

A.6 APPENDIX

Tendring District Council



PAVEMENT LICENSING POLICY

Adopted by Cabinet on XXXX

Tendring District Council: www.tendringdc.gov.uk

Introduction

The Business and Planning Act 2020 (as amended) was introduced as temporary legislation to assist businesses and remove existing bureaucracy around what were known as Tables and Chairs Licences under the Highways Act. The Business and Planning Act 2020 has now been amended by the Levelling Up and Regeneration Act 2023 which makes the Pavement Licence regime permanent.

The Act allows Tendring District Council to permit specified furniture to be placed on the highway (mostly footpaths and pedestrianised areas) although where applicable, businesses may still need the activity to be licensed, for example, sale of alcohol.

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.

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, ice cream parlours or similar.

A licence permits the business to use furniture placed on the highway in order to 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 licence the activity, only the placing of the furnishings. The pavement licence 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.

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).

Tables and chairs can only be placed in front of and immediately adjacent to the façade the licence holder is responsible for.

Tables and Chairs with any barriers, posts and bases will not be permitted where they would restrict any pedestrianised public highway to less than 1.5 metres unobstructed pavement in width or impede any designated cycle route.

Type of furniture permitted

Seating, tables and, if required, umbrellas and heaters (together with a secure base) as well as any proposed barriers to enclose the seating area are permitted.

The furniture must be fit for purpose and designed specifically for commercial outdoor use (and comply with all relevant BS standards). It must be kept in good order; damaged or faded items must be replaced.

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 type and style of furniture would be 'in keeping' with the local area.

Picnic benches and plastic tables and chairs designed for domestic use (e.g. white plastic furniture) are not permitted.

Any form of gazebo or enclosed shelter with one or more sides is not permitted.

Barriers

When tables and chairs are in place a standard barrier consisting of a fabric banner and associated post/rail system shall be used. The function of the barriers is to demarcate and contain the tables and chairs but also to give a clear warning particularly to people with visual impairments.

The barriers shall be secured by a purpose designed post and rail system with weighted post bases to prevent being knocked or blown over and be of a height range of 800mm to 1000mm so to not visually obstruct views down the street or be an obstructing hazard.

Street café barriers should be of a design to complement the character of the surrounding area. Banners should be of one design, in a plain style and can incorporate the business name or brand logo. Posts and rails should be stainless steel, chrome plated or powder coated.

Times of Operation

The tables and chairs can be placed on the highway only when the premises are open for business and in any event not before 6.00 am and normally until 30 minutes of the terminal hour of the licence.

Where nuisance is likely to be caused to residents e.g. late at night, businesses may be required to remove the tables and chairs before the close of business.

Planning Permission

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

Consultation

Applications are consulted upon for 14 days, starting with the day after that on which the application is made to the Council (an application will not be considered to have been properly made unless each requirement has been met).

The applicant is required to fix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure that the notice remains in place for the duration of the public consultation period.

The Council is required by law to consult with the Essex County Council Highways Authority. In addition, to ensure that there are no detrimental effects in granting such a licence the Council will also consult with:

- Environmental Health Service
- Planning Department
- Essex Police

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 in their determination of the application.

Appeals

There is no statutory appeal process against the decision of the Council.

Cost

There is an application fee and a renewal fee payable every two years. Details can be found on the application form and Tendring District Council website.

Insurance

Operators must indemnify both Tendring District Council and Essex County Council in respect of injury, damage or loss arising out of the grant of permission (unless such claims arise out of the Councils' negligence). All operators must have public liability insurance in the sum of £10,000,000 in respect of any one event. A copy of this insurance must be produced to the Council before a licence will be issued.

The Licence holder shall make no claim or charge against the Council in the event of the furniture or other objects being lost, stolen or damaged in any way.

Litter

Refuse and litter deposited on the highway in the vicinity of the chairs and tables must be collected at not less than hourly intervals (or more frequent intervals if required under the Environmental Protection Act 1990).

Litter is not to be placed in the litter bins situated on the highway for use by the general public, but in the trade refuse bins.

All tables must be cleared as soon as practicable after being vacated by customers to avoid litter being deposited unnecessarily on the highway.

Miscellaneous Conditions

The Licence holder must remove any furniture if required to do so to permit works in or the use of the highway by the Council, the County Council, the emergency services any statutory undertaker or telecommunications code operator or where the Licence holder has been notified of a special event taking place.

No charge can be made by the Licence holder for the use of the furniture.

All licences are renewable every two years.

ANNEX 1 – CONDITIONS

LICENCE FOR THE PLACEMENT AND USE OF TABLES, CHAIRS AND ASSOCIATED FURNITURE (THE FACILITY)

National Conditions Made by the Secretary of State

1. Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths (1.5 metres) and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility.
2. There must be clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smokefree (Signs) Regulations 2012.
3. No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
4. The licence requires a minimum 2m distance between non-smoking and smoking areas, wherever possible.

Standard Licence Local Conditions

1. To use the highway permitted within the licence for the purpose of The Facility and for no other purpose whatsoever listed outside of the licence.
2. The boundary of the licensed area must be adhered to and ideally marked with a rigger barrier system that is stable so as not to be easily blown or knocked over, or as agreed otherwise in writing with the Licensing Authority.
3. Parasols must not overhang the area of The Facility and must not be erected in high winds.
4. The licence does not permit any fixtures or excavations of any kind to the surface of the highway.
5. The Facility must be removed for the purpose of allowing:
 - a. Works in, under or over the highway or in connection with works in, under or over land adjacent to the premises as may be required by Tendring District Council, Highway Authority or any statutory undertaker
 - b. Use and access by emergency services
 - c. Any other reasonable cause
6. To remove The Facility within 30 minutes of the terminal hour of the licence or upon any suspension or revocation of the licence.
7. The Facility within the marked boundary and any reasonable area outside of the boundary, caused by The Facility, must be kept free of litter, debris and food and drink spillages. The licensed area is to be washed at the close of each day using a method and materials sufficient to remove food debris, grease and spillages.
8. Plastic or toughened glasses and bottles are only permitted for the consumption of alcohol within The Facility as required by Tendring District Council or Essex police.

9. The Facility is to be used for seated customers only.
10. The licence holder must ensure The Facility is covered by valid and up to date public liability insurance cover of ten million pounds which is valid for the duration of the licence period.
11. A copy of the licence must be prominently displayed at the licensed area and must be made available for inspection by any Authorised Officer of the council or Police.
12. Waste from the Licensee's operations shall not be disposed of in the permanent litterbins situated on the highway for use by the general public provided by the Council.
13. The Licensee shall make no claim or charge against the District or County Council in the event of the street furniture being lost, stolen or damaged in any way whatever cause.
14. Without prejudice to the ability of the County Council to remove the tables and chairs by reason of Statute, common law, and/or for breach of any of the terms and conditions of this consent, this consent shall remain in force until such time as the applicant seeks to amend its proposal, including, but not limited to, the location and/or number of the tables and chairs to be placed in the highway and/or such time as the Council refuse to issue the related permission.
15. 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.
16. Despite this consent, the authorised area shall always remain part of the public highway and users of the highway are still entitled to exercise their right of passage over them.
17. The Tendring District Council 'A' Board Protocol must continue to be adhered to by businesses with a pavement licence and positioning of 'A' Boards must be in relation to the original business premises and not beyond equipment covered by the pavement licence.