

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 must conform with latest Government guidance on social distancing and hygiene measures to ensure the licensed area is COVID-safe for staff and customers, as far as reasonably practical.
2. 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.
3. 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.
4. 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.
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.
9. 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.

Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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 keeping good order including the control of all litter and rubbish within the boundary of the permitted area.
15. 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 21:00.
16. 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

17. Where the consumption of alcohol is to take place the only plastic or toughed glasses and bottles are to be permitted within the facility.
18. The operation of the area must not interfere with highway drainage arrangements.
19. 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.
20. 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

21. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc.) be regularly removed from the footway surface to reduce hazards to pedestrians.
22. 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 5 metres from the boundary of the Facility.
23. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation.
24. 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.
25. 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.
26. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within licensed area.

27. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Facility outside the hours in force for the premises itself.
28. The licence must be displayed on the premises with a plan of the agreed layout of the pavement licence.
29. 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.
30. 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.
31. Harlow District Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
32. This licence shall not be assigned to any other person, firm or organisation.
33. 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.
34. Failure to comply with these conditions may lead to revocation of the licence and or prosecution of the licence holder.

Note: Permission to place tables and chairs on the highway does not exempt the applicant from complying with any other legislation applying to the premise

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, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

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 3.1 of the Government's guidance on Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway;
- 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;
- 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. The available route must be entirely clear and not pass through an area with tables and chairs;
- 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 don't, 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, 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 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.

Where an authority has set a local condition covering the same matter as a national condition, which take precedence?

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.