

## **Standard Pavement Licence Conditions**

The Council reserve the right to revoke the licence failure to comply with the conditions set out below.

1. The licence holder(s) shall at all times comply with all statutes, statutory instruments, regulations and by-laws. Particular attention should be paid to the requirements of the Health and Safety at Work Act 1974, the Food Safety Act 1990, The Food Hygiene (England) Regulations 2013 and associated European Regulations, particularly, but not exclusively EC Reg 852/2004, The Smoke-free (Premises and Enforcement) Regulations 2006, and the Business and Planning Act 2020.
2. Permission to operate a pavement licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Harlow District Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
3. Harlow District Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Café. This must indemnify Harlow District Council and Essex County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.
4. The Licensee shall make good, to the County Council and Harlow Council's satisfaction, any damage to the highway caused by the exercise of this consent and indemnify and keep indemnified both Council's from and against any claims, demands or proceedings in any way arising in regard thereto.
5. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
6. Harlow District Council and/or Essex County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.
7. The licence holder is not to make or cause to be made any claim Harlow District Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
8. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions. The licensee shall not place furniture on the highway outside the permitted area of use.

9. 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.
10. Unless separately agreed by the Licensing Department the method of marking the boundary of the licensed area shall be;
  - A fixed barrier system, that is suitably stable not to be easily blown or knocked over.
  - A colour that is suitable contrasting with the surrounding environment to ensure it can be easily seen.
11. To ensure a safe footpath with a minimum width of 2 metres for pedestrians, or 2.5 metres in busier locations, which must be maintained at all times.
12. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence, which should not, in normal circumstances, extend beyond the width of the premises frontage. Neither the barriers, or tables and chairs must obstruct entrances into or out of the establishment.
13. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.
14. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
15. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised. The authorised area shall be supervised by competent staff or the Licensee at all times during the exercise of this consent who shall take all reasonable steps to ensure compliance with these conditions.
16. The permitted area shall be used solely for the purpose of consuming refreshments by persons seated at tables within the permitted area.
17. No charge shall be made by the Licensee for the use of the furniture.
18. The licence holder(s) shall not cause any nuisance or annoyance to any other user of the highway, or any adjacent land or premises. The licence holder is responsible for the behaviour and good order of their customers.
19. Otherwise than stated on the specific licence, the following time restrictions apply:

- a) Pavement furniture will not be put out on the licensable area before 9am on any day
  - b) The licensable area must be cleared of furniture and customers by no later than 23:00.
20. The tables & chairs and other furniture shall be kept in a clean, safe and well-maintained condition, to the satisfaction of the Council. It must be of a design and construction that it cannot easily be pushed or blown over by the wind, so as to cause obstruction
21. Where the consumption of alcohol is to take place only plastic or toughed glasses and bottles are to be permitted within the facility. The Licensee shall not permit the removal of any drinking vessels from the permitted area.
22. The operation of the area must not interfere with highway drainage arrangements.
23. 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 areas must be agreed with the Highway Authority.
24. Where tables and chairs are put on the licenced area for consumption of food and drink, reasonable provision must be made for seating, in a designated area, where no smoking is permitted. This may include:
- Clear 'smoking' and 'non- smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' areas.
  - No ash trays or similar receptacles to be provided or permitted to be left on furniture where a smoke-free seating is identified.
  - Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

The licence holder must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006

25. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians.
26. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility.
27. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation.
28. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.

29. Commercial waste from the licence holder's operations must not be disposed of in the litterbins situated on the highway for use by members of public provided by the Council. The Licensee shall comply with all requirements of any public health legislation for the time the licence is in force.
30. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by Harlow District Council or the Highway Authority.
31. No alcohol shall be consumed on the permitted area unless a licence authorising the sale of alcohol has been issued by the Council.
32. No amplified music or other regulated entertainment shall be provided in the licenced area unless authorised.
33. The licence must be displayed on the premises with a plan of the agreed layout under the pavement licence.
34. The licensee 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. The use of the pavement licence must not compromise the licence conditions imposed under any other legislation.
35. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
36. Harlow District Council reserves the right to revoke this licence at any time if any conditions are not fulfilled and maintained.
37. This licence shall not be assigned to any other person, firm or organisation.
38. The licence holder shall make available these general conditions to every person engaged in supplying food and drink to customers on the premises subject to this licence.

## **National Conditions**

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke free seating condition. These apply only to licences granted under the Business and Planning Act 2020.

### **How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?**

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction considering the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.2 of Inclusive Mobility - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway; Advertising boards are not included in the definition of furniture within the pavement licensing regime, therefore, should not be used as a barrier;
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded with tables and chairs;

- the cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not, and foster or encourage good relations between people who share a protected characteristic and those who don't.

### **What is reasonable provision for seating where smoking is not permitted?**

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers can sit outside.

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, 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.