

# PAVEMENT LICENCE POLICY

## 1. Introduction

Ealing Council is committed to maintaining a vibrant economy for the benefit of those who live, work, and conduct business in the borough. Ealing has adopted the Part III provisions of the London Local Authorities Act 1990 to regulate street trading throughout the borough. These provisions apply street trading licensing controls covering the placement of tables and chairs on or near the public highways. From July 2020, a new pavement licensing scheme has been introduced under the Business and Planning Act 2020 in order to simplify the system in response to restarting the economy following the Covid-19 pandemic.

The policy sets out the council's approach to the licensing of the use of the pavement. It informs applicants of the parameters in which the council will make decisions and how their needs will be addressed. It also highlights the council's intention to avoid duplication with other statutory provisions and its commitment to work in partnership with other enforcement agencies. The council aims to provide a clear, consistent approach for users. At the same time, it aims to protect the safety of highway users, to prevent nuisance and to regulate the location and number of businesses using pavements.

The application of this guidance will be in line with legislative requirements. It will be reviewed in light of developing practice, guidance and changing legislation as necessary. Attached to this guidance is the application form for pavement licensing.

### 1.1 Pavement Licensing – Fast Track

The new process provides a cheaper, easier, and faster way for businesses to obtain a licence. The fee for applying for a licence under the new fast-track process is capped at £100 and the consultation period is 5 working days (excluding Bank holidays) compared to other schemes which can take longer. The council has set the fee at **£100**.

If the local authority does not determine the application before the end of the determination period (which is 5 working days beginning with the first day after the public consultation period – excluding public holidays), the licence is deemed to have been granted until 30 September 2021 and the business can place the proposed furniture within the area set out in the application for the purpose or purposes proposed.

### 1.2 Eligible Businesses and Furniture

A business which uses (or proposes to use) premises for the sale of food or drink for consumption on 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 pavement 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. 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
- barriers to mark out the permitted area and to contain the permitted furniture.

This furniture is required to be removable, with the Local Authority using the principle that “removable” means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

### **1.3 Exclusions**

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, by TFL, or over the Crown land are exempt (so a licence cannot be granted).

### **1.4 Sale of Alcohol and Planning Permission Requirements**

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licensing Act 2003 will allow them to sell alcohol for consumption off the premises without need to apply for a variation of their licence.

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.

## **2. Duration**

Please note that these temporary exemptions do not give you permanent permitted rights in terms of alcohol licensing, planning permissions or use of the pavement / highway. Therefore Premise Licensing is restricted in terms of length allowed to be granted, and when such a scheme ends.

### **2.1 Valid Pavement Licence Period**

If a local authority determines an application before the determination period explained above, the authority can specify the duration of the licence, subject to a minimum duration of 3 months. The expectation is that the Local Authority will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

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 valid until 30 September 2021.

### **2.2 Pavement Licensing Scheme Duration**

This is a temporary measure to support businesses while enabling social distancing measures to be in place. As it is uncertain how long some form of social distancing measures will be in place, the new process will remain in place until the end of September 2021. This will give certainty to businesses for the foreseeable future, supporting them to operate safely while social distancing measures are in place. It will also allow them enough time to apply for new licences under the existing process (e.g. London Local Authorities Act) if they want to extend beyond the end of September 2021.

## **3. New applications**

The application form is attached to this guidance and is also available from the street trading team and the council's website – URL

### 3.1 Information to be provided

Applications must: -

- specify the premises and the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which, and the hours between which, it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- the date on which the application is made;
- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence of a minimum £5 million;
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown (see Appendix B);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority; and
- Any other evidence needed to demonstrate how any local and national conditions will be satisfied.

### 3.2 Existing Applications

If an applicant has already applied for permission to place furniture on the highway under the London Local Authorities Act requirements and your application has not been determined you have to proceed with that application. However, you may opt to make a fresh application for a pavement licence under the new process. In those circumstances, the pending application will be deemed to have been withdrawn.

## 4. Consultation

Any application must be subject to consultation with the community as well as relevant Departments (e.g. Highways Department). The form of consultation is set out below and must run for a period of 5 working days.

The applicant is required to affix 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 the notice remains in place for the public consultation period which is the period of 5 working days beginning with the day after the day the application is submitted to the authority. When counting 'working days' public holidays are not included. **Applicants are encouraged to keep evidence of this.**

#### 4.1 Consultation Notice

The notice must:

- be in the form as set out in **Appendix C**;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require.

The applicant is 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.

#### 4.2 Consultation by the Local Authority

The local authority must consult the highways authority, if they are not the highways authority then the relevant body (e.g. Transport for London). The authority must also consult such other persons as the local authority considers appropriate (e.g. Estates Department if they feel there is an interest). but will ensure that Ward Councillors for the area the application applies to receive a copy.

The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity, such as automatic notices, which members of the public can opt in to receive. In deciding what steps to take authorities should consider the needs of those who may find it more difficult to access online publications.

#### 4.3 Public Representations

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period which is the period of 5 working days starting the day after the application is submitted (excluding public holidays).

In taking into account any representations, the Council will give reference to areas set out under Section 5 below.

### 5. Determination of Applications

Once the information is submitted to the local authority the authority has 10 working days from the day after the application is made (excluding public holidays) to consult on, and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 10 working day period, the application will be deemed to have been granted.

The Council generally will only permit Pavement Café's between 09:00 and 21:00. Applications outside these hours will be assessed in terms of the criteria detailed below. The

Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

## **5.1 Relevant Factors to Determine Application**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include the scope for national or local conditions to make it possible to approve an application which would otherwise be unacceptable.

When setting local conditions and determining applications, the Local Authority has taken into consideration in line with Government guidance:

- 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;
- 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 recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility, and
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

## **5.2 Licence Conditions**

### **5.2.1 National Conditions**

The Secretary of State may publish conditions for pavement licences. For example, the Secretary of State has published the following condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

#### **Condition relating to clear routes of access:**

It is a condition that 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 Section 3.1 of Inclusive Mobility.

#### **Guidance on the effect of this condition**

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to 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 Section 3.1 of Inclusive Mobility, the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

This is in addition to the statutory 'no obstruction' condition referred to in 5(4) and 3(6) of the Business and Planning Act 2020.

### **5.2.2 Local Conditions**

For the purposes of consistency, the Local Authority has set out local conditions that will be attached to any pavement licence that also tie in with those already in place with the London Local Authorities Act scheme in the Borough around tables and chairs licensing. These can be found in **Appendix C**.

When considering their powers in relation to local conditions the Local Authority has borne in mind the requirements of the Business and Planning Act 2020 and any national published conditions such as that above.

It should be noted that the Local Authority can add conditions to a licence that are not set out in Appendix C if it determines the need to meet the requirements of determining factors set out under Section 4.1 above. There is an expectation these will be supported by a clear justification for the need of a condition which is in addition to any published local conditions.

Conditions might, for example, limit the maximum number of chairs and tables, or type of furniture, time and days of operation with justification for this.

The Local Authority will also take into account any Government guidance relevant to pavement licensing, for instance government has published the COVID-19 Secure: safer public places guidance, which provides owners and operators of public spaces with information and examples of measures that may be undertaken to adapt and manage public spaces in order to help social distancing.

### **5.3 Application Outcome**

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.

A local authority may grant a pavement licence only if the authority considers that, taking into account any conditions subject to which it proposes to grant the licence, nothing done by the licence-holder pursuant to the licence would have an effect specified in Clause 3(6) of the Business and Planning Act 2020 being:

- 1) preventing traffic, other than vehicular traffic, from—
  - a) 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),
  - b) passing along the relevant highway, or
  - c) having normal access to premises adjoining the relevant highway,
- 2) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,
- 3) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or



- 4) 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.

#### **5.4 Appeal**

There is no statutory appeal process for these decisions.

### **6. Deemed Conditions and Licence**

If the local authority does not determine the application before the end of the determination period, the application is deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

To the extent that local conditions deemed to be imposed on the licence do not have the effects specified in [clause 3(6)] (non-obstruction clause) the licence is granted subject to those restrictions.

### **7. Enforcement**

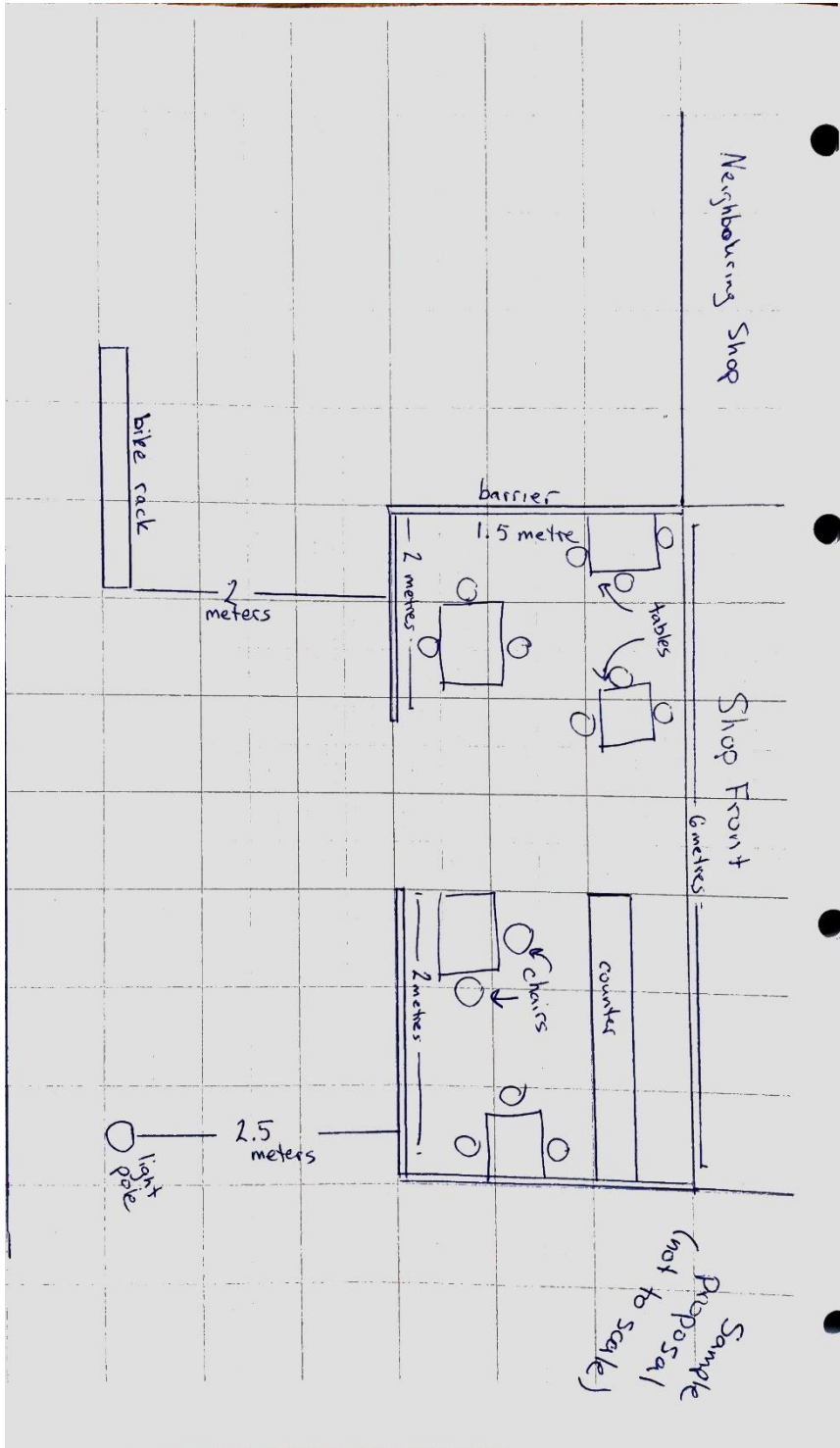
If a condition imposed on a licence, either by the local authority or nationally, is breached the local authority will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

- 1) For breach of condition, (whether or not a remediation notice has been issued) or
- 2) Where:
  - a) There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
  - b) the highway is being obstructed (other than by anything permitted by the licence);
  - c) there is 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;
  - d) 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
  - e) the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
- 3) The local authority 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, the licensed area (or road adjacent) is no longer to be pedestrianised. The Local Authority will seek to set out the reasons when such a decision is made.

It is down to the licence holder to ensure that no condition is breached or any aspect that could lead to revocation under point 2 is met. Failure to do so will lead to revocation and no appeal. Future application for a pavement licence is likely to be refused based on this failure and therefore failure to meet the requirements of Section 5.1 above

**APPENDIX A: Sample Proposal**





**APPENDIX B: Consultation Notice**



**BUSINESS AND PLANNING ACT 2020  
APPLICATION FOR A PAVEMENT LICENCE**

I/We (1),.....

do hereby give notice that on (2)..... [I/we] have applied to (3) **The London Borough of Hillingdon** for a 'Pavement Licence'

at: (4).....

.....

known as (5).....

The application is for:

(6).....  
.....  
.....

Any person wishing to make representations to this application may do so by writing to: (7) **streettrading@ealing.gov.uk**

by: (8).....

Dated (10) .....

**Guidance notes:**

Substitute the numbers with the following information:

(1) *name of applicant*

(2) *date the application is made (ie submitted)*

(3) *name of local authority*

(4) *postal address of premises*

*(5) name premises is known by*

*(6) brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink)].*

*(7) address to which where representations can be sent (this could be an email address or via a portal).*

*(8) last date for representations being the date 5 working days after the date the application is submitted to the local authority (excluding public holidays)(2)*

*(9) the website address where the application can be viewed*

*(10) date the notice was placed (must be the same date as (2))*

## **APPENDIX C: Conditions**

### Conditions For Pavement Licence

1. The pavement licence will be valid until 30<sup>th</sup> September 2021 and must be displayed on the premises with a plan on the agreed layout of the pavement
2. A copy of the business's On Licence must accompany the application. Any application that does not include the On Licence will not be processed under the fast-track scheme and will take longer than 5 days

3. Applications for fast-track pavement licences are made for use between the hours of 6am and 11pm (with all materials being removed by 11pm)
4. The proposed area for tables and chairs must give enough space to allow people to pass whilst keeping the appropriate social distances: 2 metres on high streets and city centres, 1.5 metres on other streets
5. Furniture may be placed in front of the neighbouring premises with the permission of the owner of said property
6. The pavement licence will not be allowed in any location where the pavement has been temporarily widened to allow for social distancing
7. Apart from the furniture agreed by the Council, no other items may be used on the highway as part of the licence without first seeking the written permission of the Council. Amplifiers, umbrellas, and gas-powered heaters must not be used.
8. A pavement licence does not imply any exclusive right to the area of public highway. The licence holder must be aware that London Borough of Ealing and others (e.g. police, highways authority, utilities companies, statutory undertakers) may need access at various times (including emergencies) for maintenance etc. or any other reasonable cause. This may mean that you will need to cease operation of the pavement licence for a period of time. On these occasions there would be no compensation for loss of business.
9. The licence holder is required to have Public Liability Insurance for the operation of the Pavement Licence. This must indemnify This must indemnify The London Borough Of Ealing 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.
10. The licence holder must make arrangements to ensure all detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface caused by persons frequenting the licensed premises, and where necessary, wash down the pavement licensed area using a method sufficient to remove food debris, grease and other spillages that may occur.
11. 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 the Council.
12. The Licensee of a premises not licensed under the Licensing Act 2003, must not allow the consumption of alcoholic liquor within licensed area. Additionally, the Licensee of a premises licensed under the Licensing Act 2003, must not allow the

consumption of alcoholic liquor within the pavement licence outside the hours in force for the premises itself.

13. 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.
14. The Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
15. The Council reserves the right to alter or amend these conditions at any time.