
Pavement licensing policy- 2024

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Elmbridge
Borough Council

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1. Introduction

- 1.1 The Business and Planning Act 2020 introduced a mechanism to more easily allow businesses such as pubs and cafes to serve food and drink on public land adjacent to their premises. This is permitted via the issuing of licences.
- 1.2 The measures were originally introduced to assist businesses recover during and after the 2019 Pandemic affording a streamlined, light touch, fast application process.
- 1.3 The Levelling Up and Regeneration Act 2023 makes permanent the provisions that are set out in the Business and Planning Act 2020 with several changes. The fee for applying for a licence is now capped at £500 for first time application and £350 for renewals. The consultation period for application and for the duration that a licence can be issued have both been extended.
- 1.4 Now the regime has been made permanent the Council's policy has been updated to reflect the new revised guidance published by the then Department for Levelling Up, Housing and Communities in April 2024 and the new procedures required.

2. Scope

Definition of pavement licence

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

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 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.

- 2.4 Businesses that do not use their premises for the sale of food or drink, for example salons are ineligible. However, they can apply for permission to place furniture on the pavement under the Highways Act 1980.

Eligible locations

- 2.5 Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Crown land and highways maintained by Network Rail are exempt from licensing requirements.
- 2.6 A pavement licence does not entitle the holder or any other person to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required. Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.

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, and other articles used in connection with the outdoor consumption of food or drink. (NB. Outdoor heaters are prohibited).
- 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.
- 2.9 Applicants that wish to place non-removeable furniture onto the highway are ineligible for a pavement licence and must apply to Surrey County Council for permission under the Highways Act 1980.

Planning permission

- 2.10 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

2.11 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.

2.12 The Levelling Up and Regeneration Act (Sch 22, Para 11) clarifies that if a business can apply for a pavement licence that they may not apply for permission under the Highways Act 1980 as an alternative.

2.13 Any existing permissions issued under Part 7A of the Highways Act 1980 remain valid.

3. Application and determination of pavement licences

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, paid by credit or debit card
- c) proof of the applicant's identity and right to work
- 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) the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway
- g) the proposed duration of the licence
- h) photos or brochures showing the proposed type of furniture and

information on potential siting of it within the area applied for

- i) (if applicable) reference of existing pavement licence currently under consideration by the local authority, or current licence number
- j) (if applicable) evidence of consent from neighbouring frontages to use footway space outside their property
- k) 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)
- l) 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 BC and Surrey County Council)
- m) 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 but is currently capped at £500 for a new licence and £350 for a renewal. The fees for applications will be published via the Council's website with other fees and charges and will be for a 2-year period from date of determination.
- 3.3 Application fees must accompany the application 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 14 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 register](#).
- 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 Health (Pollution and Food and Safety Services)
 - c) Elmbridge Borough Council Planning Services
 - d) Surrey Fire & Rescue Service
 - e) Surrey Police
 - f) The appropriate Local Ward Councillor(s)
 - g) Claygate Parish Council (as appropriate)
 - h) The local Business Improvement District (if applicable)
- 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.
- 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 (14 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 – including a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in public spaces. Additionally, the impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people.
- 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 and the cumulative impact of multiple pavement licences issued in a vicinity
 - iii. the consideration of no-obstruction, especially taking into account the needs of disabled persons or those with children in buggies
 - iv. the impact of access and egress to the premises
 - v. the impact on any neighbouring premises
 - vi. 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
 - vii. 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 council, and take any issues around noise, and nuisance into consideration as part of the proposal.

3.15 When considering applications, the council must consider the needs of disabled people using the public realm. **Section 149 of the Equality Act**

2010 places a duty on the Council to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not and foster or encourage good relations between people who share a protected characteristic and those who don't.

- 3.16 In accordance with Inclusive Mobility Guidance, the council consider that the footways should be kept as wide as possible allowing at least 2000mm width of passable space.
- 3.17 However, it is recognised due to the physical constraints of some areas, this may not be possible. It is therefore recognised that a proportionate approach may need to be considered in such circumstances. In such a case a minimum passing width considered to be acceptable would be 1500mm.
- 3.18 The council will also consider the need for licence holders to use barriers or other suitable removeable furniture to create suitable barriers to pavement licensed areas. The purpose of such barriers to prevent creep of furniture and to provide a clear barrier so that users of the public realm with sight impairments and other disabilities can be aware of the licensed area in situ.
- 3.19 Pavement licensed areas should not cause users of the public realm to divert into the road or path of traffic and clear lines of pedestrian movement should be maintained so highway users are not obstructed when passing through the area.

Determination

- 3.20 Once the application is submitted the Council has 28 days from the day after a valid application is made (excluding public holidays) to consult on and determine the application. This consists of 14 days for public consultation, and then 14 days to consider and determine the application after the consultation period has ended.
- 3.21 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.
- 3.22 If the local authority does not determine the application within the 28-day

period, the application will be deemed to have been granted subject to any published local or national conditions.

Approval of Applications

- 3.23 Elmbridge Borough Council supports the aims of the Business and Planning Act and wishes to help promote economic growth in its area and will therefore seek to grant applications for licences where possible.
- 3.24 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 public realm.
- 3.25 The Council will consider the criteria contained within these guidelines in determining applications and will treat each case on its merits.
- 3.26 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.
- 3.27 A copy of the Council's standard conditions, which will be attached to all Pavement Licences are shown at Appendix 2. Additional conditions maybe attached if the Council considers it appropriate in the circumstances of any particular case.
- 3.28 The Council generally will only permit Pavement licences between 07:00 and 22:00.
- 3.29 Applications outside these hours will be assessed in terms of the criteria detailed above, and applicants are expected to provide suitable mitigations to nuisance issues arising. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstance.

Licences Deemed to be Granted

- 3.30 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 14 days beginning with the first day after the public consultation period.
- 3.31 If the Council does not make a determination by the end of the determination period. The Act details that the licence is deemed to have been granted for

two years and the business can place the proposed furniture in accordance with the details and purposes proposed. Local and national conditions will apply.

Licence Duration

- 3.32 If the Council determines an application before the end of the determination period (which is 14 days, beginning with the first day after the end of the publicconsultation period, excluding public holidays) the duration of the licence will be specified.
- 3.33 The expectation from the Government is that local authorities will grant licences for two years unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space.
- 3.34 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 two years.

Refusal of Applications

- 3.35 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.
- 3.36 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 a person's ability to move freely along the street.
- 3.37 The Council will notify applicants of the reasons for refusal following determination. There is no statutory appeal process against a decision to refuse an application.

4. Conditions

- 4.1 The Council's local standard conditions are set out at Appendix 2. In some cases,extra measures may be required. This will be determined when assessing any application and considering representations, 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 condition applies to all Licences. The National 'no obstruction condition is shown in Appendix 3.

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

It is important that businesses can cater to their customers' preferences. The National Conditions impose a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been placed on the 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.

The Council will not prescribe how businesses will wish to cater for their customers, however ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (Signs) Regulations 2012.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2000mm 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.

5. Enforcement

- 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 because 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, Employers Liability Health & Safety at Work, Food Hygiene and Safety, and Alcohol and Entertainment Licensing, 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 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 allow furniture to ‘creep’ thus creating hazards and causing an obstruction
 - 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 within the 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 The Levelling Up and Regeneration Act introduces a new provision allowing the Council to deal with unlicensed Pavement facilities. 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, the Council 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 Council 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 Council can dispose of the furniture by sale or other means and retain the proceeds.

- 5.8 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.

6. Review Procedures

- 6.1 This Policy was originally drafted to cover the Temporary Permissions for Pavement Licences under the Business and Planning Act 2020. The council's policy has been updated to reflect the new procedures and revised guidance published by the Department for Levelling Up, Housing and Communities in April 2024 which introduces a permanent pavement licensing regime.
- 6.2 This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement licences generally, or as a result of local considerations within the Elmbridge Borough.

Appendix 1

Site Notice Template for display by an applicant for a Pavement Licence

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 via the public register where details of the application can be viewed <https://www.elmbridge.gov.uk/licensing/pavement-licences>

or by post to:

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

by: *(last date for representations being the date 14 days after the date the application is submitted to the local authority (excluding public holidays))*

The Council's policy along with links to any application and supporting information submitted can be viewed on the Council's pavement licences webpages

Signed

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

Appendix 2

Standard Pavement Licence Conditions

1. Permission to operate a pavement café 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 will 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 licence be ignored.
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 Licensing Department. Whatever method is agreed a 1.5 metre clear walkway must always be maintained for the use of those using the pavement.
7. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement licensed area, which should not, unless otherwise agreed extend beyond the width of the premises 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 all persons 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 persons, 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 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 persons in the surrounding area. The licence holder must make arrangements to regularly check for and remove litter and rubbish on 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 pavement 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 licence must be displayed on the premises with a plan of the agreed layout of the licensed area.
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 licence.
20. The licence holder must ensure that the area covered by the 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 licensed under the Licensing Act 2003, any relevant conditions attached to the premises licence, the latest government guidance and any other requirements of the Business and Planning Act 2020.
- b) The licence holder 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.
- c) Elmbridge Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

Appendix 3

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 [Inclusive Mobility](#).

Guidance on the effect of this condition

3.
 - Section 3.2 of Inclusive Mobility - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.
 - any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, as these are not necessary for the consumption of food, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway. Advertising boards are not included in the definition of furniture within the pavement licensing regime, therefore, should not be used as a barrier;
 - any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway or force pedestrians into the highway. The available route must be

entirely clear for pedestrians to use and not be impeded with tables and chairs;

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

Condition relating to smoke-free seating

4. 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.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (Signs) Regulations 2012.

No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.

Licence holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible.

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