structure is causing an imminent danger the owner of the structure will be asked to remove the obstruction(s) immediately. If the owner fails to remove the item(s) the officer will arrange to remove it using powers under section 149 of the Highways Act 1980. The costs of removal will be charged to the owner. If they pay the bill the goods will be returned to the owner. If the bill is not paid then an order will be obtained from the magistrates to recover the costs and to ask for a disposal order. The owner will also be issued with a warning or a (community protection notice) CPN in line with the process below.

Non-Dangerous items

If the item(s) is not dangerous the officer will check to see if a previous warning has been issued to the owner of the item(s). If a warning has not been issued, then a warning will be given to the owner along with the new guidelines. The warning will also request that the item(s) is removed.

The purpose of the letter will be to explain how:

- To outline how their unreasonable behaviour is affecting local environmental quality.
- To explain what behaviour we expect and an appropriate timescale to comply.
- To highlight the consequences if their unreasonable behaviour continues (they will be issued with a CPN).

If the item is not removed, (or a previous warning has been issued) the owner will receive a Community Protection Notice in reasonable situations. The owner of the item(s) will be given a further opportunity to remove the item(s). The purpose of the notice will be:

- To outline how their unreasonable behaviour is affecting local environmental quality.
- To explain what behaviour we expect and an appropriate timescale to comply.
- To remove the items within an appropriate timescale.
- To highlight the consequences if their unreasonable behaviour continues (they will be issued with a FPN of £100 or could face prosecution).

If the item is not removed (or the owner has already been issued with a CPN) then evidence will be taken for breaching the notice. The owner of the item will be informed of the breach and will be given a fixed penalty notice to discharge their

liability for prosecution for this offence. If the fixed penalty notice is not paid then this will be followed up with prosecution action. They will also be told to remove the item(s).

If the item is not removed then the officer will apply to the Justice of the Peace for a seizure order under section 51 of the Anti-Social Behaviour and Crime and Policing Act 2014. This must be following up with prosecution action within 28 days. Failing this then the goods would have to be returned to the owner.

Anti Social Behaviour & Crime and Policing Act 2014

S48 Offence of failing to comply with a notice.

S51 Seizure of an item used in commission of an offence.