

## **PAVEMENT PERMISSIONS UNDER THE BUSINESS AND PLANNING ACT 2020**

### **1 PURPOSE OF REPORT**

- 1.1 To note the extended use of the Pavement Permit Licensing Policy and the cost of applications under the Business and Planning Act 2020.
- 1.2 To approve the introduction of a £100 application fee for all Pavement Permits (new and renewed) with effect from 1 October 2021.

### **2 INTRODUCTION**

- 2.1 The Business and Planning Act 2020 (the “Act”) introduced a number of urgent measures intended to support businesses recover from the disruption caused by the COVID-19 outbreak in the UK. 2.1 These urgent measures included provisions to make it easier for those businesses that sell food and drink to seat and serve customers outdoors, through temporary changes to regulatory procedures and the alcohol licensing regime. The Act introduces a new type of “pavement licence”.
- 2.2 The Council’s previous policy was temporarily replaced with the Pavement Permit Licensing Policy July 2020 – September 2021.

### **3 CHANGES TO BUSINESS AND PLANNING ACT LEGISLATION**

- 3.1 On 20 July 2021, the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 came into force.

#### **What does this mean?**

- 3.2 In order to continue to assist hospitality businesses in their recovery from the pandemic, the fast-track pavement licence procedure as outlined in the Business and Planning Act 2020, has been extended from 30 September 2021 to 30 September 2022.

#### **How does this impact on existing policy?**

- 3.3 The Pavement Permit Licensing Policy, as set out in Appendix A, will be extended to operate until 30 September 2022.
- 3.4 There are currently 5 premises across the district taking advantage of the legislation.
- 3.5 The current application fee is set to nil cost. The legislation allows a fee of up to £100. In order to support the administration costs of processing all applications, it is proposed that from 01/10/2021 a new Pavement Permit

application fee will be introduced and set at £100, for all new applications and renewal of licence applications.

3.6 The licensing Team proposes that the fee is applied to the application process due to the amount of officer time it takes to process each application. Officers need to liaise with partner agencies (internally and externally) within the limited timescales (10 working days) before determining whether to grant or refuse each application.

3.7 If a licence is refused, the process allows an appeal process at the cost of officer and Committee Members' time and hire of venue.

The fee also covers general administration costs including printing of documents and maintenance of the licensing system. This is aligned with the High Court Case R v The Council of the City of Wakefield and The Local Government Association (Intervening) [2019] EWCA Civ 2166.

#### **4 RISK IMPLICATIONS**

4.1 Once a pavement licence is granted, or considered 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.

4.2 The expectation is that local authorities will grant pavement 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.

4.3 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.

#### **5 CRIME AND DISORDER IMPLICATIONS**

5.1 There is an increased risk associated with noise from the premises, potentially creating disorder within these areas. To minimise this risk the standard policy conditions outline measures the Council expects, whilst these pavement licensed areas are in use and the applicant must evidence how they are going to minimise those risks associated with the extended areas.

5.2 Essex Police and Environmental Health teams are both responsible authorities that will be entitled to make comment and representations against an application.

#### **6 RESOURCE IMPLICATIONS**

6.1 The current application fee is set to nil cost; however, legislation allows a fee of up to £100 to be charged. In order to support the administration costs of processing applications, it is proposed that from 30/09/2021 a new Pavement Permit application fee will be introduced and set at £100, for all new and

renewal of licence applications. As there are only 5 such licenses in operation currently this would generate £500 income p.a. to offset the costs associated with processing these applications; this could rise if the volume of applications increases in future.

## **7 LEGAL IMPLICATIONS**

7.1 There are no legal implications other than set out within this report.

## **8 EQUALITY AND DIVERSITY IMPLICATIONS**

8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- To eliminate unlawful discrimination, harassment and victimisation
- To advance equality of opportunity between people who share a protected characteristic and those who do not
- To foster good relations between those who share a protected characteristic and those who do not

8.2 The protected characteristics are age, disability, gender, race, sexual orientation, religion, gender reassignment, marriage/civic partnerships, pregnancy/maternity.

8.3 The Equality Impact Assessment (EIA) indicates that the proposals in this report will have a disproportionately adverse impact on any people with a particular characteristic.

8.4 This policy will have an impact on those with mobility issues. The increase in street furniture will impact on the space allocated for pedestrians on the public highway.

8.5 To minimise this risk, the standard conditions have been introduced to allow at least a 2 metre walking area to allow members of the public to safely pass one another without breaching social distancing rules.

## **9 RECOMMENDATION**

9.1 It is proposed that the Committee **RESOLVES**

- (1) That the Pavement Permit Licensing Policy be extended to 30 September 2022.
- (2) That the Licensing Team be given extended delegated powers to determine an application in accordance with the Pavement Permit Licensing Policy.

- (3) That it be agreed that with effect from 1 October 2021 the Council will charge a £100 Pavement Permit fee for all applications whether new or renewed.



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**Background Papers:-**

2021 - 2022 Pavement Permission Policy

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Rochford District Council

**Pavement Permit Licensing Policy**

**September 2021 – September 2022**

Effective: 30/09/2021

Version 2.1

July 2021

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## 1. Introduction

- 1.1. The COVID-19 pandemic has impacted on businesses across the country causing many to cease trading for several months whilst others have had to significantly modify their way of operating.
- 1.2. As the economy starts to re-open on 25<sup>th</sup> June 2020 the Government announced a proposal to further relaxation to planning and licensing laws to help the hospitality industry to recover from the coronavirus lockdown by removing short term obstacles that would ordinarily get in their way.
- 1.3. The Business and Planning Act 2020 makes it easier for premises to serve food and drink (such as bars, restaurants and public houses) in accordance with the guidance.
- 1.4. As the lockdown restrictions are lifted but social distancing guidelines remain in place to seat and serve customers outdoors, the legislation is designed to temporarily change the planning procedures and alcohol licensing to support the trade in complying with the guidelines.
- 1.5. The measures included in the legislation modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales.
- 1.6. The legislation also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from Rochford District Council for the placement of furniture such as tables and chairs on the pavement adjacent to their premise which will enable them to maximise their capacity whilst adhering to social distancing guidelines.
- 1.7. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2022– giving 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 if they want to extend beyond the end of September 2022.

## **2. Current Procedures in place**

- 2.1. Currently, Rochford District Council issues Table and Chairs licences under Part 7A of the Highways Act 1980. The fee is currently fixed at £260.90. This Policy will replace any existing procedure and fee structure currently adopted by the Council until the end of the temporary measures outlined within the legislation.
- 2.2. Currently the fee varies between local authorities and there is a time consuming 28 day consultation period.
- 2.3. 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 to their financial recovery.

## **3. In Scope**

### **DEFINITION OF PAVEMENT LICENCE**

- 3.1. 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

- 3.2. 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 including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.
- 3.3. 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.

## TYPE OF FURNITURE PERMITTED

- 3.4. 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. 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
  - umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

- 3.5. This furniture is required to be removable, this means it is not a permanent fixed structure, and is able to be removed easily and stored away at the end of an evening.

## PLANNING REQUIREMENTS

- 3.6. 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

## 4. Out of Scope

- 4.1. 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 or over the Crown land are exempt (so a licence cannot be granted).

## 5. Application of Pavement Licences

### SUBMISSION OF THE APPLICATION

- 5.1. An application to the local authority must:
- Be completed electronically using the gov.uk website
  - contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require;

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified;

5.2. Within the application, the applicant 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;
- specify the date on which the application is made;
- the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);
- evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- any other evidence needed to demonstrate how any local and national conditions will be satisfied.

## FEES

5.3. The fee for applying for a licence under the new process are set locally, but cannot be more than £100.

## WHAT HAPPENS IF AN APPLICANT HAS ALREADY MADE AN APPLICATION UNDER THE PREVIOUS REGIME.

- 5.4. If an applicant has already applied for permission to place furniture on the highway under the existing regime and their application has not been determined they may proceed with that application. However, that applicant 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. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

## 6. Determination of Pavement Licences

- 6.1. Once the information is submitted to Rochford District Council, the authority has 14 days from the day after the 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.
- 6.2. If Rochford District Council does not determine the application within the 14 day period, the application will be deemed to have been granted.

## CONSIDERATIONS WHEN DECIDING WHETHER TO GRANT A PAVEMENT LICENCE

- 6.3. Rochford District Council will 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.

- 6.4. The Secretary of State have issued statutory 'no obstruction' condition referred to in 5(4) and 3(6) of the Business and Planning Act 2020.
- 6.5. Rochford District Council have published local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them.
- 6.6. When considering an application in relation to local conditions, Rochford District Council will bear in mind the requirements of [clause 3(5)] and will seek to impose conditions which have the same effect as the no-obstruction condition. These conditions also support the national published conditions.

## LOCAL CONDITIONS

- 6.7. When setting our local conditions and determining applications. Rochford District Council will consider the following on each application:
  - 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<sup>1</sup>, and
    - other users of the space, for example if there are high levels of pedestrian or cycle movements.
- 6.8. The Council’s standard conditions are set out at Appendix B. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.
- 6.9. 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 where there is reasonable justification to do so.
- 6.10. However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National ‘no obstruction conditions is shown in Appendix C.

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

## SITE SPECIFIC CONDITIONS

6.11. Rochford District Council may impose additional conditions whether or not they are published upfront. Rochford District Council will provide 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.

## DECISION OPTIONS AVAILABLE TO ROCHFORD DISTRICT COUNCIL

6.12. 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.

6.13. To the extent that conditions imposed on a licence by the local authority do not have the effects specified in [clause 3(6)] the licence is granted subject to those restrictions.

## APPEAL PROCESS

6.14. There is no statutory appeal process for these decisions, however, Rochford District Council will be permitting appeals to the Licensing and Appeals Committee.

## 7. Consultation

- 7.1. 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 Rochford District Council. Applicants must ensure the notice remains in place for the public consultation period which is the period of 7 days beginning with the day after the day the application is submitted to Rochford District Council. Applicants are encouraged to keep evidence of this.
- 7.2. The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to Rochford District Council, and so take any issues around noise, and nuisance into consideration as part of the proposal.

### PUBLIC NOTICE

- 7.3. The notice must:
- be in the form which Rochford District Council prescribe as outlined in Appendix A;
  - 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 Rochford District Council during the public consultation period and when that period comes to an end; and
  - contain such other information or material Rochford District Council may require.



## OTHER PUBLICATIONS

- 7.4. Rochford District Council is required to publish the application and any information or material which the applicant has submitted on our website.
- 7.5. Rochford District Council 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.
- 7.6. The Council will publish details of the application on its website at [www.rochford.gov.uk/tables-chairs-licence](http://www.rochford.gov.uk/tables-chairs-licence)

## CONSULTATION WITH INTERESTED PARTIES

- 7.7. Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council.
- 7.8. Rochford District Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:
  - Rochford District Council Environmental Health Service (including Environmental Control and Food and Safety Teams)
  - Local Parish / Town Council
  - Rochford District Council Planning
  - Essex Fire & Rescue Service
  - Essex Police
  - Rochford Community Safety Team

## WHO CAN MAKE REPRESENTATIONS AGAINST AN APPLICATION

- 7.9. The Council must take into account representations received during the public consultation period and consider these when determining the application.
- 7.10. Members of the public and others listed above can contact the Council to make representations.

## IF NO REPRESENTATIONS ARE RECEIVED

- 7.11. The Council will approve the application subject to meeting the criteria contained within these guidelines.

## **8. Deemed licences and conditions**

- 8.1. If a local authority determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period, excluding public holidays) the authority can specify the duration of the licence, subject to a minimum duration of 3 months.
- 8.2. Rochford District Council will grant a licence until 30<sup>th</sup> September 2022 unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.
- 8.3. 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.
- 8.4. A licence granted or deemed to be granted will not be valid beyond 30 September 2022.

- 8.5. On approving the application, Rochford District Council will issue a Table and Chairs Licence (Pavement Permit) 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.
- 8.6. A copy of the Council's standard conditions, which will be attached to all Table and Chairs Licences (Pavement licence) are shown at Appendix B. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.
- 8.7. The Council generally will only permit Table and Chairs Licences (Pavement licence) between 09:00 and 21:00.
- 8.8. 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.

## **9. Enforcement**

- 9.1. Rochford District 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 by Essex Police.
- 9.2. Obtaining a Consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

9.3. If a condition imposed on a licence either by Rochford District Council or via a National Condition is breached, Rochford District Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

9.4. Rochford District Council may revoke a licence in the following circumstances:

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

Where:

- 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;
- the highway is being obstructed (other than by anything permitted by the licence);
- 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;
- 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
- the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.

9.5. Rochford District 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.

## **10. Review Procedures**

- 10.1. This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2022.
- 10.2. This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Table and Chairs Licence (Pavement Licence) generally, relevant social distancing measures or as a result of local considerations within the Rochford District.

APPENDIX A – PUBLIC NOTICE

**BUSINESS AND PLANNING ACT  
PUBLIC NOTICE OF APPLICATION**

**APPLICATION FOR A PAVEMENT LICENCE  
(under Section x of the Business and Planning Act 2020)**

Name of Applicant	
Postal address of premises including Postcode (where possible) or a description to enable the location to be identified.	
Do hereby give notice that on <b>[date of application]</b> [I/we] have applied to Rochford District Council for a 'Pavement Licence' at:	
<b>[location]</b>	
The application is to <b>[brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink)]</b>	

The Licensing Register may be inspected at the Licensing Department, Rochford District Council South Street Rochford Essex SS4 1BW between 9.00 am and 4.30 pm (Monday to Friday except public holidays).

The application and information submitted with it can be viewed on the Council's website at:

**[www.rochford.gov.uk/business/licensing](http://www.rochford.gov.uk/business/licensing)**

Any representations by a Responsible Authority or Interested Party must be made in writing to the above address by **[enter date]**

It is an offence knowingly or recklessly to make a false statement in connection with an application punishable on summary conviction with an unlimited fine.

## APPENDIX B – STANDARD CONDITIONS

### **Standard Pavement Licence Conditions**

1) Permission to operate a pavement licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Rochford District Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause.

This may mean that the pavement licence (pavement Permit) 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) Rochford District Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Café.

This must indemnify Rochford District Council and Essex County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.

3) Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.

4) Rochford District Council will only permit Table and Chairs Licences (Pavement licence) between 09:00 and 21:00.

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

5) No Amplified or Live music to be located within the licensed area.

6) Rochford District Council and/or Essex County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.

7) The licence holder is not to make or cause to be made any claim against Rochford District Council in the event of any property of the

## APPENDIX B – STANDARD CONDITIONS

licence holder becoming lost or damaged in any way from whatever cause.

8) An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.

9) Unless separately agreed by the Licensing Department the method of marking the boundary of the licensed area shall be;

A fixed barrier system, that is suitably stable not to be easily blown or knocked over.

A colour that is suitable contrasting with the surrounding environment to ensure it can be easily seen.

10) Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians between the road and the licensed area.

11) Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence (Pavement Permit), which should not, in normal circumstances, extend beyond the width of the premises frontage.

12) Tables and chairs should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises.

13) 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.

14) Patio heaters must not be used.

15) 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.

16) The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.



## APPENDIX B – STANDARD CONDITIONS

17) Where the consumption of alcohol is to take place the only use of plastic or toughed glasses is to be permitted. Bottles are to be decanted into plastic or toughed glass drinking vessels within the facility.

18) The operation of the area must not interfere with highway drainage arrangements.

19) During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area.

Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.

20) All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians.

The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility.

The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation.

21) The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.

22) 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 Rochford District Council or the Highway Authority.

23) The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within licensed area.

24) The licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the

## APPENDIX B – STANDARD CONDITIONS

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

- 25) The licence must be displayed on the premises with a plan of the agreed layout of the pavement café.
- 26) The external seating and associated paraphernalia, including planters, shall not be placed outside when a market stall is set out on the public highway.
- 27) External seating and associated paraphernalia, including planters, to the frontage prior to the setting up of the market the seating and associated paraphernalia shall be immediately removed.
- 28) The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to.
- 29) The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
- 30) The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
- 31) Rochford District Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.
- 32) The operation of the area must not interfere with taxi ranks or bus stops.

## APPENDIX C – STANDARD CONDITIONS

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke-free seating condition. These apply only to licences granted under the Business and Planning Act 2020, not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.

### **Smoke-Free Seating Condition**

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.

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

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

### **No Obstruction Condition**

The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting

## APPENDIX C – STANDARD CONDITIONS

conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:

- Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
- any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
- any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
- so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who don't, and foster or encourage good relations between people who share a protected characteristic and those who don't.

# APPENDIX D – PROCESS FLOWCHART

