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# Pavement licensing policy

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**Elmbridge**  
Borough Council

*... bridging the communities ...*



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# 1. Introduction

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- 1.1 The COVID-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.
- 1.2 As the economy starts to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing some requirements and expediting others.
- 1.3 The Business and Planning Act 2020 (the Act) makes it easier for premises such as bars, restaurants, and pubs to serve food and drink to customers outdoors as and when lockdown restrictions are lifted. However, Government Guidelines on social distancing remain in place.
- 1.4 The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.
- 1.5 The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from Elmbridge Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premises which will enable them to maximise their capacity whilst adhering to social distancing guidelines.
- 1.6 Currently, tables and chairs permissions are granted as pavement licences by Surrey County Council, the Highways Authority, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a 28-day consultation period.
- 1.7 The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost-effective manner aiding their financial recovery.

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## 2. Scope

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### Definition of pavement licence

- 2.1 A pavement licence is a licence granted or deemed to have been granted by the local authority, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises.

### Eligible businesses

- 2.2 A business 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, and ice cream parlours.
- 2.3 A licence allows the business to use furniture placed on the highway
- a) to sell or serve food or drink and/or
  - b) allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

### Eligible locations

- 2.4 Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.
- 2.5 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).

### Type of furniture permitted

- 2.6 The furniture which may be used is:
- 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; and
  - d) umbrellas, barriers, heaters, and other articles used in connection with the outdoor consumption of food or drink.

- 2.7 This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.
- 2.8 The Council would also expect the type of furniture to be 'in keeping' with the local area.

### **Planning permission**

- 2.9 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.

### **Interaction with Part 7A of the Highways Act 1980**

- 2.10 Part 7A of the Highways Act 1980 already provides a mechanism for local authorities to grant businesses permission to place objects or structures on the highway for any of the following:
- a) for a purpose which will result in the production of income;
  - b) for the purpose of providing a centre for advice or information; or
  - c) for the purpose of advertising.
- 2.11 In Elmbridge Borough Council's area, permissions to put tables and chairs on the highway under Part 7A of the Highways Act 1980 are dealt with by Surrey County Council Highways.
- 2.12 The new pavement licence regime runs alongside the provisions in Part 7A of the Highways Act 1980, which remain in place.
- 2.13 Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

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## **3. Application and determination of pavement licences**

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### **Submission of the application**

- 3.1 An application for a pavement licence must be made to the Council, and the following will be required to be submitted with the application:

- a) completed application form
- b) the required fee of £50, paid by credit or debit card
- c) proof of the applicant's identity and right to work in the United Kingdom
- d) a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- e) a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that the applicant wishes to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area
- f) a risk assessment demonstrating how the applicant will manage social distancing and the conflict between pedestrians using the footway, those using the tables and those queuing to access the premises
- g) the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway
- h) the proposed duration of the licence (for e.g. 3 months, 6 months, a year, or until 30 September 2021)
- i) photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied for
- j) (if applicable) reference of existing pavement licence currently under consideration by the local authority
- k) (if applicable) evidence of consent from neighbouring frontager(s) to use footway space outside their property
- l) evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself)
- m) 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 (indemnifying both Elmbridge Borough Council and Surrey County Council)

- n) the plan at e) above shall show the proposed areas where customers will be allowed to smoke, and the areas set aside for non-smoking
- o) any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

## Fees

- 3.2 The fee for applying for a licence under the new process is set locally and is capped at £50.
- 3.3 Application fees must accompany the application in order for the application to be considered valid and for the consultation period to commence.
- 3.4 The fee is an 'application' fee for the processing of the application. The fee will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

## Consultation

- 3.5 Applications are consulted upon for 7 days (5 working days), starting with the day after the day on which a valid application was made to the Council.
- 3.6 The Council will publish details of the application on its [pavement licensing online tool](#)
- 3.7 The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are no detrimental effects from the application the Council will consult with:
  - a) Elmbridge Borough Council Organisational Development (Economic Development/Community Safety)
  - b) Elmbridge Borough Council Environmental Services (Pollution Services and Food and Safety Services)
  - c) Elmbridge Borough Council Asset Management
  - d) Elmbridge Borough Council Planning Services
  - e) Surrey Fire & Rescue Service
  - f) Surrey Police
  - g) The appropriate Local Ward Councillor(s)

h) Claygate Parish Council (as appropriate)

3.8 Members of the public and others listed above can contact the Council to make representations.

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

### **Site notice**

3.10 An applicant for a pavement licence must on the day the 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 notice must be constructed and secured so that it remains in place until the end of the public consultation period. Evidence of compliance with the site notice requirement must be supplied to the Council. The applicant must also serve a copy of the site notice on immediate neighbours to make them aware of the application.

3.11 The Site Notice must:

- a) state that the application has been made and the date on which it was made
- b) state the statutory provisions under which the application is made
- c) state the address of the premises and name of the business
- d) describe the proposed use of the furniture
- e) 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
- f) state the Council's website where the application and any accompanying material can be viewed during the consultation period
- g) state the address to which representations should be sent during the consultation period; and
- h) the end date of the consultation (7 days starting the day after the application is submitted to the authority).

3.12 A template Site Notice is shown as Appendix 1.

## Site assessment

3.13 The following matters will be taken into account by the Council in considering the suitability of the proposed application:

- a) public health and safety – for example, ensuring that users 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
- b) public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise, and litter; and
- c) accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, taking account of:
  - i. 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
  - ii. whether there are other permanent street furniture or structures in place on the footway that already reduce access
  - iii. the impact of access and egress to the premises
  - iv. the impact on any neighbouring premises
  - v. 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 the Government’s inclusive mobility guidance<sup>1</sup> and
  - vi. other users of the space, for example if there are high levels of pedestrian or cycle movements.

3.14 Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and take any issues around noise, and nuisance into consideration as part of the proposal.

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<sup>1</sup> [gov.uk/government/publications/inclusive-mobility](https://www.gov.uk/government/publications/inclusive-mobility)

## **Determination**

- 3.15 Once the application is submitted the Council has 14 days (10 working days) from the day after a valid application is made (excluding public holidays) to consult on and determine the application. This consists of 7 days for public consultation, and then 7 days to consider and determine the application after the consultation period has ended.
- 3.16 If the local authority determines the application before the end of the determination period, the local authority can:
- a) grant the licence in respect of any or all of the purposes specified in the application
  - b) grant the licence for some or all of the part of the highway specified in the application
  - c) impose conditions on any licence granted, or
  - d) refuse the application.
- 3.17 If the local authority does not determine the application within the 14-day period (10 working days), the application will be deemed to have been granted subject to any published local or national conditions.

## **Approval of applications**

- 3.18 Elmbridge Borough Council supports the aims of the Business and Planning Act and wishes to help promote economic recovery and growth in its area and will therefore seek to grant applications for licences where possible.
- 3.19 However, this aim has to be balanced with the need to ensure the issuing of pavement licences does not put public health or safety at risk, does not lead to antisocial behaviour or public nuisance and ensures that the public, particularly those with disabilities such as sight impairment are unhampered when using the highway.
- 3.20 The Council will consider the criteria contained within these guidelines in determining applications and will treat each case on its merits.
- 3.21 On approving the application, the Council will issue a pavement licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

- 3.22 A copy of the Council's standard conditions, which will be attached to all pavement licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.
- 3.23 The Council generally will only permit pavement licences between 09:00 and 22:00.
- 3.24 Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

### **Licences deemed to be granted**

- 3.25 The Council aims to determine all applications within the determination period provided by the Act. That means that applications will be granted or refused within the period of 7 days beginning with the first day after the public consultation period.
- 3.26 If the Council does not make a determination by the end of the determination period, section 3 (8) of the Act provides that the licence for which the application was made is deemed to be granted by the Council to the applicant.

### **Licence duration**

- 3.27 If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the end of the public consultation period, excluding public holidays) the duration of the licence will be specified, subject to a minimum duration of 3 months.
- 3.28 The expectation from the Government is that local authorities 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. As such, the Council will normally grant applications until 30 September 2021.
- 3.29 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 for a year.

## Refusal of applications

- 3.30 If the site is deemed unsuitable for a pavement licence, or if relevant representations are made which cannot be mitigated by imposing conditions, then the application may be refused.
- 3.31 The Council may refuse an application on other grounds including (but not limited to) where the granting of the licence would put at risk public health or safety, lead to antisocial behaviour or public nuisance, or unreasonably hamper pedestrian's ability to move freely.
- 3.32 The Council will notify applicants of the reasons for refusal following determination.
- 3.33 There is no statutory appeal process against a decision to refuse an application.

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## 4. Conditions

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- 4.1 The Council's standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.
- 4.2 Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition to the extent that it is inconsistent with it.
- 4.3 The national no-obstruction conditions and smoke free seating conditions apply to all licences. These conditions are shown in Appendix 3.

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## 5. Enforcement

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- 5.1 The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police. The Council will normally seek to rectify any issues arising as a consequence of the activities authorised by a pavement licence by engaging in informal discussions with the licence holder in the first instance.
- 5.2 Obtaining a pavement licence does not confer the holder immunity in regard

to other legislation that may apply, e.g. public liability, health and safety at work, food hygiene and safety, alcohol and entertainment licensing, and social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to operating.

- 5.3 If the Council considers that a licence-holder has breached any condition of the licence, the authority may:
- a) revoke the licence, or
  - b) serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.
- 5.4 If a licence-holder on whom an enforcement notice is served fails to comply with the notice, the Council may:
- a) revoke the notice, or
  - b) take the steps itself to remedy the breach and recover the costs of doing so from the licence holder.
- 5.5 The Council may revoke a licence in the following circumstances:
- a) for breach of condition, (whether or not a remediation notice has been issued) or
  - b) where:
    - i. 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
    - ii. the highway is being obstructed (other than by anything permitted by the licence)
    - iii. there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night or litter is not being cleaned up
    - iv. 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
    - v. the applicant did not comply with the requirement to affix the

notice to notify the public for the relevant period.

- 5.6 The Council 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 Council will give reasons where these powers are used.
- 5.7 All enforcement activity will be undertaken in line with the principles set out in the Regulators' Code and the Council's Environmental Health and Licensing Enforcement Policy.

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## 6. Review procedures

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- 6.1 This Policy covers the temporary permissions for pavement licences under the Business and Planning Act 2020, which are scheduled to expire on 30 September 2021.
- 6.2 As the Business and Planning Act has been passed quickly, it has not been possible to undertake public consultation on this policy in time to be ready to accept applications for pavement licences. The Policy has been drafted in consultation with the statutory consultees listed in section 3.3.
- 6.3 This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of pavement licences generally, relevant social distancing measures or as a result of local considerations within the Elmbridge Borough.

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# Appendix 1

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## Site notice template for display by an applicant for a pavement licence.

### Section 2 of the Business and Planning Act 2020.

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] have applied to Elmbridge Borough Council for a 'Pavement Licence' at:

*(postal address of premises)*

known as

*(name premises known by)*

The application is for:

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

Any person wishing to make representations to this application may do so by writing, preferably electronically to:

[envhealth@elmbridge.gov.uk](mailto:envhealth@elmbridge.gov.uk) or by post to:

Environmental Services, Elmbridge Borough Council, Civic Centre, High Street, Esher, Surrey, KT12.

by: *(last date for representations being the date 7 days after the date the application is submitted to the local authority (excluding public holidays))*

There will be the ability to make a comment on any application you view through the details available on our pavement licences webpage.

The Council's policy along with links to any application and supporting information submitted can be viewed on the Council's pavement licences webpage at [elmbridge.gov.uk/licensing/pavement-licences/](http://elmbridge.gov.uk/licensing/pavement-licences/)

Signed .....

Dated *(date the notice was placed which must be the same date as the date of application)*

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## Appendix 2

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### Standard pavement licence conditions

1. Permission to operate under a pavement licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Elmbridge Borough 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 and it is a condition of this licence to provide such access. 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.
2. The licence holder must hold public liability insurance for the operation of the pavement licence. This must indemnify Elmbridge Borough Council and Surrey 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 £10 million in respect of any one incident. Evidence of the insurance must be provided to Elmbridge Borough Council on request.
3. Tables and chairs must not be placed in position outside of the permitted times stated on the licence. 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.
4. Elmbridge Borough Council and/or Surrey County Council are empowered following the service of the appropriate statutory notice, 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 pavement licence be ignored. The Council will not be responsible for its safekeeping.
5. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the national licence conditions.
6. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Council. Whatever method is agreed a 2-metre clear walkway must be maintained for the use of pedestrians.
7. Emergency routes to the premises and adjacent buildings must not be obstructed by the approved tables and chairs or other furniture, which should

not, unless otherwise agreed, extend beyond the width of the premise's frontage.

8. 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's 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.
9. 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.
10. The licence holder shall not use or allow to be used any music playing, music reproduction or sound amplification apparatus or any musical instruments, radio, or television receiving sets in the area of the highway covered by the pavement licence.
11. The licence holder must not allow customers using the area to engage in anti-social or disorderly behaviour.
12. The operation of the area must not interfere with highway drainage arrangements.
13. 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.
14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) must be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and remove litter and rubbish on pedestrian walkways, left by persons using the premises, for a distance of up to 10 metres from the boundary of the premises. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is 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.
15. The licence holder is not permitted to affix any fixtures, or make excavations of any kind, to the surface of the highway without prior written approval.

16. 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 the licensed area.
17. 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 premises outside the hours in force for the premises itself.
18. The pavement licence must be displayed on the premises with a plan of the agreed layout of the area covered by the licence.
19. The licence holder must remove any tables, chairs, and other furniture immediately at the end of the licence period or on revocation of the pavement licence.
20. The licence holder must complete a risk assessment demonstrating how they will manage social distancing and the conflict between pedestrians using the footway, those using the tables and those queuing to access the premises.
21. The licence holder must ensure that the area covered by the pavement licence is monitored regularly by staff to ensure that the conditions above are being adhered to.

## **NOTES**

- a) These conditions should be read in conjunction with any mandatory national conditions concerning pavement licences, if the premises is licenced under the Licensing Act 2003, any relevant conditions attached to the premises licence, the latest government requirements concerning coronavirus and social distancing and any other relevant requirement of the Business and Planning Act 2020.
- b) The licence 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 this licence and for no other purpose whatsoever.
- c) Elmbridge Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

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## Appendix 3

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### National Conditions

1. The Secretary of State publishes this condition in exercise of his powers under [Section 5(6)] of the Business and Planning Act 2020:

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

2. 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 the Government's inclusive mobility guidance<sup>2</sup>.

#### Guidance on the effect of this condition

3. 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 the Government's inclusive mobility guidance, the licence is granted subject to those requirements.
4. 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.

#### Conditions relating to smoke free seating

5. The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers are able to sit outside, in order to protect public health by reducing risks of COVID transmission.
6. 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

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<sup>2</sup>[gov.uk/government/publications/inclusive-mobility](https://www.gov.uk/government/publications/inclusive-mobility)

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:**

7. Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012.
8. No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
9. Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.
10. 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.