

# Pavement Licence guidance

Business and Planning Act 2020

Effective: 27 July 2020

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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 starts to reopen, 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 makes it easier for premises serving food and drink such as bars, restaurants and pubs, to follow social distancing guidelines. Under the Act, businesses will be allowed 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 provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure designed to boost the economy, with provisions lasting until the end of September 2021.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a "Pavement Licence" (Tables and Chairs Licence), from the London Borough of Islington. The Pavement Licence will enable businesses to place furniture, such as tables and chairs, on the pavement outside their premises, which - will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently, tables and chairs permissions are granted as Tables and Chairs Licences by the council, using the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and within the borough depending upon location and the area required. There is also a standard 28-day consultation period.

The new temporary measure creates a maximum application fee for businesses, and introduces a new 14-day determination period, with a view to 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 Pavement 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**

You may only apply for a Pavement Licence for land that is directly adjacent to your premises i.e. the area on the highway (pavement) directly outside your premises.

In addition, Pavement 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
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

No other furniture or items can be permitted using a pavement licence. Where A-boards are required a separate application must be made:

<https://www.islington.gov.uk/business/licences-permits-registration/trading-on-our-streets/tables-chairs-and-a-boards/a-boards-and-tables-and-chairs>

Counters or stalls for selling or serving food or drink could mean a bar but only where the pavement area is also licenced for the retail of alcohol.

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 of an evening.

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

## **2.4 Planning permission**

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

## **2.5 Smoke Free Seating**

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, in order to protect public health by reducing risks of COVID transmission.

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.

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.

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

### **3.1 submitting an 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 fee of £100, paid online by either credit or debit card
- 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 are to be placed 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 (for e.g. three months, six months, or a year)
- evidence of the right to occupy the premises (e.g. the lease)

- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied
- (if applicable) reference of an 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 council has determined that the fee for applications will be £100.

### **3.3 Consultation**

Applications are consulted upon for seven days (excluding bank holidays), starting the day after a valid application is made to the council.

The council will publish details of the application on its website at:

<https://www.islington.gov.uk/business/licences-permits-registration/trading-on-our-streets/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:

- London Borough of Islington Planning team
- London Borough of Islington Licencing team
- London Borough of Islington Town Centre Management
- The appropriate Local Ward Councillor(s)
- Highways Authority (London Borough of Islington or Transport for London)

Members of the public and others listed above can also 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 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
- the end date of the consultation (seven days (excluding bank holidays) starting the day after the application is submitted to the council).

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/or 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:
  - 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 and visually impaired people as set out in Section 3.1 of Inclusive Mobility
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

The minimum footway widths and distances are designed to allow two wheelchairs to pass one another comfortably. Therefore, under normal circumstances, the restricted width of pavement should not be less than 2m and the length of this restricted width should be no more than 6m.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the council, and so take any issues around potential 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 a valid application is made (excluding public holidays) to consult on, and determine the application. This consists of seven days (excluding bank holidays) for public consultation, and then seven days (excluding bank holidays) to consider and determine the application after the consultation period.

If the council determines the application before the end of the determination period, the council 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
- refuse the application.

If the council does not determine the application within the 14-day period (excluding bank holidays), 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 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 a Pavement Licence between 8am and 9pm or in line with an existing Premises Licence if appropriate.

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 seven 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 three months.



We will grant licences for 12 months or more, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

The London Borough of Islington is undergoing a major transformation of road space through the People Friendly Streets initiative, as such this may affect the length of licence periods.

If a licence is 'deemed' granted because the council does not make a decision on an application before the end of the determination period, then the licence will be valid for **a year**.

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

### **3.9 Refusal of applications**

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

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

## **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 the council 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 condition which applies to all licences. The National 'no obstruction' conditions are shown in **Appendix 3**.

## **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 consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health and Safety at Work, Food

Hygiene 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 council can take action to cover any costs.

The council may revoke a licence in any of the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued)
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/or 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
  - 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 guidance covers the Temporary Permission for Pavement Licences under the Business and Planning Act, which are scheduled to expire on 30 September 2021.

This guidance 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 London Borough of Islington.

## 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 the London Borough of Islington 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 emailing:

[street.trading@islington.gov.uk](mailto:street.trading@islington.gov.uk)

by: *(last date for representations being the date seven days from the day after the date the application is submitted to the council (excluding public holidays))*

The application and information submitted with it can be viewed on the council's website at: <https://www.islington.gov.uk/business/licences-permits-registration/trading-on-our-streets/pavement-licence>

Signed .....

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

### Standard Pavement Licence conditions

1. The signatory of this application (licensee) is the person accepting responsibility for the compliance of all conditions and regulations associated with the furniture placed on the highway as per the licence.
2. The licence will become invalid and permissions will terminate if any of the conditions are not adhered to, no fees will be refunded.
3. The licence does not relieve the licensee from compliance with any other legislation enforced by the council or other agencies, e.g. Environmental Health, Health and Safety, Food Safety, Trading Standards, Fire Prevention, Waste Management and Highways Regulations.
4. The licensee must ensure to follow all Covid-19 and social distancing Government guidelines.
5. A Covid-19 risk assessment must be taken and followed throughout the term of this licence.
6. The licence is valid only between the specified hours. No licence will be granted after 11pm.
7. The furniture is not to be permanently fixed and all furniture must be removed at the given time on the licence.
8. Any disturbance or damage to utility plant will be the responsibility of the licensee.
9. The licence granted will be exercised in such a manner as not to cause a nuisance, disturbance or danger to the occupiers of adjoining property or the users of the highway.
10. The highway will at all times be kept in a neat and tidy condition and free from obstructions.
11. The council is indemnified against all claims resulting from an incident caused by any furniture on this licence. All applicants must have public liability insurance of **£5 million** to validate their occupancy of the public highway. Failure to have insurance would result in your licence becoming invalid.
12. The amount of any furniture and position shall be specified and agreed before a licence is issued.
13. The area permitted should be solely for the purpose of consuming or the sale of food and drink.
14. Ashtrays should be made available and be portable and windproof and frequently emptied into appropriate bins.
15. If tables are used, they are to be regularly cleared of glasses, plates, ashtrays, etc. and the surrounding area to be swept clear of litter, food and smoking deposits etc. Receptacles must be provided at the tables to allow for the smoking debris to be extinguished.
16. Waste deposited on the highway must be removed each day at the licensee's expense or at more frequent intervals as may be required by the council under the Environmental Protection Act 1990.
17. A licence issued does not permit the use of the area solely for smoking.
18. The licence does not give permission to serve alcohol unless your

- premises licence states that you have on/off sales.
19. No charge shall be made by the licensee for the use of any tables and chairs.
  20. The licensee shall remove all furniture from the highway to allow the highway to be cleaned or maintained or allow access to works by the council its partners or agents. Licensees must also ensure access if required to do so by the council, the police, fire, ambulance services, statutory undertaker, telecommunications operators, service vehicles, hearses and furniture removal vans and access to premises.
  21. Any furniture shall not interfere with or affect the rights of any statutory undertakers having apparatus in the highway.
  22. There are to be no permanent fences or other means of enclosure of the area.
  23. Storage facilities maybe subject to inspection and must be practical and adequate for the storage of furniture outside of licensed hours.
  24. Any conditions that are required in your premises licence must apply to your Pavement Licence.
  25. **All licences issued MUST be displayed on site.**
  26. You are reminded that wilful obstruction of the public highway is an offence (s137, Highways Act 1980). Recent legislation changes now allow the council to issue a Fixed Penalty Notice (FPN) to persons deemed to be responsible for such obstructions. The current level of fine is £100, £50 if paid within 28 days of issue.

### National conditions

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.

Condition relating to Smoke Free Seating:

### **Social distancing and safety advice for restaurants, pubs, bars and takeaways**

The Government has now given the go-ahead for a limited re-opening of our pubs, bars and restaurants from 4 July 2020, however it is important that businesses follow Covid-19 secure guidelines.

You can access the current guidance here:

<https://assets.publishing.service.gov.uk/media/5eb96e8e86650c278b077616/working-safely-during-covid-19-restaurants-pubs-bars-takeaway-090720i.pdf>

The first step in the process is to undertake a Covid-19 risk assessment to identify safety measures to minimise the risk. The safety measures will include:

- Complying with social distancing requirements (2m or reduced to 1m only if risk mitigation measures have been put in place)
- Increasing the frequency of hand washing and surface cleaning
- Using screens and barriers
- Reducing the number of people each person comes into contact with
- Calculating the maximum number of customers that can be safely seated inside, and provide or reconfigure seating
- Calculating the maximum number of customers that can be sit or stand in any available external areas and put in place arrangements to manage the use of external areas
- Managing queues both inside and outside your premises
- Providing a seated table service and encouraging customers to book a table in advance
- Keeping a secure record of customers and visitors to your premises for 21 days to assist NHS Test and Trace.

For more detailed advice and information:

- Keeping your workers and customers safe during COVID 19 in restaurants, pubs, bars and takeaways
- (<https://assets.publishing.service.gov.uk/media/5eb96e8e86650c278b077616/working-safely-during-covid-19-restaurants-pubs-bars-takeaway-090720i.pdf>)
- Guidance for food businesses to include a new section on the prevention of infection and a revised section on the management of outbreaks.
- ([www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19](http://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19))
- [Reopening checklist for food businesses during COVID-19 | Food Standards Agency](#)
- [Destroying spoilt beer, cider, wine or made-wine during coronavirus \(COVID-19\) - GOV.UK](#)
- HSE risk assessment tool kit ([www.hse.gov.uk/coronavirus/working-safely/index.htm](http://www.hse.gov.uk/coronavirus/working-safely/index.htm))
- UK Hospitality – Covid - 19 Secure advise and risk assessment for hospitality businesses
- ([COVID19 Secure Guidelines for hospitality businesses - Hospitality](#))

If you need any further advice, please contact our Commercial Environmental Health Team by email: [commercial.envh@islington.gov.uk](mailto:commercial.envh@islington.gov.uk) or phone 020 7527 3816. This service is available Monday to Friday between 9am and 5pm.