

# Pavement Licence Policy

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## **1. Introduction**

Colchester City Council (the Council) supports the provision of street café furniture in the city and surrounding areas. Street cafés can make a positive contribution to the street scene and add vitality to the area bringing life, colour and interest onto the street.

The Levelling Up and Regeneration Act 2023 makes permanent the provisions set out in the Business and Planning Act (BPA) 2020 that streamlined the process of applying for outdoor furniture through a new system of 'Pavement Licences'.

This policy is intended to help businesses understand how to meet the legal requirements and the high standards expected by the Council for pavement licences.

## **2. Scope**

### **2.1 What is a pavement licence**

A pavement licence is a licence granted/deemed to be granted by the local Council which allows the licence holder to put removable furniture on part of a relevant highway adjacent to the premises to sell or serve food or drink and/or for consumption of food or drink from the premises.

A pavement licence can be granted for a period of up to 2 years.

The licensed area is to be used solely for the purpose of consuming food and drink purchased on the premises. It is strictly forbidden to prepare any food and drink in the licensed area.

The Council will attach conditions to the licence to ensure its safe operation. The standard local conditions and National conditions are shown in [Appendices 1 and 2](#).

### **2.2 Eligible Businesses**

To be eligible to apply the premises must be:

- a) used as a public house, wine bar or other drinking establishment; and/or
- b) other use for the sale of food or drink for consumption on or off the premises.

This covers a wide range of businesses including public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours, including where such uses form an ancillary aspect of another use, for example, supermarkets or entertainment venues which sell food and drink.

Businesses that are not eligible under this legislation can apply for permission to Essex County Council Highways Department for a pavement permit under Section 115 of the Highways Act 1980.

## 2.3 Eligible Locations

Licences can only be granted in respect of a 'relevant highway; to which Part 7A of the Highways Act 1980 applies ([Appendix 3](#)). For example, footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.

Licences cannot be granted for highways maintained by Network Rail or over the Crown land.

If land is in private ownership, you do not need to apply for a pavement licence, however you must have permission from the landowner and may require planning permission from the Council.

## 2.4 Furniture type and positioning

The type of furniture that can be included in a pavement licence application are:-

- a) counters or stalls for selling or serving food or drink;
- b) tables, counters or shelves on which food or drink can be placed;
- c) chairs, benches or other forms of seating;
- d) umbrellas; and
- e) barriers to demark the area.

Outdoor heaters are not permitted as their use is not consistent with the Councils Climate Emergency Action Plan.

Other articles used in connection with the outdoor consumption of food or drink can be considered on a case by case basis. All furniture must be kept in a good state of repair.

The type of furniture to be used should be 'in keeping' with the local area.

All furniture must be removable. Furniture must be stored securely inside a premises away from the highway when the licence is not in use. Applicants that wish to place non-removable furniture onto the highway must apply for permission to Essex County Council Highways Department for a pavement permit under Section 115 of the Highways Act 1980.

Table and chairs should be separated from the users of the highway by way of barriers. Barriers should have a minimum overall height of 800mm and a gap of no more than 150mm between the base or tapping rail and the ground. Barriers must be manoeuvrable enough to allow them to be removed from the highway at the close of business. It is recommended that the barriers are in a contrasting colour to the highway surface to provide maximum impact for the visually impaired.

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, umbrellas etc that they do not protrude into the walkway and a 2 metre clear walkway for the use of pedestrians is maintained.

Emergency routes to the premises and adjacent buildings must not be obstructed by the area covered by the Pavement Licence.

If the proposed outdoor seating area is not a wholly non-smoking area, reasonable provision must be made for seating, in a designated area, where no smoking is permitted. Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

## 2.5 Hours of operation

The purpose of a pavement licence is to support the catering and hospitality sectors and can operate seven days a week. The hours of operation applied for must be appropriate to the food business.

In general, where the hours of operation are between 07:00 and 18:00 hours, the application is likely to be granted.

The Council may approve applications where the hours of operation include between 18:00 and 23:00 hours, on a case by case basis.

The Council are unlikely to approve applications requesting hours of operation between 23.00 and 07.00 hours, i.e. overnight.

Each application is judged on its own merits.

## 2.6 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,
- public amenity,
- guidance in the Department of Transport document '[Inclusive Mobility](#) - A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure' is met with regard to minimum footway widths and distances required for access by mobility impaired and visually impaired people,
- whether there are other permanent street furniture or structures in place on the footway that already reduce access,
- the impact on any neighbouring premises.

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.

## 2.7 Fees

The application fee for pavement licences will be set on a cost recovery basis, and published on the Councils Website.

For a new pavement licence the application fee is capped at £500.

For a renewal of an existing pavement licence the application fee is capped at £350.

Where a business has previously held a pavement licence the Council will treat the application as a renewal application if it is made by the same licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

Where the applicant wishes to change the location, layout, number or type of furniture or trading hours etc, this will be treated as a new pavement licence application.

## 2.8 Other regulatory processes

It is important to note the grant of a pavement licence only permits the placing of removeable furniture on the highway. Other regulatory frameworks still apply including, but not limited to, the need to register a food business, compliance with food safety legislation, and a need for alcohol licences (premises licence, club premises certificate or temporary event notice).

Temporary amendments to the Licensing Act 2003, under the Business and Planning Act 2020, allow the sale of alcohol by eligible holders of an on-sale licence for consumption off the premises without needing to apply for a variation of their licence. These temporary amendments apply if the premises had a licence that permitted sales of alcohol only for consumption on the premises on 22 July 2020, and the premises still retain that licence. More details can be found in the [guidance accompanying the Business and Planning Act 2020](#). This is currently in place until 31 March 2025. It will remain legally independent and separate from the pavement licences process.

The licence holder must have regard to smoke-free legislation under The Health Act 2006 and regulations made thereunder.

There is a Public Space Protection Order (PSPO) in place for Colchester City Centre, which restricts certain activities including the use of A-boards. Barriers cannot be used for advertising purposes unless Advertisement consent has been granted by the Council.

Once a pavement 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 pavement licence is valid.

## 3. Application and Determination of Pavement Licences

### 3.1 Submission of the Application

An application for a Pavement Licence shall be submitted to the Council online, via the Councils website, [www.colchester.gov.uk](http://www.colchester.gov.uk).

The following must be submitted with the pavement licence application for it to be considered a 'valid' application:-

- a) a completed Application Form;
- b) the required application fee paid to Colchester City Council by credit or debit card;

- c) an Ordnance Survey site plan (scale 1:1250), showing the location of the premises shown by a red line, so the application site can be clearly identified;
- d) a site plan, scale 1:100, clearly showing the proposed area covered by the licence in relation to the highway. The plan must show the positions and number of the proposed tables and chairs, and any other furniture to be placed on the highway. The plan shall include any other fixed item in the proposed area eg litter bins etc;
- e) the proposed times of day and days of the week on which it is proposed to put furniture on the highway;
- f) the proposed duration of the licence (up to a maximum of 24 Months);
- g) evidence of the right to occupy the business premises (e.g. the lease);
- h) photos or brochures showing the proposed type of furniture;
- i) a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £10 million, and
- j) any other evidence requested by the Council to demonstrate how the licence conditions will be satisfied.

The Council will reject any application that does not contain the required information stated above.

Where a person applies for a pavement licence, the person may not make another application for a pavement licence in respect of the same premises before the end of the determination period.

The application number will be confirmed by email to the applicant, this information is required to be included in the Site Notice.

### 3.2 Site Notice

An applicant for a pavement licence must on the day a valid 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 site notice must be constructed and secured so that it remains in place until the end of the public consultation period.

The Site Notice must:

- state that the application has been made, the application number 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 address to which representations should be sent during the consultation period; and
- the end date of the consultation (seven working days starting the day after the valid application is submitted to the authority).

A template Site Notice is shown in [Appendix 4](#).

Evidence showing the site notice displayed at the business premises must be supplied to the Council. This shall include a copy of the site notice, and photographs showing the notice affixed at the premises. If the applicant fails to display the site notice in accordance with the Act the licence may be refused or revoked.

### 3.3 Consultation

Once a valid application is submitted, the Council has 28 days (excluding public holidays) from the day after the application is made to process the application.

A 14 day public consultation period begins the day after a **valid** application has been made.

The Council will publish details of the application on its [online register](#) of licence applications.

The Council is required by law to consult with the Highways Authority (Essex County Council). In addition, to ensure that there are not detrimental effects to the application the Council may also consult with:

- Essex Fire & Rescue Service
- Essex Police (which may include Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors)
- Colchester City Council Food and Safety Team
- Colchester City Council Environmental Control Team
- Colchester City Council Planning Department
- Colchester City Council Town Centre Management
- Colchester City Council Community Safety Team

Representations from consultees or members of the public should be sent to the Council Licensing Team at Colchester City Council, Rowan House, Sheepen Road, Colchester, Essex CO3 3WG, and can be made by email to [licensing.team@colchester.gov.uk](mailto:licensing.team@colchester.gov.uk)

The Council must take into account representations received during the public consultation period and consider these when determining the application.

### 3.4 Determination

Following the end of the public consultation period, the Council has a further 14 days (excluding public holidays) to consider and determine the application.

If the Council 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.



Where necessary, the Council may impose additional conditions whether or not they are published upfront. Any additional conditions imposed will be reasonable, proportionate and tailored to the applicant's premises.

If the Council does not determine the application within the 28 day consultation and determination period (excluding public holidays), the application will be deemed to have been granted as applied for and the standard national and local conditions will apply. A pavement licence that is deemed to have been granted will be valid for 24 months.

### 3.7 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 the decision to refuse an application.

### 3.8 Approval of Applications and conditions

On approving the application, the Council will issue a Pavement Licence to the applicant.

The pavement licence will state:

- the date on which the licence expires. Licences will normally be granted for a period of 24 months;
- when and where the furniture can be sited; and
- the national conditions, local conditions, and any non-negotiable site-specific conditions that are set by Essex County Council Highways department.

The license holder is responsible for ensuring that the conditions of the pavement 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 pavement licence in line with the provisions of their licence and for no other purpose whatsoever.

Alternative items of furniture must not be used without first seeking the written authority of the Council. Licence holders will be asked to apply for a new pavement licence where there are significant changes to the number, type or layout of furniture or change of operating hours.

## 4. Transfer and Surrender of a Pavement Licence

4.1 Pavement Licences **cannot be transferred** to another licence holder. If the holder of a pavement licence is no longer associated with the business to which the pavement licence was granted, they must surrender the licence.

4.2 The licence holder may surrender a pavement licence at any time by giving written notice to Colchester City Council by sending an email which includes the pavement licence number to [Licensing.team@colchester.gov.uk](mailto:Licensing.team@colchester.gov.uk). Licences cannot be

surrendered by persons other than the licence holder unless they are legally entitled to do so, for example following the death of a licence holder.

- 4.3 Following the surrender of a pavement licence, if the new proprietor of the business wishes to use outdoor furniture, they will need to apply for a new pavement licence. Furniture **must not** be placed on the highway until the new licence is granted/deemed to be granted.

## 5. Enforcement

- 5.1 If a condition imposed on a licence is breached, the Council can issue a notice requiring the breach to be remedied. If the licence-holder fails to do so, the Council may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing.

- 5.2 The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised; or

2. If there is evidence that:

- a. there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
- b. this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – 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 alongside the highway; or
- c. the use is causing, or risks causing, anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up.

- 5.3 The Council may also revoke a licence in the following circumstances:

1. For a breach of condition, (whether a remediation notice has been issued or not) or

2. 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; or

3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

- 5.4 In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

## **6. Review Procedures**

The Pavement Licence Policy will be reviewed periodically and on any changes to the relevant legislation.

**Standard Local Conditions**

1. The pavement licence is non transferable.
2. The pavement licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
3. The licence holder(s) shall produce this permission on demand when so required by a Police Officer or a duly authorised Officer of the Council.
4. No charge shall be made by the licence holder for the use of the tables and chairs.
5. The licence holder shall ensure that the area operates in a safe and orderly manner, minimising any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises.
6. Tables, chairs and other furniture must not be placed on the highway outside of permitted times stated on this pavement licence.
7. 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.
8. At the instruction of the Council, the licence holder must remove the licensed furniture during the permitted times for the purpose of:
  - i. Works in or under or over the highway or for using it in connection with works in, under or over land adjacent to or adjoining it as may be required by Colchester City Council, the local highways authority, telecommunications code operator, any statutory undertaker or other person authorised by the Council;
  - ii. Use by emergency services; or
  - iii. Any other reasonable cause.And the licence holder shall make no claim against the City Council or County Council for any loss of revenue.
9. The operator of a premises not licensed for the sale of alcohol under the Licensing Act 2003 (or any modification or re-enactment thereof) must not allow the consumption of alcoholic liquor within area of the pavement licence.
10. Where the consumption of alcohol is permitted to take place, all drinking vessels shall be reusable plastic or toughed glass.
11. The licenced area, pavements and road surfaces immediately adjacent, must be kept free of litter, detritus and rubbish, including staining of the highway surface from food and/or drink spillages.
12. The operation of the area must not interfere with highway drainage arrangements.

13. 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 of the Highway Authority.
14. The licence holder shall have Public Liability Insurance for the operation of the Pavement Café. The minimum level of indemnity must be £10 million. This must indemnify Colchester City 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.
15. The licence holder is not to make or cause to be made any claim against Colchester City Council in the event of any property of the licence holder becoming lost or damaged in any way, from whatever cause.
16. Colchester City Council reserves the right to revoke this licence at any time if any of the Conditions are not met.

### National Licence Conditions

N1: Condition relating to clear routes of access:-

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 the Department of Transport publication '[Inclusive Mobility](#)'.

N2: Smokefree seating condition:-

The licence-holder must 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.

Extract from the [Highways Act 1980](#)

**115A Scope of Part VIIA.**

(1) This part of this Act applies—

- (a) to a highway in relation to which a pedestrian planning order is in force;
- (aa) to a restricted byway;
- (b) to a bridleway;
- (c) to a footpath (including a walkway as defined in section 35(2) above);
- (d) to a footway;
- (e) to a subway constructed under section 69 above;
- (f) to a footbridge constructed under section 70 above;
- (g) to a highway of a description not mentioned in any of the preceding paragraphs of this definition whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- (h) to a local Act walkway.



## NOTICE OF APPLICATION FOR A PAVEMENT LICENCE

### Business and Planning Act 2020 (as amended)

(1), Name of applicant

do hereby give notice that on (2) Date application made  
an application has been made to Colchester City Council for a Pavement  
Licence at: (3) Name and address of business.

Application reference number: (4) WK/00001000

The application is for: (5) number and proposed use of the furniture (eg  
[2 x Barriers, 4 x tables and 8 x chairs] at the [Front/side of] the  
premises.

Any person wishing to make representations regarding this application  
may do so by email to: **licensing@colchester.gov.uk** by: (6) date: **14  
days beginning with the day after that on which the application is  
made.**

If making representations by post please send them to:- Licensing  
Team - Colchester City Council, Rowan House, 33 Sheepen Road,  
Colchester, Essex CO3 3WG.

The application can be viewed online at:-

[www.colchester.gov.uk/licensing/current-licence-applications/](http://www.colchester.gov.uk/licensing/current-licence-applications/)