



PAVEMENT LICENSING POLICY

From JULY 2024

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1. INTRODUCTION

1.1 Background

A pavement licence allows businesses such as cafes, restaurants and bars to place removable furniture 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.

On 25 June 2020 the Government announced urgent relaxation to planning and licensing laws in the wake of severe business impacts from the Covid-19 pandemic. The relaxation was designed 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 cafes, bars, restaurants and pubs, to seat and serve customers outdoors.

The measures included in clauses 1 – 10 of 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. The Pavement Licence measures were temporary, lasting until the end of September 2021. These were subsequently extended to the end of September 2022, again until 2023, and again further extended to the end of September 2024. Most recently on 31 March 2024 the Levelling Up and Regeneration Act LURA2023 introduced a permanent pavement licensing regime in England to extend and make changes to the temporary provisions in the Business and Planning Act 2020.

This permanent regime retains the key features of the 2020 regime, intended to streamline processing and reduce costs, but also incorporates some changes to ensure long-term sustainability of the model.

1.2 The Business and Planning Act 2020

The Business and Planning Act 2020 introduced a fast-track process for businesses to obtain permission, in the form of a Pavement Licence, from East Suffolk Council for the placement of removable furniture such as tables and chairs on the pavement outside their premises. It enabled them to maximise their capacity and offer an al fresco service to customers whilst adhering to the social distancing guidelines in place at the time.

The temporary pavement licence measures placed a cap on the application fee for businesses and introduced a seven-day consultation and seven-day determination period (excluding public holidays), involving a period of consultation to ensure protection of public safety and amenity and allow businesses to apply for pavement licences in a timely and cost-effective manner aiding to their financial recovery.

1.3 The Permanent Pavement Licensing Regime introduced by the Levelling UP and Regeneration Act 2023 (LURA2023)

The LURA2023 introduces several new pavement licensing provisions, principally:

- A £500 cap for new applications and a £350 cap for renewal
- Local authorities may grant licences for a length of their choosing, up to two years and are encouraged to grant licences for two years as standard.
- The seven-day consultation and seven-day determination periods provided under the temporary regime have been extended to 14 days for each (excluding public holidays) which starts from the day after the application is sent electronically to the Council.

- Clarifies that a minimum width of 2000 mm clear space should be provided between an obstacle and the edge of the footway. However, if this is not feasible due to physical constraints, then a minimum width of 1500 mm could be regarded as the minimum acceptable distance.
- Existing licence holders can retain their licences granted under the temporary regime until the expiration date on their licence.
- The new pavement licensing provisions grants local authorities' new enforcement powers. From the commencement date, local authorities can, with the consent of the licence-holder, amend the licence in certain circumstances.
- The Act also amends the Anti-social Behaviour, Crime and Policing Act 2014 to include pavement licences within the exemption from public space protection orders.

1.4 Transitional arrangements

Existing pavement licences granted under the Business and Planning Act 2020 will remain valid until the expiration date on the licence. Once this has expired, businesses will need to apply for a new licence. This new licence will be treated as a renewal if it is made by the existing licence holder, it is in respect of the same premises and it is on the same terms as the expired licence..

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 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 of an evening. The LURA2023 clarified that other furniture not directly related to the consumption of and drinks, such as advertising boards, (which also need advertising consent under planning regulations) are not included.

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 electronically with the application:

- a completed Application Form
- the required fee of £250 for first time applications and £200 for renewal applications, paid on-line by credit or debit card
- a site plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a detailed 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 Act requires a licence-holder to make reasonable provision for seating where smoking is not permitted, the plan must clearly show the area that is designated as non smoking which will have a 2 metre gap from the smoking permitted area, wherever possible.
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway
- 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
- 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
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied, and
- (following submission of the application) 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).

3.2 Fees

Application fees must accompany the application form and relevant documents for the application to be considered valid, and for the consultation period to commence. The fee set by East Suffolk Council is £250 for first time applications and £200 for renewal applications. This should be paid online - <https://www.eastsuffolk.gov.uk/make-a-payment/>

The fee is an 'application' fee for the processing of the application. The fee will not usually be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

3.3 Consultation

Applications are consulted upon for 14 days (excluding public 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 www.eastsuffolk.gov.uk/business/licensing/pavement-licences

The Council is required by law to consult with the Highways Authority. In addition, the Council will consult with:

- East Suffolk Council Environmental Health Service (both Food and Safety, and Environmental Protection Teams)
- East Suffolk Council Planning
- East Suffolk relevant Councillors
- Relevant Parish and Town Council
- Suffolk Constabulary

Members of the public and others listed above can contact the Council to make representations in writing and preferably by e-mail.

The Council must consider representations received during the public consultation period. The Licensing Manager and Housing Lead Lawyer in consultation with the Chair of Licensing committee, will determine the application in cases where representations have been received.

3.4 Public Notice

An applicant for a pavement licence must on the day after the application is submitted and accepted by the Council, 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. 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 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 (14 days (excluding public holidays) starting the day after the application is submitted to the authority).

A template Public 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:

- whether the licenced area sought is a highway of the status where a pavement licence could be lawfully granted, i.e. a highway to which part 7A of the Highways Act 1980 applies;
 - 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;
 - crime and disorder – will the proposed use have an impact on the likelihood of crime and/or disorder occurring;
 - 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 needs of disabled people and recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in the Government's guidance available online provides advice on the needs of particular pavement users: [Inclusive Mobility. A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/725267/inclusive-mobility-a-guide-to-best-practice-on-access-to-pedestrian-and-transport-infrastructure). Updated guidance makes clear that under normal circumstances a width of 2000mm is the minimum that should be provided. In cases where this is not possible, a width of 1500 mm could be regarded as the minimum acceptable distance. Local Authorities are expected to take a proportionate approach when measuring this, and to be mindful of the cumulative impact of multiple pavement licences and the potential this could have on disabled pavement users 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 28 days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 14 days for

public consultation, and then 14 days to consider and determine the application after the consultation period has ended.

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 28 day period (excluding public holidays), the application will be deemed to have been granted subject to any published local or national conditions.

The Council must consider representations received during the public consultation period. The Licensing Manager and Housing Lead Lawyer in consultation with the Chair of Licensing committee, will determine the application in cases where representations have been received.

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.

A copy of the Council's standard conditions and National 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.

3.8 Licence Duration

If the Council determines an application before the end of the determination period (which is 14 days, beginning with the first day after the public consultation period of 14 days, excluding public holidays) it can specify the duration of the licence. East Suffolk Council has approved a licence will be for a duration of two years.

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 deemed to have been granted subject to local (standard) conditions.

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.

3.10 Conditions

The Council's standard conditions and national 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 national 'no-obstruction' and provision of a 'no smoking' seating area conditions apply to all Pavement Licences and are deemed attached to all licences granted under the new regime. National conditions are shown at Appendix 3.

4. 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 section 149 of the Highways Act 1980 and will be dealt with by the Highways Authority or the Police and which can also be enforced by the local authority, under clause 7(6) of the new Act.

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, and applicants must ensure all such permissions are in place prior to operating.

The new pavement licensing provisions under the LURA2023 grants local authorities new enforcement powers. Local Authorities can now, with the consent of the licence-holder, amend the licence in certain circumstances.

Local Authorities can also now give notice to a business that has placed furniture on a relevant highway without a licence requiring the breach to be remedied. If furniture continues to be placed on highway in contravention of the notice the authority may remove and store the furniture and recover the associated costs. It may refuse to return the furniture until those costs have been paid. If within three months of the notice being served the costs have not been paid, the authority can dispose of the furniture and retain any proceeds.

If a condition imposed on a Pavement Licence either by the Council (local condition) or via a national condition is breached the Council will be able to issue a notice requiring the breach to be remedied. If the notice is not complied with, the Council may revoke the licence or take the required steps itself and recover the costs of doing so.

The authority may revoke a Pavement Licence in the following circumstances:

1. Where:

- There are risks to public health or safety
- the highway is being obstructed 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 along the highway);
- anti-social behaviour or public nuisance is being caused or risks being caused – for example, the use is increasing the amount of noise generated 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 only 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; or

2. For breach of condition, (whether or not a remediation notice has been issued)
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, where the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

5. REVIEW PROCEDURES

This Policy covers the provisions in the LURA2023 which introduce a permanent pavement licensing regime in England which update the temporary permission for Pavement Licences under the Business and Planning Act 2020.

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

6. CONTACT DETAILS

Any questions or enquiries should be addressed to:

Licensing@eastsuffolk.gov.uk

Licensing Team
East Suffolk Council
Riverside
4 Canning Road
Lowestoft
Suffolk
NR33 0EQ

Tel. 01394 444802

Appendix 1 - Template for Public Notice



PUBLIC NOTICE

Pavement Licence – New Application

An application has been made for a Pavement Licence under the provisions of Business and Planning Act 2020 as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act 2024.

Name of Applicant:

Name of Premises:

Postal Address of Premises:

Date application was made:

This application may be viewed on our website -

<https://www.eastsuffolk.gov.uk/business/licensing/pavement-licences/>

Proposed Area:

Eg. Area immediately in front of premises – 2m X 3M

Proposed number of tables and chairs or stall:

Eg. 2 tables each with 4 chairs, 1 stall

Proposed days and times:

Eg. Monday to Sunday 9am to 6pm

Dates between which representations may be made to the Licensing Authority:

Start Date: (Day after application received and accepted)

Closing Date: (14 days later)

Representations must be made in writing to the Licensing Team, East Suffolk Council (as the Licensing Authority) by e-mail to licensing@eastsuffolk.gov.uk

Appendix 2 – East Suffolk Council Local Pavement Licence Conditions

Please note that these conditions are not an exhaustive list. Each application will be considered on its own merits and individual, specific conditions may be attached where deemed appropriate.

1. The conditions attached to the Pavement Licence may be varied and added to by the Council at any time.
2. The Licence holder must always have a valid insurance policy for public liability for at least £5,000,000 and must notify the insurance company of their application and receive confirmation they are covered as required by the application form.
3. The holder of the Licence shall not provide any refreshments other than that normally obtainable within the licence holder's premises.

4. Tables and chairs should ideally be sited so that they are clearly visible from inside the premises.
5. Licence holders shall ensure that during the period of use and at the conclusion of any period of use the area of the highway that is the subject of this consent shall be kept clean and tidy and free from litter.
6. A suitable waste/litter bin must be provided in addition to a receptacle for the disposal of cigarette ends.
7. All furniture and objects covered by the licence must be removed from the highway at the end of the permitted time of opening according to the individual consent.
8. All furniture is required to be removable. In principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.
9. All furniture is to be removed from the pavement by 23:00 hours.
10. No omission from or addition to, or variation of, the consent shall be valid of any effect unless it is agreed in writing by the Council and the licence holder.
11. The Licence holder shall ensure that any equipment used for the purposes of providing these facilities are safe and present no risk to members of the public and in particular: (i) that all chairs are in good repair and are stable (ii) any parasols and umbrellas are fully secured to the ground and weighted to prevent them being dislodged by the wind. (iii) The area to be used is protected and separated from the rest of the highway in such a way that a blind or visually impaired person, or those with learning disabilities or mobility difficulties run no risk of injury from their use.
12. The consent holder shall indemnify the Council against any claim in respect of injury, damage or loss arising out of the grant of the licence except where any claim in respect of such injury, damage or loss is attributable to the negligence of the Council.
13. A clear pedestrian, wheelchair and pushchair route will be provided for those passing the premises. Emergency exits from adjacent buildings must not be obstructed by a seating area.
14. The layout of the licence area should not provide any obstructions, inconvenience or danger to those customers with disabilities and adequate space should be left between tables for wheelchair access.
15. The Local Authority will repair any damage to Local Authority property caused as a result of objects placed on the highway, with all costs being recovered from the Licence holder.
16. The Council, in giving consent, cannot and does not, seek to absolve anyone from any statutory risk which they may incur in placing or depositing anything on the highway.
17. The Licence holder must not do anything or allow any activity by other persons enabled by the Licence, which will create an obstruction. These include:
 - (a) preventing 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) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
 - (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - (d) preventing 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.
18. Where tables and chairs are provided for use by persons for the purposes of consuming food and drink, there must be reasonable provision for seating where smoking is not permitted.

19. The licence does not operate as a licence for any other purpose than to permit the licence holder to provide tables and chairs on a public highway for customers to consume food and drink brought from within the licence holders business. The licence holder must ensure that they have obtained any other permission or approval to use the land and or to place furniture upon it.

20. If permission from a landowner is required then any pavement licence granted must correlate to the permission of use for the land, including timings and/or number of furniture items.

21. If at any time, where permission has been granted to use an area, changes are made to the size of the seating area, numbers of tables and chairs permitted and/or timings that the seating area can be used then you must inform the Licensing Team so that the pavement licence can be amended. At this time a new plan must be submitted and full details of new permissions provided. The Licensing Team will then issue the licence holder with an amended licence to expire on the same date as the original licence.

These conditions should be read in conjunction with any mandatory national conditions concerning pavement licences, if the premises is licenced under the Licensing Act 2003, any relevant conditions attached to the premises licence, the latest government requirements and any other relevant requirement of the Business and Planning Act 2020.

The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. 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. East Suffolk Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

Appendix 3 – National Pavement Licence Conditions

The Secretary of State publishes these conditions in exercise of his powers under clause 5(8) of the Business and Planning Act 2020 and may publish conditions for pavement licences in addition to the statutory conditions referred to below. All and any national conditions must be complied with throughout the duration of the pavement licence period:

Condition relating to clear routes of access – a ‘no obstruction condition’ – as set out at section 5(5) of the Business and Planning Act 2020:

It is a condition that anything done by the licence holder pursuant to the licence or any activity of other persons which is enabled by the licence must not:

(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) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
(c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
(d) preventing 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.
as set out in section 3(6) of the 2020 Act.

Condition relating to provision of a no smoking seating area - 'a smoke free seating condition' – as set out at 5(6) of the Business and Planning Act 2020:

It is a condition of the legislation that a licence-holder make reasonable provision for seating where smoking is not permitted.

Guidance on the effect of this condition:

1. Where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway in accordance with the licence. The licence-holder is required 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
 - 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 2 metres distance between non-smoking and smoking areas, wherever possible.
2. 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