

Pavement Licence Policy

Business and Planning
Act 2020



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1. Introduction

In response to the Covid-19 pandemic of 2020 the government has introduced a series of measures with the intention of stimulating businesses that have been struggling over this period and continue to financially recover whilst 'Covid secure' measures remain in place, particularly in respect of social distancing. The Business and Planning Act 2020 (The Act) was therefore introduced as temporary legislation effective until 30th September 2021 to assist businesses and remove existing bureaucracy around what are currently known as 'Tables and Chairs' Licences under the Highways Act. That reference will remain as the overarching licensing regime, moving beyond September 2021.

The Act essentially introduces a quicker means by which businesses may be permitted to use space at the front of and adjacent to premises that are situated on the 'highway' for specified purposes and introduces a 'Pavement Licence'. At the same time the Act permits Licensed Premises under the Licensing Act 2003 to sell alcohol where previously the licence only permitted 'on sales' and would have required a minor variation to the licence before such sales could take place. This policy does not concern itself with this part of the Act and no part of the Act extends the authority to sell alcohol into those areas licensed to place street furniture.

The Act introduces relaxation to Planning permissions and assist the hospitality industry to recover from the restrictions that existed previously and where further complicated due to emergency regulations and guidance.

The Act makes it particularly easier for premises serving food and drink such as bars, restaurants and pubs, as emergency measures are lifted but social distancing guidelines remain in place to seat and serve customers out of doors.

The Act allows the Chelmsford City Council (the council) to permit specified furniture to be placed on the highway (Mostly footpaths and pedestrian zones) although where applicable businesses will still need the activity to be licensed e.g. sale of alcohol and social distancing measures must still be maintained.

The present regime for similar use of the highway is granted 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 new temporary measure places a cap on the application fee at £100 and introduces a temporary 14-day consultation and determination period. Whilst this is intended to be a quicker and less costly process there should be no assumption to grant on the part of an applicant unless a decision whether to grant or not has been made during the determination period, in which case tacit consent will apply.

2. Scope

2.1 Definition of 'pavement licence'

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways *adjacent* to the premises in relation to which the application was made, and for certain purposes.

2.2 Eligible Businesses

A person (which includes a body corporate) 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, cream parlours, art galleries, theatres, hairdressers (where (*even partial*) food or drink is made available) or similar.

A licence permits the business to use furniture placed on the highway in order 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.

A pavement licence does not license the activity, only the placing of the furnishings.

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

Furniture which may be placed are:

- 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, meaning that it is not a permanent fixed structure, and is able to be moved easily, and should be stored away when the premises are closed for activity.

There is an expectation that the Council would expect the type of furniture to be 'in keeping' with the local area.

2.4 Customer toilet provision

Particularly in respect of those premises who previously have not provided seating internally - and with the exception of very limited circumstances - it is expected that toilets and associated handwashing facilities will be made available for customers. Both indoor and outdoor seating will need to be taken into account when calculating the number of toilets that may be required. In assessing the suitability and sufficiency of customer toilets, regard must be had to the Council's guidance on toilet provision, please contact safe.support@chelmsford.gov.uk for further information.

2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done only in pursuant to the licence while the licence is valid, but not for otherwise.

2.6 Street Trading

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed authority for the purpose of street trading to use the land in for anything done only in pursuant to the licence while the licence is valid, but not for otherwise.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

An application for a Pavement Licence may only be made to the Council **electronically**, 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; a plan showing the location of the current boundary of the premises and the area sought to be covered by the pavement licence within the application by using a 'red line' (as common with the licensing Act 2003);
- The plan showing the proposed area to be licensed will clearly show its relationship to the adjoining highway, preferably to scale and with measurements clearly shown such that authorised officers are able to determine its precise location. The plan must show the positions and number of the proposed tables and chairs, together with any other items that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item within 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 (for e.g. 3 months, 6 months or until 30th September 2021);
- evidence of the right to occupy the adjoining business premises (e.g. the lease);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million and that it covers the proposed licensed area, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

Whilst officers making the determination on behalf of the council will refer to this policy in making any decision, they may deviate from the policy where there are justified reasons to do so and will state those reasons in the determination.

3.2 Data Protection

Applicants will be deemed to agree that for the purposes of communications that their address and other details may logically be used in connection with the application.

3.3 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.

3.4 Consultation

Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council (an application will not be considered to have been properly made unless each requirement has been met). This must include 5 working days and therefore any bank holidays falling within this period will not be taken into account.

The Council will publish details of the application on its website at www.chelmsford.gov.uk/business/licensing/find-a-licence/pavement-licence

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:

- Chelmsford City Council Environmental Health Service
- Chelmsford City Council Planning
- Chelmsford City Council City Centre Management
- Essex Fire & rescue Service
- Essex Police
- The appropriate Local Ward Councillor(s)
- The appropriate Parish or Town Council
- Chelmsford City Council Business Improvement District
- Essex County Highways Authority

Members of the public and others listed above may contact the Council to make representations.

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

3.5 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. The notice must be constructed and secured so that it remains in place throughout and until the end of the public consultation period.

Evidence of the site notice requirement must be supplied to the Council at the time of making application.

The Site Notice must:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address or email address to which representations should be sent during the consultation period; and
- the end date of the consultation period (5 working days (not including any bank holiday) starting the day after the application is submitted to the authority).

A template Site Notice is shown as **Appendix 1**.

3.6 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 and layout conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
 - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
 - the impact on any neighbouring premises
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
 - other users of the space, for example if there is any shared use by pedestrian, wheelchair users 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 obstructions, noise, and nuisance into consideration as part of the proposal.

3.7 Determination

Following the correct receipt of an application for a Pavement Licence the Council has 14 days (10 working days) from the day after the application is made (working days excludes any public holiday) to consult and determine the application. This consists of 7 days (5 working days) for public consultation, and a further 7 days (5 working 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 or part 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 determination period, the application will be deemed to have been granted and tacit consent will apply.

3.8 Approval of Applications

The Council may approve applications meeting the criteria contained within this policy.

On approving the application, the Council will issue a Pavement Licence to which standard conditions will be attached.

The licence will also contain specific terms such as days and hours when tables and chairs are permitted and the appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions that will be attached to all Pavement Licences are shown at **Appendix 2**, along with these conditions and any that may be required by the Secretary of State. Additional conditions may be attached if the Council considers it appropriate on a case by case basis.

The Council will generally only permit Pavement Licences between 09:00hrs and 23:00hrs unless the applicant has previously held a tables and chairs licence for a later hour.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to modify any permitted hours of use of the licensed area that may be are less than those specified above in appropriate circumstances.

3.9 Licence Duration

If the Council determines an application before the end of the determination period (which is 7 days (5 working days), beginning with the first day after the public consultation period, it may also specify the duration of the licence, subject to a minimum duration of 3 months.

There is no expectation by government to issue these licences for a period of a year. Unless further guidance is issued the council initially intends not to extend any licence beyond 30th May 2021 without a further application being made. This position will be reviewed before

this date. Unless extended by further regulation no licence issued under this Act will be valid beyond 30th September 2021.

If a licence is 'deemed' granted because the authority did not make a decision within the statutory time limit, the licence will be valid for one year commencing the day after the end of the determination period.

3.10 **Refusal of Applications**

Where the Council are of the reasonable opinion that the grant of a pavement licence would be inappropriate 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. However, applicants can request a review of the decision to refuse a licence by contacting the Council's Public Health & Protection Services Manager paul.brookes@chelmsford.gov.uk

If the application to grant a pavement licence is refused by the council the applications fee will be non-refundable.

4. **Conditions**

The Council's standard conditions are set out at **Appendix 2**. In some cases, extra measures may be required, and these may be determined during the consultation and determination period on a case by case basis.

Where a local authority sets a local condition that covers the same matter as set out in any mandatory conditions set out by the Secretary of State then the locally set condition takes precedence where there might be a conflict and reasonable justification to do so.

However, this is not the case for the statutory no-obstruction condition which is as applies to all licences. The National 'no obstruction conditions is shown in **Appendix 3**.

5. **Enforcement**

The Council aims to work closely in partnership with other authorities to enforce the provisions of all appropriate legislation. Any obstruction of the Highway remains an offence under The Highways Act 1980 and any complaint will be referred to the Highways Authority or the Police for investigation.

Granting permission does not confer the holder immunity in respect of other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls etc, and applicants must ensure all such permissions and authorities are in place prior to applying.

If a condition imposed on a licence either by the Council or as a mandatory condition is breached the Council may issue a notice requiring the breach to be remedied where less informal attempts to resolve are unsuccessful and where ultimately the Council may take their own action and seek to recover 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 by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are later found to be using the area for a purpose other than the sale and consumption of food and/or drink.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. Transfer of the licence

The pavement is issued to a person or incorporated body. Where there is a change to that person or incorporated body then the licence will lapse, and a further application will need to be made by any new person.

7. Policy Review

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

This Policy will be reviewed from time to time should changes to any other relevant legislation, Covid-19 safe practice guidance or any further guidance in respect of Pavement Licences is issued or as a result of local considerations within the area covered by Chelmsford City Council.

Creation Date	Version No	Changes Made	Changes made by	Date of Change
21/7/2020	3	created	created	created



PUBLIC NOTICE
for display by an applicant for a Pavement Licence
s.2 of the Business and Planning Act 2020

I/We (1),

do hereby give notice that on (2) [I/we] have applied to Chelmsford City Council for a 'Pavement Licence' at: (3)

known as (4)

The application is for: (5)

Any person wishing to make representations to this application may do so by writing to Chelmsford City Council, Licensing department, Civic Offices, Duke Street, Chelmsford CM1 1JE or (preferred) by email :

licensing@chelmsford.gov.uk

by: (6)

The application and information submitted with it can be viewed on the Council's website: www.chelmsford.gov.uk

Signed

Dated (7)

Guidance notes:

Substitute the numbers with the following information:

(1) name of applicant

(2) date the application is made (ie submitted)

(3) postal address of premises

(4) name premises is known by

(5) brief description of application (e.g outdoor seating (including numbers of tables and chairs etc) to the front of the premises for serving of food and drink).

(6) last date for representations being the date 5 working days after the date the application is submitted to the local authority (excluding public holidays)(2)

(7) date the notice was placed (must be the same date as (2))

Annex A: Mandatory Conditions (National)

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

Condition relating to clear routes of access:

1. It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition

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.

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.

2. Smoke free seating – Where placement of furniture is provided for the purpose of the consumption of food or drink, the licence holder must make reasonable provision for seating where smoking is not permitted.

Guidance on the effect of this condition

The local authority will have regard to any current guidance issued by the Secretary of State in determining whether or not this condition has been met.

Annex B: Standard Conditions

1. This permission is personal to the Licence holder and not be capable of being transferred.
2. Unless determined otherwise, all pavement licences will be restricted so as only to authorise the placement of street furniture between the hours of 9am – 11pm and in accordance with the plan submitted with the application.
3. Unless determined otherwise, all pavement licences will expire on 30th May 2021 or three months after the date granted, whichever is the later date.
4. The Licensee shall make good, to the County Council's satisfaction, any damage caused to the highway caused by the exercise of this consent and indemnify and keep indemnified the County Council from and against any claims, demands or proceedings in any way arising in regard thereto.

5. The Licensee shall make no claim or charge against either Chelmsford City Council (The Council) or Essex County Council in the event of the furniture or other objects being lost, stolen or damaged in any way from whatever cause.
6. The Licensee shall indemnify both the Council and the Essex County Council as Highway Authority against all actions, proceedings, claims, demands and liability which may at any time be taken, made or incurred arising out of the grant of this permission and for this purpose must take out at the Licensee's expense a policy of public liability insurance approved by the Council in the sum of at least five million pounds in respect of any one event and must produce to the Council on request the current receipts of premium payments and confirmation of the annual renewals of the policy.
7. The authorised area shall be used solely for the purpose of consuming food or drink and only by persons seated at the tables and chairs provided within the authorised area.
8. No charge shall be made by the Licensee for the use of the tables and chairs.
9. Waste from the Licensee's operations shall not be disposed of in the permanent litter bins situated on the highway for use by the general public provided by the Council.
10. Refuse and litter deposited on the highway in the vicinity of the chairs and tables must be collected and removed each day by the Licensee at the Licensee's expense at not less than hourly intervals, at close of business or at more frequent intervals as may be required by or under the Environmental Protection Act 1990 and the Licensee shall comply with all requirements of any public health legislation for the time being in force.
11. The Licensee shall remove from the highway the barriers, posts, tables and chairs to permit works in or the use of the highway by the Council, the County Council, the police, fire and ambulance services, any statutory undertaker or telecommunications code operator and shall make no claim against the Council or County Council for any loss of revenue or for refund or permission fee as a result thereof. When such temporary removal is required to enable authorised special events to take place, the Council will provide reasonable prior notice of such events.
12. No alcohol shall be consumed on the permitted area unless a licence authorising the sale of alcohol has been issued by the Council.
13. The Licensee shall be responsible for any rates, taxes and other outgoings which may be charged arising from the exercise of this licence.
14. The Licensee shall at its own expense obtain any necessary statutory consents and approvals required in connection with the exercise of a refreshment facility on the highway and comply with the provisions of all such consents and approvals and all statutes and other obligations imposed by law with regards to the provision, maintenance and operation of the refreshment facility.
15. The Licensee shall at the written request of the Council's Director of Public Places remove from and shall not replace any furniture on the permitted area which is not maintained to a standard satisfactory to the said Director.

16. No regulated entertainment shall be permitted within the licensed area unless authorised.
17. The Licensee shall keep the furniture clean and tidy and the tables cleared regularly, ensuring that they do not obstruct entrance or egress from the premises.
18. No furniture is to be placed or kept on the permitted area when [premises] is not open or trading.
19. The furniture is to be used only by customers of [premises], Chelmsford for the consumption of food and drink supplied from within those premises.
20. The Licensee shall not cause or permit any nuisance or annoyance to users of the highway, to which the public will remain at all times entitled to exercise their right of passage over.
21. The Licensee shall not place furniture on the highway outside the authorised area of use.
22. The Licensee shall not permit or suffer the removal of any glassware used for the supply of the refreshment provided by the public from the authorised area.
23. Glasses supplied for the consumption of drinks on the authorised area shall be made of toughened glass or plastic only.
24. All barriers erected to enclose the area will be of high visibility and with a low tapping rail for the visually impaired.
25. The authorised area shall be supervised by competent staff of the Licensee at all times during the exercise of this consent who shall take all reasonable steps to ensure compliance with these terms and conditions.
26. Any heaters used in the permitted area must conform to BS EN 60529:1992 (electric heaters) and BS EN 14543:2005 (gas heaters). The Licensee shall restrict access to the controls/ pipe cylinders on the heaters to authorized employees of the premises only.
26. This permission may be suspended or revoked:
 - (a) by either party giving to the other not less than one months notice in writing to expire at any time or
 - (b) in the event of the Licensee failing to comply with any of the above conditions the Council may revoke the licence by giving 24 hours notice in writing to the Licensee and in this event all consideration money previously paid shall be without prejudice to any right or action which the Council may have for breach of terms of this permission damages or otherwise.
28. Any notice to be served in connection with this permission will be sent by email to the email address of the licence holder provided within the application and shall be deemed to be served upon the Council if sent via email to licensing@chelmsford.gov.uk or addressed to Director of Public Places c/o The Licensing Team, Civic Centre, Duke Street, Chelmsford CM1 1JE.

29. The Licensee shall remove all furniture from the authorised area when the premises are closed for trading. For further clarification, no furniture is to be placed or kept on the authorised area when the premises are not open or trading, nor placed on the highway other than in the layout shown on the approved plan.
30. This consent is a consent issued under s.3 (3)(a) of Part1 Business and Planning Act 2020
31. No form of decking/flooring will be permitted under any circumstances.
32. The Licensee is responsible for ensuring that no statutory undertakers' apparatus is affected by the exercise of this consent.
33. Customer toilet and associated hand-washing facilities is to be provided in accordance with the Council's Guidance on Toilet Provision.
34. A copy of page 1 of this licence shall be placed in a prominent position adjacent to the area in respect of which this permission has been granted so as it can be clearly seen by authorised officials without need to enter the premises.

The Licensee's attention is drawn to The Chelmsford City Council Public Spaces Protection Order (Chelmsford City Centre and Surrounding Area) 2019 made in accordance with the Anti-social Behaviour, Crime and Policing Act 2014

Annex C: Part 1 Business and Planning Act 2020

1. If it appears to a local authority that a person to whom they have granted or deemed to be granted permission under Section s.3 (3)(a) of Part1 Business and Planning Act 2020 has committed any breach of any condition of the licence they may revoke the licence, or serve a notice requiring them to take such steps to remedy the breach as are specified in the notice within such time as it is so specified.
2. If a person on whom a notice is served under subsection 6(1)(b) above fails to comply with the notice, the council may revoke the licence or take the steps themselves and in doing so may recover any costs from the licence holder.
3. A local authority may also revoke a pavement licence if it considers that (a) some or all of the part of the relevant highway has become unsuitable for any purpose in relation to which the licence was granted and (b) as a result there is a risk to public safety, anti-social behaviour or public nuisance is being caused or the highway is being obstructed (other than that permitted in pursuant of the licence) or (c) it is later found that the applicant was misleading or gave false information in their application or (d) the licence holder failed to comply with the duty in s. 2(5) in respect of failure to properly display the public notice.

Effect

1. The effect of granting this licence negates the need to apply for any planning permission or street trading consent in connection with only the purposes for which this licence has been issued.

Mandatory Conditions (National)

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

Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition

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.