



East Cambridgeshire District Council

Business and Planning Act 2020

Pavement Licensing Policy



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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, 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 makes it easier for premises serving food and drink such as bars, restaurants, cafes, and pubs, (as lockdown restrictions are lifted but social distancing guidelines remain in place) to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modify provisions in the Licensing Act 2003 to automatically allow on-licensed premises to allow off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.

The Act also introduces a temporary fast-track process for food and drink businesses to obtain permission, in the form of a “pavement licence”, from East Cambs District Council for the placement of furniture such as tables and chairs on the pavement outside their premise which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, tables and chairs permissions are granted as Pavement licences by Cambridgeshire County Council’ Highways Authority, under Part 7A of the Highways Act 1980. The fee varies depending upon the size of the licensed area, and there is a time consuming 28 day consultation period.

The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost effective manner aiding to their financial recovery.

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, 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).

2.4 Type of furniture permitted

The furniture which may be used can 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;
- umbrellas, barriers, heaters, and
- other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

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

2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

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 – online or via email
- the required fee paid online, or by credit or debit card over the phone
- Site plan to a suitable scale showing:
 - property boundary and proposed boundary of area to be covered by the pavement licence (with a red line to indicate the area to be licensed)
 - building and kerb lines
 - furniture layout
 - points of access and egress
 - position of any lighting columns, litter bins, road signs or other existing street furniture
 - measures to comply with national smoke free seating condition
- evidence of the right to occupy the premises e.g. the lease;

- photos or pictures showing the proposed type of furniture
- photo evidence that the notice of the application is being displayed in accordance with section 2(5). (if applicable) reference of existing pavement licence currently under consideration by the local authority;

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.

3.3 Consultation

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

All applications will be displayed on the public access area of the Council's website.

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

- Cambridgeshire Police
- Cambridgeshire Fire and Rescue

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. The notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of the site notice requirement must be supplied to the Council.

The Site Notice must:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address to which representations should be sent during the consultation period; and
- the end date of the consultation (7 days starting the day after the application is submitted to the authority).

A template Site Notice is 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 reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
 - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
 - the impact on any neighbouring premises
 - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.
 - the needs of disabled people, and
 - the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.”

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 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 ends.

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,
- impose specific conditions, over and above the standard published conditions,
- refuse the application.

If the local authority does not determine the application within the 14 working day period,

the application will be deemed to have been granted.

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 published 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) East Cambridgeshire District Council has agreed that all licences granted by them will expire on the 30 September 2021, unless revoked, or surrendered.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year, or until 30 September 2021 if sooner, as required by the Act.

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.

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.

The Act contains two national conditions that all granted and deemed granted licences must adhere to if the council fails to publish their own conditions, or the published conditions fail to make provision for observing the national conditions. The two conditions are:

- a no-obstruction condition
- a smoke free seating condition

The Council's published conditions make provision for these conditions.

The national conditions are shown in Appendix 3 for transparency.

The Act also allows for the Secretary of State to produce via regulations conditions for pavement licences, and to stipulate whether these conditions have effect as well as, or instead of, the conditions placed on a licence by the Council. If such conditions are created, this policy will be amended to reflect them, and all licence holders will be notified of any changes this may create.

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a Licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls. Applicants must comply with all relevant legislation.

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:

- (i) For breach of condition, (whether or not a remediation notice has been issued) or
- (ii) Where:
 - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
 - the highway is being obstructed (other than by anything permitted by the licence);
 - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
 - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
 - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
- (iii) 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 2020 which are scheduled to expire on 30 September 2021.

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

Appendix 1 - Site Notice Template for display by an applicant for a Pavement Licence.

[Section x] of 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 East Cambridgeshire District Council 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 email to:

licensing@eastcambs.gov.uk

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*

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

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

Appendix 2 - Standard Conditions for Pavement Licences (applicable to both deemed and granted licences)

1. The Licence Holder shall ensure that no activity undertaken by them by the placing of furniture on the highway will:
 - (a) prevent traffic, other than vehicular traffic, from:
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway),
 - (ii) passing along the relevant highway, or
 - (iii) having normal access to premises adjoining the relevant highway,
 - (b) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - (c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - (d) prevent the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.
2. The licence holder must ensure clear routes of access are 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 the Department for Transport's "Inclusive Mobility" document in force at the time this licence is granted, and the licence is granted subject to those requirements.
 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/3695/inclusive-mobility.pdf
3. The Licence Holder shall comply with all requirements of the government's response to the Covid 19 pandemic at all times whilst licensed, and will abide by any requirements stipulated by the Council in this regard. This shall include, but is not restricted to, ensuring social distancing is observed, and track and trace details of customers and visitors to the facility are taken and kept for the required 21 day period.
4. The Licence Holder shall ensure that where no specific condition has been added to their licence relating to smoking (including vaping) within the licensed area, the national smoke-free seating condition is observed, as follows, where seating is placed on the relevant highway for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating to be available where smoking is not permitted.
5. Furniture placed on the pavement after the granting of a licence must be in accordance with the details and plans provided at the time of the application. No changes are permitted without prior approval from the Council.
6. Any furniture shall be kept in a clean, safe and well maintained condition. Any canopies or umbrellas must be adequately secured.
7. The licence holder must not place any furniture in the licensed area more than 30 minutes before the hours as specified on this licence, and must remove all furniture either at the end of the trading day, or within 30 minutes of the end of the hours as

specified on this licence, whichever is the earliest. When not in use, all furniture must be stored securely inside a premises away from the highway.

Where no formal licence exists due to the applicant obtaining tacit permission, furniture must not be set out on the highway before 8:30am for a 9:00am trading start, and the area must be closed by 9pm with all furniture removed from the highway by 9:30pm.

8. If the furniture is (a) not removed outside the permitted hours or (b) located in breach of the licence, conditions or other regulatory requirements, the Highway Authority may remove and store or dispose furniture, at the cost of the licence holder and with no responsibility for safekeeping.
9. The premises should not place A-boards or advertising signs on highway outside of the licensed area.
10. All furniture authorised by the licence must be removed by 11pm on the day the licence expires, or by 11pm on the day a revocation notice is served. The Council reserves the legal right to recover costs of any furniture removal from the licence holder.
11. The Licensee shall maintain a public liability insurance policy up to the value of £5 million pounds against any liability, loss or damage, claim or proceeding whatsoever arising under Statute or Common law in respect of the placing and maintaining of the tables and chairs on the highway or their removal there from.
12. The Licensee shall be responsible for keeping the designated area in a clean and tidy condition at all times, and will ensure that the area covered by the licence is left clean and tidy once the furniture is removed at the end of the day.
13. Any waste produced by the business will be handled safely, and disposed of in accordance with the law.
14. The Licence Holder must comply with any request to allow highway maintenance and any other necessary remedial work to be carried out at the location covered by the licence. The Licence Holder must also comply with any request to remove the furniture due to an emergency situation or special event. A reasonable period of notice will be given to the licensee where possible. The Highways Authority and/or East Cambs District Council will not be liable for any loss of earnings arising out of the loss of use of a licence whilst complying with any such request.
15. No furniture other than that stipulated on the application is permitted to be used. Any replacement furniture must be like for like, or permission must be sought from the Council.
16. No form of entertainment (incl. background music) is permitted in the licensed area, this includes the placing of speakers or any other equipment for the amplification of sound.
17. The licence holder must ensure that the area covered by the licence is monitored regularly by staff to ensure compliance with the licence conditions and to ensure that the area operates in a safe and orderly manner to reduce the risk of nuisance.
18. The licence holder shall not allow their customers to cause any form of nuisance or annoyance to:

- any other users of the highway
 - any neighbouring residents, or
 - any neighbouring businesses.
19. During hours of use, the licence holder or a nominated representative shall be available to receive and respond to complaints.
 20. 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 area must be approved in writing by the Council.
 21. When the licensed area is in use, the licence holder shall make toilets and hand washing facilities available for customers, including to wheelchair accessible standards where it is practicable and reasonable to do so.
 22. The licence holder shall ensure that disabled persons and wheelchair users can be adequately served.
 23. Only alcohol purchased from the connected premises may be consumed within the licensed area.
 24. The front page of the licence and Annex 1 plan must be prominently displayed on the premises so that it may be easily viewed.
 25. The licensee is responsible for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the activity (if requested to do so by the Highway Authority). The permanent surface reinstatement shall be carried out to the satisfaction of the Highways Authority.
 26. The licence is not transferable.
 27. These conditions may be varied where appropriate to reflect any changes in local areas and will come into effect upon written notification by the Council.
 28. The Licence Holder shall ensure that all persons using the defined area remain seated at all times save for the purposes of entering and exiting the area. To avoid confusion, no person should be allowed to remain standing whilst consuming food and/or drink in the area.
 29. The Licence Holder shall ensure that the footway is not obstructed by patrons waiting to be seated, or by any other items of furniture or personal possessions of patrons.
 30. The council reserves the right to revoke this licence at any time if there is a failure to comply with any of the above conditions.

Appendix 3

National Conditions

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.

Condition relating to smoke-free seating:

Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.

In considering for any purposes of this group of sections whether a licence holder has made reasonable provision for seating where smoking is not permitted, a local authority must have regard to guidance issued by the Secretary of State.”

Guidance on the effect of this condition:

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 which can be viewed [here](#).
- 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.