

Report No.  
ES 20319

London Borough of Bromley

PART ONE - PUBLIC

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**Decision Maker:** GENERAL PURPOSES AND LICENSING COMMITTEE

**Date:** 29<sup>th</sup> May 2024

**Decision Type:** Urgent Non-Urgent Executive Non-Executive Key Non-Key

**Title:** BUSINESS AND PLANNING ACT 2020 AND THE LEVELLING UP AND REGENERATION ACT 2023.

**NEW POWERS, COMMENCEMENT DATE AND NEW FEES STRUCTURE FOR THE PERMANENT PAVEMENT LICENSING REGIME**

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**Chief Officer:** Colin Brand – Director of Environment & Public Protection

**Ward:** All Wards

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1. Reason for report

To support the hospitality sector's recovery and to allow businesses to operate whilst managing risks arising from the COVID-19 pandemic. The Business and Planning Act 2020 (the Act) was given Royal Assent on 22 July 2020. The Act initially relaxed licensing and planning laws until 30 September 2021 by (a) making it easier to obtain permissions to seat and serve customers outdoors, creating a fast-track pavement licence application process and (b) enabling automatic extension of alcohol off-sales to premises that already had permission for on-sales. Through the Levelling Up and Regeneration Act 2023 this temporary provision has now been made permanent with a commencement date of 31<sup>st</sup> March 2024.

The London Borough of Bromley Pavement Licensing Policy (the Policy) sets out the strategy aimed at facilitating the pavement licence application process whilst maintaining public safety. The policy has been amended to incorporate the provisions of the Business & Planning Act 2020 and the Levelling up and Regeneration Act 2023.

This report provides the background to provide guidance, and seek approval, for delegated authority in relation to Pavement Licensing to the Director of Environment & Public Protection to do all things necessary to implement and operate the pavement

licensing arrangements as amended and made permanent under the Levelling Up and Regeneration Act 2023.

The report provides a recommendation to keep the licence period for pavement licences to one (1) year. Additionally, to set the fees at the capped level of £500 for a new and £350 for the renewal of existing licences.

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## 2. RECOMMENDATION

Members are asked to:

1. Agree the amended Pavement Licensing Policy incorporating the changes of the Levelling Up and Regeneration Act 2023
2. Agree the new fee structure and time period for the length of a Pavement Licence
3. Agree the delegation of powers to the Director of Environment & Public Protection and his officers to administer the Business and Planning Act Pavement Licensing regime.

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### Impact on Vulnerable Adults and Children

1. When making decisions under the Licensing Act 2003 the Council is required to promote the licensing objectives, one of which is the protection of children from harm.
2. The Business and Planning Act does not specify objectives or requirements to promote any form of protection to vulnerable adults or children, however, the Council has a duty to safeguard children and vulnerable adults, and this has been considered in the attached Policy.

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### Corporate Policy

1. Policy Status: The Council has adopted a statement of Licensing Policy under the Licensing Act 2003 for the period 2021 to 2026.
2. The Pavement Licensing Policy is currently in place until the 30<sup>th</sup> of Sept 2024 and is provided, based on a non-statutory provision, to bring together the requirements of the Business and Planning Act 2020 and now the Levelling Up and Regeneration Act 2023. Approval of this report's recommendation will extend the policy life date to 31<sup>st</sup> of March 2026.
3. MBEB Priority: Ambition 3 – For people to make their homes in Bromley and for business, enterprise and the third sector to prosper.

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### Financial

1. Cost of proposal: No Cost
2. Ongoing costs: Not Applicable:
3. Budget head/performance centre: Public Protection
4. Total current budget for this head: £1.6m
5. Source of funding: Existing Revenue Budget 2024/25

Personnel

1. Number of staff (current and additional): x3.5 FTE Business Support staff and x1 FTE Licensing Officer
  2. If from existing staff resources, number of staff hours: Approx. 5hrs per application
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Legal

1. Legal Requirement: Business and Planning Act 2020 and The Levelling Up and Regeneration Act 2023
  2. Call-in: Not Applicable:
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Procurement

1. Summary of Procurement Implications: None
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All premises with, or who wish to apply for, a Pavement License, and all residents of the Borough.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
  2. Summary of Ward Councillors comments: Not Applicable
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**3. COMMENTARY**

3.1 The London Borough of Bromley is the licensing authority for a broad range of legislation and licensable activities.

3.2 The Business and Planning Act 2020 (the 'Act') was introduced on 22 July 2020. Due to the timing of the legislation and the last minute change from an executive function to a non-executive function, the Council Solicitor exercised powers under Article 15 of the Constitution (paragraph 15.2 (d)) to make changes to the Council's Constitution arising as a result of legislative changes, brought about by the Business and Planning Act 2020 in relation to Pavement Licensing, and changes necessitated by administrative convenience, to delegate authority to the Director of Environment & Public Protection to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020 when enacted.

3.3 The Temporary scheme was identified in [The Levelling-Up and Regeneration Act 2023](#) (which became law after receiving Royal Assent on 26 October 2023) as being moved to a permanent licensing scheme within the next 12 months.

3.4 Subsequently this received a commencement date of the 31<sup>st</sup> March 2024

A summary of the relevant points from the new provision is shown here.

Section 135 The Levelling-Up and Regeneration Act 2023 (LARA) makes provision for a permanent regime for pavement licences by amending the Business and Planning Act 2020 (BPA '20), the

details of which are contained in Schedule 22 of LARA. The changes according to the LARA are as follows:

- Section 1 – There are no changes to this section, so the purpose & scope remain the same, this includes sub-section 2 which states “*A pavement licence in respect of any premises is a licence for the licence-holder to put **removable furniture** on part of a **relevant highway adjacent to the premises**”*”
- Section 2 – Amended to change the fees from £100 to £500 for a new licence and £350 for a renewal, and to insert a section explaining the procedure for renewal
- Section 3 – The period for consultation and determination are increased from 7 days for each stage (14 days total) to 14 days for each stage (28 days in total).
- Section 4 – Minimum duration of 3 months has been removed. The licence lasts for the period the authority specifies on the licence, but this cannot be more than 2 years. Where determination is not made within the 28 days, the licence is ‘deemed’ to be granted for 2 years.
- Section 5 – Conditions have not been amended so this section remains unchanged in relation to the ability of the LA to impose conditions it considers reasonable on any licence approved.
- There is nothing in LARA to provide the facility to vary a licence, however, S.6 of BPA '20 has been changed to allow the LA to amend the licence, either with the consent of the holder, or where the no-obstruction condition is not being complied with.
- **NOTE** – LARA also amends Section 115E of the Highways Act 1980 to state “*A council may not under this section grant a person permission to do anything which is capable of being authorised by a pavement licence under Section 1 of the Business and Planning Act 2020.*” **It should be pointed out here that within London the table and chair licensing regime is encapsulated within the London Local Authorities Act 1990 so it would appear that this is either an oversight on behalf of the drafting of the Act, or less likely, that the government intentionally intend to keep the two schemes running in tandem.**

A copy of the amended guidance issued by the government on the 2<sup>nd</sup> of April 2024 is shown in Appendix 1 of this report.

3.5 The Act permits premises to apply for a pavement licence to place furniture outside, adjacent to their premises, on the public highway. In this context, furniture means stalls for selling or serving food or drink, tables and chairs and articles such as patio umbrellas, barriers and heaters.

3.6 The application process remains streamlined in order to enable businesses to boost trade. The pavement licensing process requires a 14-day consultation period and a 14-day determination period. The implications for the authority if it fails to determine the application within 28 days is that the licence is deemed to be granted for a period of 2 years. Thus, the Council can lose the ability to refuse an application or to impose restrictions or bespoke conditions onto the license.

3.7 The BPA 2020 now caps the application fee that can be charged to £500 for a new application and £350 for a renewal.

3.8 All existing licence holders will be invited to re-apply for a pavement licence in advance of the expiry of their current licence on 30 September 2024, and all licenses issued as a result, will be granted for a period of one year

3.9 Since August 2023, LB Bromley has received, processed, and granted 124 pavement licence applications.

3.10 The London Borough of Bromley Pavement Licensing Policy (the Policy) shown at Appendix 2, defines the application and determination process, the licence fee, duration, conditions, and enforcement options where necessary.

3.11 The current policy with amendments to take account of the new permanent scheme is appended for comment and consideration of any alterations that the Committee may wish to implement. However, the end date for all pavement licences under the Business & Planning Act 2020 is the 30<sup>th</sup> of Sept 2024, in accordance with the B&P Amendment Regulations.

3.12 In determining the applications, the principal matters the Council need to consider are set out in the Act and guidance, and include the amount of available pavement to allow passers-by free, clear access and egress to and from the area covered by the Pavement License, ensuring access along the pavement, especially for wheelchair and pushchair users, those with reduced mobility and the visually impaired, and ensures there are no obstructions to statutory undertakers, utility providers, or operators of an electronic communications code network, in having access to any apparatus of theirs kept, installed, under, in, on or over the highway.

3.13 Accordingly authorisation is sought via a delegation of authority to the Director of Environment & Public Protection, who will exercise further delegations to their officers to do all things necessary to implement and operate the pavement licensing arrangements under the Business and Planning Act 2020, as amended. Including, but not limited to, the determination of standard conditions which apply, determining applications made at the fee set by the licensing committee, revocation of licenses and authorising officers to enforce and exercise these functions.

3.14 Whilst the new scheme does not contain any provision for an appeal against a decision of the licensing authority in respect of a refused application, the proposal is that where a pavement licence is refused by the delegated officer, and the applicant wishes to then lodge an objection to this refusal. Then the matter will be put to the Licensing Sub Committee for a final decision. This is in line with the advice given by the government guidance at point 5.7 shown in Appendix 1

#### **4. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

4.1 The Licensing regime provides for additional controls through specific permissions to undertake licensable activities. The Licensing Act 2003 contain 4 licensing objectives one of which is to protect children from harm. Businesses and the Council are required to promote this objective in the way they operate and/or make decisions.

4.2 The Business and Planning Act does not explicitly consider public protection to the same level as the licensing regime, however, where they relate to premises undertaking the sale of alcohol the licensing objectives apply to the Pavement Licence as well. The Council has a duty to protect the public, which includes children and vulnerable adults, and to promote equality, and should be fully aware of these duties when considering any Pavement Licensing application.

4.3 There is some potential for Pavement Licenses granted without controlling conditions to inadvertently impede the passage of pushchairs, prams and wheelchairs however that is balanced with

the improved access to the premises Pavement License area and the services and facilities they provide by those same persons.

## **5. POLICY IMPLICATIONS**

5.1 The Licensing Act 2003 requires the Council to prepare, consult on, and publish a statement of licensing policy. This policy must be reviewed at least every 5 years under the Licensing Act 2003.

5.2 The current Pavement Licensing Policy is in place until the 30<sup>th</sup> of Sept 2024 and is provided based on a non-statutory provision to bring together the requirements of the Business and Planning Act 2020. Approval of this report's recommendation will extend that date to 30<sup>th</sup> of Sept 2026.

5.3 Members should note these current policies:

- Statement of Licensing Policy 2021 to 2026

[http://www.bromley.gov.uk/downloads/file/226/statement\\_of\\_licensing\\_policy\\_2021-2026](http://www.bromley.gov.uk/downloads/file/226/statement_of_licensing_policy_2021-2026)

- The Pavement Licensing Policy in place until 30<sup>th</sup> Sept 2024

[LBB pavement licence policy | London Borough of Bromley](#)

## **6. FINANCIAL IMPLICATIONS**

6.1 The fee for temporary pavement licences was fixed by the Government at £100. The now permanent scheme has a fee capped to £500 for a new application and £350 for a renewal.

6.2 In 2023, the issuing of 117 licences generated income of £11,700.

6.3 The income generated if a similar number of licences are made from Sept 2024 under the new scheme based on an approximate 20 % new application basis would be c£42,500.

## **7. PERSONNEL IMPLICATIONS**

7.1 No additional personnel were made available to administer the temporary Pavement Licensing scheme. This workstream will continue to be undertaken within existing staff resource.

## **8. LEGAL IMPLICATIONS**

8.1 Decisions in relation to Pavement Licences are included in Schedule 1 (at B73) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as a non-executive function, which therefore come under the remit of the General Purposes & Licensing Committee, thus the decision can be delegated.

8.2 Section 3(9) of the Business and Planning Act 2020 is clear that any application made to the Council and not determined by the end of the determination period will be deemed granted, so the Council has no option but to agree a process to decide these applications or face uncontrolled licences. Officially adopting the extension of the legislation and extending the currently agreed process means

the Council can continue imposing generic and specific conditions on licences, or reject applications (see s3(3) of the Planning & Business Act below.

### **3 Determination of applications**

*(9) If the local authority does not make a determination under subsection (3) by the end of the determination period, the licence for which the application was made is deemed to be granted by the authority to the applicant.*

8.3 The attached policy at Appendix 2 covers all necessary points, including enforcement, which is essential when legislation requires such a short determination period. Effective enforcement protects residents' rights and safeguards the Council's reputation.

8.4 Section 149 of the Equality Act 2010 applies to all functions of the Council and will specifically need to be considered during the decision-making process for each application. Although some aspects are already included in the Business and Planning Act 2020 (mainly in relation to wheelchair users) not all are cited:

## **Part 11 Advancement of Equality**

### **Chapter 1 Public Sector Equality Duty**

#### **149 – Public sector equality duty**

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—*
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

8.5 As the Council has decided to include Climate Change at the heart of all its decisions, this aspect needs to be included in all decisions, strategic or operational, practicalities of which will vary depending on the type of application. In this instance, littering, re-use, noise, light and heat pollution should be considered for each application and strictly enforced.

## **9. PROCUREMENT IMPLICATIONS**

None

## **10. EQUALITIES IMPLICATIONS**

10.1 The Equality Act (2010) requires public bodies to have due regard to the need to:

- *eliminate unlawful discrimination, harassment, victimization and any other*

- conduct prohibited by the Act;*
- *advance equality of opportunity between people who share a protected characteristic and people who do not share it; and*
- *foster good relations between people who share a protected characteristic and people who do not share it.*

10.2 The protected characteristics covered by the Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

10.3 The recommendation is to extend the current delegated powers in relation to pavement licensing. There are no changes proposed to the licensing arrangements that have been operating under the Business and Planning Act 2020 since last summer. No equalities concerns have been raised under these licensing arrangements to date.

10.4 There is no indication that the proposed recommendation will have a disproportionate impact on any individuals or groups with a shared protected characteristic.

## 11. ENVIRONMENTAL IMPLICATIONS

11.1 There are no further perceived environmental impacts associated with the recommendation of this report in comparison to the existing arrangements for temporary Pavement Licenses.

<b>Non-Applicable Sections:</b>	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	The Business and Planning Act 2020  Levelling-u and Regeneration Act 2023  Schedule 22.



## **Appendix 1**

### **Gov.UK Guidance on Pavement Licensing Updated 2 April 2024**

[Home](#) > [Housing, local and community](#) > [Planning and building](#)  
> [Planning system](#) > [Pavement licences: guidance](#)

[Department for  
Levelling Up,  
Housing &  
Communities](#)

[Ministry of  
Housing,  
Communities &  
Local Government](#)

Guidance

# Guidance: pavement licences (outdoor seating)

Updated 2 April 2024

## Applies to England

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# 1. Pavement licences

## 1.1 What is a 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 purposes. 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. Licences that are deemed to have been granted, should remain in place for such period as the local authority may specify in the licence, with a maximum limit of two years. Existing licences with no end date are extended to 2 years from the commencement date. 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.

## 1.2 What is the purpose of the Business and Planning Act 2020 process for pavement licences?

The Business and Planning Act process provides a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

## 1.3 What does the Levelling Up and Regeneration Act do to the pavement licencing regime?

The Levelling Up and Regeneration Act makes permanent the pavement licensing regime under the Business and Planning Act 2020, with a number of changes. The Levelling Up and Regeneration Act introduces a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods, lengthens the maximum duration of licences and provides local authorities with new powers to remove unlicensed furniture.

## **1.4 How does the process for pavement licences work?**

Permission to place objects or structures on the highway are otherwise granted primarily under Part 7A of the Highways Act 1980. The fee for the Highways Act process varies between local authorities, and there is a minimum 28 calendar day consultation period. 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 and the public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to the authority.

If the local authority does not determine the 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 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.

## **1.5 What businesses are eligible?**

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 including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

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.

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.

## **1.6 What furniture can be permitted by a licence?**

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 and related to the serving, sale and consumption of food or drink. Local authorities should be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at night.

## **1.7 What furniture is not permitted by a licence?**

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 licencing 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.

## **1.8 How much do applications cost?**

Fees will be set locally, and it is for the licencing authority to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.

## **1.9 Are there any exclusions from this provision?**

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.

## 1.10 Where does this new process apply?

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

## 1.11 Which authority can exercise pavement licence functions?

Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of their functions by a committee, a sub-committee, or an officer of the authority, or by any other local authority. This means that the executive of a local authority can delegate decisions to a committee, or officer of the authority. They may also wish to delegate the functions to another authority, for example to a County Council in a two-tier area.

## 1.12 How does this interact with other regulatory process, such as alcohol licensing?

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

Temporary amendments to the Licensing Act 2003, under the Business and Planning Act 2020, allow the sale of alcohol by eligible holders of an on-sale licence for consumption off the premises without needing to apply for a variation of their licence. These temporary amendments apply if the premises had a licence that permitted sales of alcohol only for consumption on the premises on 22 July 2020, and the premises still retain that licence. More details can be found in the [guidance accompanying the Business and Planning Act 2020 \(https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill\)](https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill). This is currently in place until 31 March 2025. It will remain legally independent and separate from the pavement licences process.

Local authorities must have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to

have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

### **1.13 Does the applicant need planning permission as well as the licence?**

No. 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. Duration**

### **2.1 How long are pavement licences valid for?**

If a local authority determines an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the end of the public consultation period, excluding public holidays), the authority can specify the duration of the licence. To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 2 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 starting with the first day after the determination period. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

### **2.2 When will the permanent pavement licensing come into force?**



The permanent pavement licensing regime and changes provided for in the Levelling Up and Regeneration Act will come into effect on 31 March 2024 (the commencement date). This means that local authorities are able to grant pavement licences to new applicants under this regime effectively immediately from this date.

## **2.3 How long will the pavement licencing process set out in the Business and Planning Act be in place?**

The process set out in the Business and Planning Act is made permanent as amended by the Levelling Up and Regeneration Act.

# **3. Applications**

## **3.1 What information does an applicant need to provide?**

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence-holder to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

Local authorities may require applications to be made on a standard application form.

### **3.2 What other information may the local authority require?**

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Publicising information requirements, and applicants ensuring that they have provided all relevant information to meet these requirements, is beneficial to all parties involved in the process and can speed up decision making. Any requirements imposed should be reasonable and should be kept as minimal as possible. Examples of the information a local authority might require include:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- 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 proposed duration of the licence (for e.g. 3 months, 6 months, a year etc.);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority
- any other evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and or other appropriate measures); and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' national condition.

### **3.3 What are the transitional arrangements?**

Existing pavement licences granted under the Business and Planning Act 2020, prior to the commencement date, will remain valid until the expiration date on the license, given to them by the licencing authority. Once this has expired, businesses will need to apply for a new licence. Licencing authorities should treat this as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

Licences determined before the 31 March 2024 will be subject to the enforcement powers set out in the permanent regime.

Any pavement licence that was granted under the Business and Planning Act 2020 before the commencement date with no limit on its duration, or that was deemed to be granted will expire 2 years from the commencement date. Any permission that was granted by a council under the Highways Act 1980 before the commencement date will continue under that legislation.

Applications made (and submitted to the local authority) on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to a 7-day consultation, 7-day determination period. The maximum fee that can be charged for applications during this timeframe is £100. However, these licences can be granted for up to 2 years.

### **3.4 How should applications for renewals of licences granted under the temporary provisions be submitted?**

To obtain a licence for any period after 31 March 2024, a new application will need to be made even if the premises already had a licence until 31 March 2024.

An application will need to have been made after the commencement date for it to be treated as a renewal. Local authorities are encouraged to take a proportionate approach to information requirements for businesses seeking a new pavement licence where a licence has existed, so that this is as convenient as possible for businesses and members of the public. An example of a proportionate approach could be allowing applicants to re-use application material from their original application, updating where relevant to ensure they still comply with local and national conditions.

Businesses who have had a licence under the previous regime and are seeking a new licence should be treated as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

### **3.5 Can licensable activities still be granted under the Highways Act?**

Any licence applications for activities in England licensable under pavement licencing legislation in the Business and Planning Act 2020 must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980

Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.

### **3.6 What happens if an applicant has already made an application under the Highways Act 1980 regime?**

It remains open for an applicant to apply for permission to place furniture on the highway under the Highways Act 1980. If the applicant has applied for permission under the Highways Act before the commencement date, but the Highways Authority has not determined the application, the applicant can instead apply for a pavement licence under the Business and Planning Act 2020. In those circumstances the pending application will be deemed to have been withdrawn. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

From the commencement date, a council may not grant an applicant permission to do anything which is capable of being authorised by a pavement licence under the Business and Planning Act 2020.

### **3.7 What happens if an applicant has already made an application under the Business and Planning Act 2020 regime?**

Licences applied for prior to the commencement date, but not yet determined by the local authority until after the commencement date, will be subject to the 7-day consultation and 7-day determination period. Though the maximum duration a local authority can grant the licence can be up to 2 years.

## 4. National conditions

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted; these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

### 4.1 How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.2 of [Inclusive Mobility](https://www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians) (<https://www.gov.uk/government/publications/inclusive-mobility-making-transport-accessible-for-passengers-and-pedestrians>) s- 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. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.
- any need for a barrier 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. 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. However, as these are not necessary for the consumption of food, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway. Advertising boards are not included in the definition of

furniture within the pavement licencing 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 licenses 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 duties on local authorities, 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.

## **4.2 What is 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.

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. 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.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.

### **4.3 Where an authority has set a local condition covering the same matter as a national condition, which take precedence?**

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.

## **5. Determining the application**

### **5.1 What happens once the information is submitted to the local authority?**

Once the information is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

### **5.2 What will a local authority consider when deciding whether to grant a pavement licence?**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may specify conditions for pavement licences, in Regulations (although to date there has not been a need to do so). This is in addition to the statutory 'no obstruction' condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 Act and 'smoke-free' seating condition.

Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. When considering their powers in relation to local conditions they should bear in mind the requirements of the no-obstruction condition and the smoke-free seating condition. They should also take into account any national conditions which may be specified in the future in Regulations.

When setting local conditions and determining applications, issues authorities will also want to consider include:

- public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter;
- 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
- 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 fixed structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

### **5.3 How can local authorities consider security?**

When considering public health and safety, local authorities should seek to ensure 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 new public spaces. The impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people. Local authorities should factor this into the security planning process and ensure the [overall security arrangements for an area are adapted as appropriate](https://www.protectuk.police.uk/) (<https://www.protectuk.police.uk/>). Examples of appropriate measures could include increased CCTV surveillance, manned guarding, vehicle security barriers and ACT (Action Counters Terrorism) training for businesses. Find more information about [ACT Awareness Products](https://www.protectuk.police.uk/catalogue) (<https://www.protectuk.police.uk/catalogue>).

Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

Additional [guidance is available for managing the most common security implications](https://www.protectuk.police.uk/user/login?destination=/advice-and-guidance/risk/pavement-licences-how-can-local-authorities-consider-security) (<https://www.protectuk.police.uk/user/login?destination=/advice-and-guidance/risk/pavement-licences-how-can-local-authorities-consider-security>) and how to protect crowds and [queues of people](https://www.cpni.gov.uk/system/files/documents/cd/70/CPNI%20and%20NaCTSO%20Advice%20Note%20-%20Protecting%20pedestrian%20queues%20from%20Vehicle%20As%20a%20Weapon%20Attack%2015%20Sept%202020%20V02.pdf) (<https://www.cpni.gov.uk/system/files/documents/cd/70/CPNI%20and%20NaCTSO%20Advice%20Note%20-%20Protecting%20pedestrian%20queues%20from%20Vehicle%20As%20a%20Weapon%20Attack%2015%20Sept%202020%20V02.pdf>). This includes information on suggested Counter Terrorism licence considerations, which local authorities are encouraged to consider when determining pavement licence applications.

## **5.4 Can local authorities impose conditions which are not published?**

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this. Conditions imposed by the local authority should be proportionate and tailored to the applicant's premises.

## **5.5 How can local authorities and applicants maintain outdoor spaces safely, following confirmation of the removal of social distancing measures?**

There are no COVID-19 restrictions in the UK and since 19 July 2021, social distancing guidance no longer applies. This means that local authorities and businesses are not expected to adhere to COVID-19 regulations and do not need to implement social distancing (2m or 1m+) and the public do not need to keep apart from people they don't live with. However local authorities and businesses may wish to consider that some people may make a personal choice and limit their close contact with others. Businesses still have a legal duty to manage risks to those affected by their business. The way to do this is to carry out a health and safety risk assessment and to take reasonable steps to mitigate the risks businesses identify from the assessment.

## **5.6 What are the outcomes of an application?**

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.

To the extent that conditions imposed on a licence by the local authority do not have the effects specified in the statutory conditions (see [paragraph 4.1](#) and [paragraph 4.2](#)) the licence is granted subject to those requirements.

## **5.7 Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licencing committee.

# **6. Consultation**

## **6.1 What steps should an applicant take to engage with their community?**

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority. When counting 'days' public holidays are not included. Applicants are encouraged to keep evidence of this. Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

## 6.2 What must a notice contain?

The notice must:

- be in the form which the local authority prescribes, if it prescribes one;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require, for example a description of how the applicant will adhere to the national conditions.

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

## 6.3 What information may local authorities require to be displayed on the site notice?

The local authority may require that other information is included in the notice such as:

- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;
- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email address) to which representations should be sent during the consultation period.

## **6.4 Who must local authorities consult?**

The local authority must consult the highways authority to which the application relates, if they are not the highways authority; this is usually the County Council in a two-tier area. Transport for London is the highway authority for some roads in London. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

## **6.5 How can members of the public make representations about the application?**

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period, which is the period of 14 days starting the day after the application is submitted. In order to promote accessibility to those unable to access printed notices, Local Authorities are encouraged to consider using digital methods of publicity. They should also consider the needs of those who may find it more difficult to access online publications and should consider ensuring that all formats of consultation are available at the same time, so that all representations can be considered equally.

## **6.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?**

The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity.

such as automatic notices, which members of the public can opt in to receive. In deciding what steps to take local authorities should consider the needs of those who may find it more difficult to access online publications.

When publishing applications and publicising the fact that representations can be made, authorities will need to have regard to their duties under the Equality Act 2010 and will need to meet the requirements in the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018, and therefore ensure that these are made accessible.

## 7. Enforcement

### 7.1 In what circumstances can the local authority enforce or revoke a licence?

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing. Local authorities are encouraged to regularly review licenses and enforce any breaches.

The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licensed area (or road adjacent) is no longer to be pedestrianised.
2. Or if there is evidence that:
  - there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
  - this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or

- the use is causing, or risks causing, 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.

The local authority may revoke a licence in the following circumstances:

1. For a breach of condition, (whether a remediation notice has been issued or not) or
2. 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
3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

It is good practice for local authorities to give reasons where these powers are used.

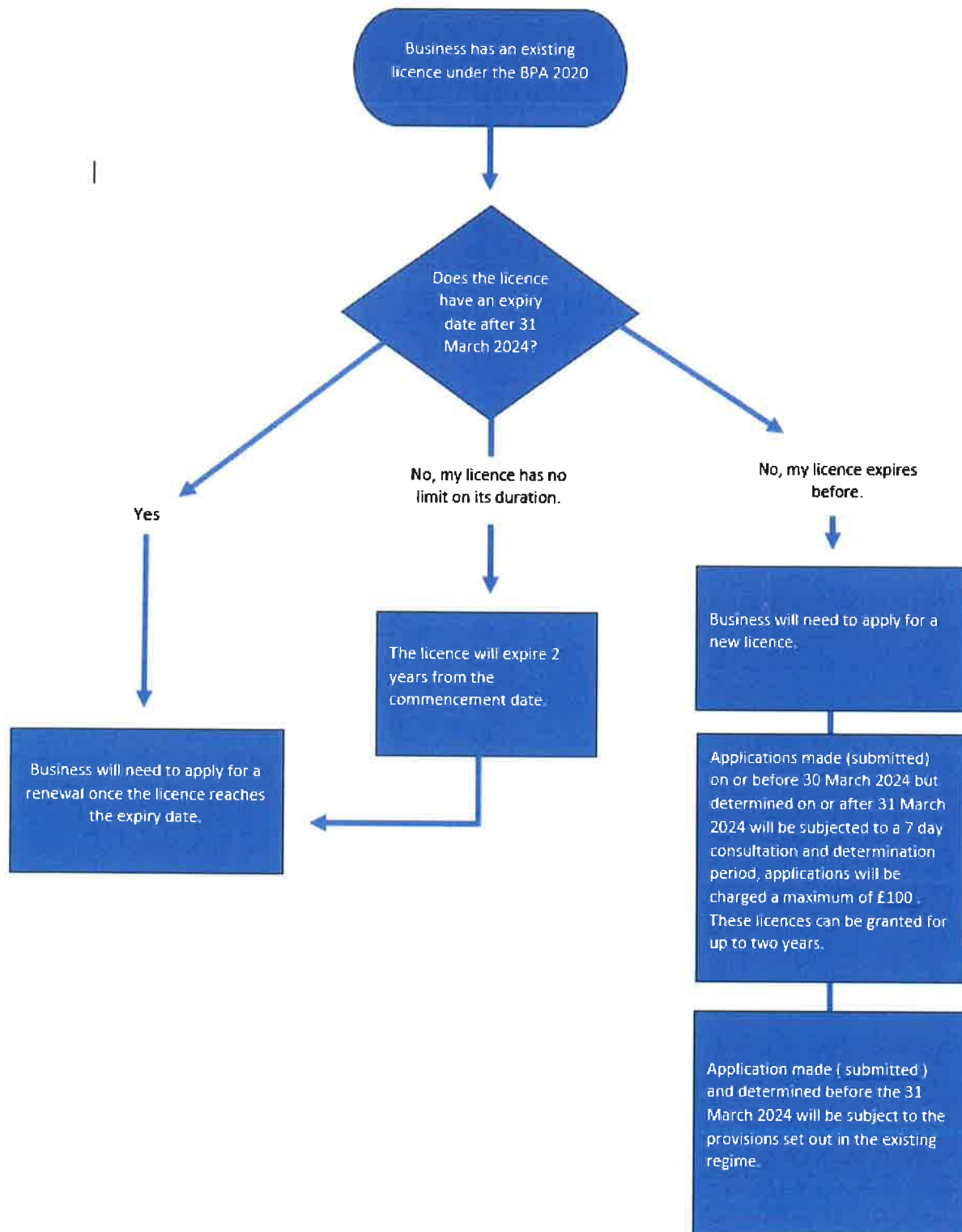
## **7.2 When can furniture be removed?**

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, local authorities 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 authority 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 authority can dispose of the furniture by sale or other means and retain the proceeds.

## **8. Annex**

### **8.1 Transitional arrangements flowchart**



### Accessible version

Business has an existing licence under the BPA 2020

Does the licence have an expiry date after 31 March 2024?

#### If yes:

Business will need to apply for a renewal once the licence reaches the expiry date.

## **Appendix 2**

### **Licensing Policy**



# Pavement Licensing Policy



THE LONDON BOROUGH

[www.bromley.gov.uk](http://www.bromley.gov.uk)

Effective: 21<sup>st</sup> July 2020  
Version Sept 2021

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## **1. Introduction**

The Covid-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

As the economy started to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.

The Business and Planning Act 2020 made it easier for premises serving food and drink such as bars, café's, restaurants and pubs, as lockdown restrictions were lifted but social distancing guidelines remained in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modified provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It was to be a temporary measure to boost the economy, with provisions initially lasting until the end of September 2021 now extended to end of September 2022.

The Act also introduced a temporary fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from the London Borough of Bromley for the placement of furniture such as tables and chairs on the pavement outside their premise which enabled them to maximise their capacity whilst adhering to social distancing guidelines.

Prior to the Summer of 2020, tables and chairs permissions were granted as Pavement licences by *Bromley* Council, the Highways Authority, only under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28 day consultation period.

The temporary measure placed a cap on the application fee for businesses, and introduced a new 7-day determination period, ensuring that businesses could obtain licences in a timely and cost effective manner aiding to their financial recovery.

## **2. Scope**

### **2.1 Definition of pavement café**

A pavement licence is a licence granted by the local authority, or deemed to have been granted by the Local Authority, 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.

### **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 Eligible Locations

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 vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

### 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 means it is not a permanent fixed structure and is able to be moved easily, and stored away at the end 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.

## **3. Application and Determination of Pavement Licences**

### 3.1 Submission of the Application

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, paid by credit or debit card online
- 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 if less than 6 months

- evidence of the right to occupy the premises (e.g. the lease) or current premises licence issued under the Licensing Act 2003
- 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 Fees

The fee for applying for a licence under the new process are set locally, but are capped at £100. The Council has determined that the fee for applications will be £100. The licence will be valid until 30<sup>th</sup> Sept 2022

### 3.3 Consultation

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

The Council will publish details of the application on its website at [www.Bromley.gov.uk](http://www.Bromley.gov.uk) On the Search Licensing Application Portal

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- London Borough of Bromley Environmental Health Service (
- Environmental Protection, Health, Safety, Food and Licensing Teams
- Any other Department or Agency deemed relevant to the application

Members of the public and others 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.

### 3.4 Site Notice

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, including wheelchair users. 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 and may be checked on site at any time without prior notice.

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 for the Site Notice is shown as Appendix 1.

### 3.5 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 re-opening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and / or 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 local authority and so take any issues around noise, and nuisance into consideration as part of the proposal.

### 3.6 Determination

Once the application is submitted the Council has 14 days from the day after the application is made (excluding public and bank 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 for one year (but will come to an end on 30 September 2022).

### 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 Appendix 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 Licence Duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period, excluding public holidays) the *Council* can specify the duration of the licence, subject to a minimum duration of 3 months.

The Licence will generally be granted until 30<sup>th</sup> Sept 2022, 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 the Council does not determine an application before the end of the determination period, the licence is deemed granted until 30<sup>th</sup> September 2022.

A licence granted or deemed to be granted will not be valid beyond 30 September 2022.

Licences previously granted without an end date are extended to 30<sup>th</sup> September 2022 without the need for a further application.

### 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 decision to refuse an application so the correct approach to challenge the decision would be via Judicial Review.

#### 4. 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, 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 zone conditions which apply to all Licences. The National 'no obstruction' and "smoke-free zone" conditions are shown in Appendix 3.

#### 5. Enforcement

The Council aims to work closely with licence holders and 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.

Obtaining a Consent 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, Social distancing controls and applicants must ensure all such permissions, etc. are in place prior to applying.

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 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 where users 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 or light generated late at night and litter is not being prevented or 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. 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 2022.

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 within the Bromley Borough.



Public Protection &  
Enforcement

**Site Notice for display by an applicant for a Pavement Licence.**

**Issued under the Business and Planning Act 2020.**

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] have applied to London Borough of Bromley for a 'Pavement Licence' at:

*(postal address of premises)*

known as

*(name premises known by)*

The application is for:

*(brief description of application (e.g. outdoor seating to the front of the premises for serving of food and drink))*

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

Licensing Team  
London Borough of Bromley  
Stockwell Close  
Bromley  
BR 3UH  
0208 313 4218  
Licensing@bromley.gov.uk

by: *(last date for representations being the date 7 days starting from the day 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: [www.Bromley.gov.uk](http://www.Bromley.gov.uk)

Signed .....

Dated *(date the notice was placed which must be the same date as the date of application)*

## Standard Pavement Licence Conditions

1. Permission to operate a pavement café does not imply an exclusive right to the area of public highway. The licence holder must be aware that London Borough of Bromley and others (e.g. 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 café 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 Public Liability Insurance at all times the Pavement Licence is operational. This must cover indemnity to London Borough of Bromley 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. The minimum level of indemnity must be £5 million in respect of any one incident.
3. 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 premises away from the highway.
4. London Borough of Bromley is empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored.
5. The licence holder is not to make or cause to be made any claim to London Borough of Bromley in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
6. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
7. The method of marking the boundary of the licensed area must be agreed between the licence holder and Bromley Licensing Department. Whatever method is agreed, a 1.5 metre clear walkway must be maintained for the use of pedestrians.
8. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Café, which should not, in normal circumstances, extend beyond the width of the premises frontage.
9. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture must 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. Alternative items may not be used without first seeking the written authority of the Council.
10. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.

11. The licensee must 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.
12. The operation of the area must not interfere with highway drainage arrangements.
13. 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.
14. 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 Facility, for a distance of up to 10 metres from the boundary of the Facility. 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 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.
15. 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 London Borough of Bromley or the Highway Authority.
16. The Licensee of premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the area covered by the Pavement Licence.
17. The Alcohol licence obtained under the Licensing Act 2003 for the main premises extends to the area covered by the Pavement Licence. The Licensee of premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Facility outside the hours in force for the premises itself.
18. The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
19. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to, including in the area covered by the Pavement Licence. 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.
20. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period and on revocation of the licence.
21. London Borough of Bromley reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
22. The Premises Licence Holder or nominated person shall erect suitable and sufficient conspicuous signage on the exterior of the premises advising patrons of the need not to cause excessive noise whilst queuing due to the proximity of residential dwellings.

23. The Premises Licence Holder or nominated person shall control levels of noise and light in the outside area and advise customers of the need to respect local residents.
24. No speakers for the amplification of music shall be placed on the outside of any building forming a part of the premises (including land), other than for events where the prior written approval of the Licencing Authority, upon consultation with Environmental Health, has been obtained in accordance with the appropriate application process

### Appendix 3

#### National Conditions

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to 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](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.
3. 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 (including vaping) is not permitted.