



**Epping Forest
District Council**

Pavement licence policy

July 2020 – September 2022

Contents

1. Introduction to Temporary Pavement Licences

2. Scope

3. How do I apply?

4. Consultation

5. Licence duration and conditions

6. Enforcement

7. Review Procedures

Appendix 1: Site Notice template

Appendix 2: Standard Pavement Licence Conditions

Appendix 3: National Conditions

1. Introduction to Temporary Pavement Licences

A pavement licence gives permission for removeable tables, chairs and other furniture to be used on the pavement outside a business to allow customers to enjoy Al fresco dining whilst also helping businesses to observe the social distancing rules through the covid-19 recovery phase. The application process is fast tracked to allow businesses to take advantage of the Temporary Pavement Licences, which will continue until 30 September 2022. Eligible businesses include pubs, cafes, bars, restaurants, snack bars, coffee shops and ice cream parlours.

Epping Forest District Council is keen to support local businesses. We have been working in conjunction with Essex County Council under the “Safer, Greener, Healthier” initiative to improve the customer experience in high streets, enlarging pedestrianised areas which in turn improves air quality. Safer Places is the Council’s project for recovery and rebuilding of businesses. Securing a pavement licence will help encourage and attract more customers, whilst maintaining social distancing measures and continuing to operate the business safely.

It is important to balance the needs of the business with the right to peaceful enjoyment of neighbouring residents, and licences will be conditioned to ensure that problems with noise, litter and anti-social behaviour will be successfully managed.

This Policy explains the requirements and standards expected for a pavement licence to be successfully issued and retained.

2. Scope

2.1 Definition of pavement licence

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.

2.2 Eligible Businesses

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.

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.

2.3 Eligible Locations

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).

2.3 Type of furniture permitted

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.

This furniture is required to be removable, which in principle this means it must not be a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

2.4 Planning Permission

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 relevant to the licence while the licence is valid.

2.5 How does this interact with other regulatory processes, such as alcohol licensing?

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. Other regulatory frameworks still apply such as the need for alcohol licenses and the need to comply with registration requirements for food businesses.

If the applicant has a licence to serve alcohol on-premises temporary amendments to the Licencing Act 2003, through the Business and Planning Act 2020, will allow them to sell alcohol for consumption off the premises without needing to apply for a variation of their licence.

Further information about on and off sales licences, as they affect pavement licences, is explained in section 4.4 Approval of Applications.

The Council has considered its responsibilities under the Equality Act 2010 when devising and implementing this new licensing regime, which includes the need to have due regard to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. Any businesses which apply for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under s.29 of the Act not to discriminate in providing their service.

3. How do I apply?

Applications are to be made online <https://www.eppingforestdc.gov.uk/licensing/apply-for-a-licence/>

Fees are as follows:

Type of business	Cost
Independent businesses operating until 8pm	no charge
Independents operating after 8pm	£100
Franchises and Chains	£100

The application must include the following information:

- The name, address and description of your business
- The date of the application
- What you want to use the furniture for e.g. to serve food or drink, and/or for use by other people for the consumption of food and drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises.
- When you want to use the furniture e.g. what time and what days
- What furniture you are proposing to use e.g. tables, chairs, umbrellas, heaters, stalls, counters
- A plan of the area outside your business premises and what part of the highway you want to use, clearly marked so the application site can be clearly identified, including the proposed layout of furniture and measurements (plan does not have to be to scale as long as measurements of pavement, sizes of tables and distances between them are clearly displayed)
- A photograph of the area outside your business including what furniture you are going to put on the pavement e.g. tables, chairs, stalls? If you haven't bought the furniture yet, an image of what you intend to use from either a brochure or a website
- A copy of your Public liability insurance certificate that covers the activity for third party and public liability risks, to a minimum value of £5 million
- Evidence that the applicant has met the requirement to give notice of the application, You will receive a pre-filled Site Notice with the email confirmation of receipt of your application. You are required to print this and fix it to the premises, adjacent to the highway and send photographic confirmation by email to the Licensing Team.
- Any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

Please be advised that the 7-day consultation period begins the day after a full and complete application is made, and this includes the fee and all supplementary documentation, including evidence of the Site Notice of Pavement Licence displayed correctly. If there are any errors or omissions in your application, a licensing officer will contact you for further information.

4. Consultation

4.1 Site Notice

On successful submission of your online application, you will receive an acknowledgement email with a Site Notice of Pavement Licence. You are required to print out and fix this Notice to the premises, in a prominent position so that it is readily visible to and can be read by members of the public who are not on the premises. This will be pre-filled based on the information in your application. You are required, on the same day, to send, via email to Licensingteam@eppingforestdc.gov.uk, photographic confirmation clearly indicating the details of the notice and its fixed position on the premises.

This Notice must stay in place for the full 7-day public consultation period. An example of the Site Notice template (without premises details) is attached at Appendix 1.

The consultation process will begin once we have received the email with the photograph of the displayed notice. The consultation process will be carried out by electronic and digital means only and the details will be published on the [website](#).

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

- The Council's Environmental Enforcement Team
- The Council's Community Safety Team
- The Council's Food Safety Team
- The Council's Development Management Team
- Essex Fire and Rescue Service
- Essex Police
- Ward members for the area subject to the licence application

Members of the public and others listed above can contact the Council to make representations by email to Licensingteam@eppingforestdc.gov.uk. Objections deemed to be vexatious and having no substance will be discounted.

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

4.2 Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – 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;

- 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 impact on any neighbouring premises;
 - the impact on disabled people, older people and those with mobility needs;
 - 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 publication www.gov.uk/government/publications/inclusive-mobility and
 - other users of the space, for example if there are high levels of pedestrian or cycle movements.

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

4.3 Determination

Once the application is submitted and the Site Notice is confirmed as attached to the premises, the Council has 14 working days from the day after the application is made 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.

Where no objections are received, The Director of Contract and Technical Service/ Regulatory Services will determine the application.

Where one or more objections are received, determination will be made by the said Service Director, in consultation with the Portfolio Holder for Commercial and Regulatory Services or the Leader of the Council, as well as the Chair or Vice Chair of the Licensing Committee.

If the Council determines the application before the end of the determination period, it 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.

If the local authority does not determine the application within the 14-day period, the application will be deemed to have been granted and the standard pavement licence conditions, as published on the Council's website will apply.

4.4 Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

Applications will be granted unless we determine that there are sufficient reasons to refuse the licence. Reasons for refusal will be explained to you in writing.

In considering whether a pavement licence should be issued, the Council must take into account the needs of disabled people and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.

Outdoor smoking on the pavement is not prohibited but businesses must make reasonable provision for smoke-free seating in accordance with the national smoke free seating condition. This may include:

- Clear 'no smoking' signage displayed in designated areas.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where a smoke-free seating is identified.
- Licence holders should aim for a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

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.

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 to do so.

The Council will generally apply hours of operation between 08.00 to 21:00 from Sunday to Thursday and 08:00 to 22:00 Friday and Saturday for all consents.

Applications outside these hours will be assessed in terms of the circumstances. The Council however retains the right to specify permitted hours of trading that are less than those specified above, in appropriate circumstances.

When considering toilet provision, generally, existing facilities provided as part of the hospitality business will be acceptable, for use by customers eating and drinking both inside and outside the premises, taking account of the reduced covers necessary as a result of social distancing requirements. Where a pavement licence is being used to sell and consume food or drink on the premises for the first time, and no existing toilet facilities are provided, arrangements may be put in place to use alternative facilities or, in certain circumstances, where the pavement area is limited, a notice informing customers that no toilet facilities are provided will be allowed.

Rules relating to alcohol

The grant of a pavement licence only permits the placing of furniture on the highway. Premises that wish to expand outdoors, with customers consuming alcohol on the highway will need both a premises licence to sell alcohol and a pavement licence.

Alcohol licences are specifically for the sale of alcohol at the premises for consumption either on or off the premises. Temporary modifications to the Licensing Act 2003, provide an automatic extension to the terms of most premises which only permit the sale of alcohol for consumption off the premises. Because the new permission is automatic, an application for an off-sales alcohol licence does not need to be made, if the premises already has an on-sales alcohol licence and has not had a disqualifying event in the last three years.

The pavement licence does not override any previous decision that imposed a licensing condition prohibiting the sale of alcohol for consumption on the pavement area.

4.5 Refusal of Applications

If the site is deemed unsuitable for a Pavement Licence, or if relevant representations are made which cannot be mitigated by conditions, then the application may be refused.

There is no statutory appeal process against decision to refuse an application.

5. Licence duration and conditions

5.1 Licence duration

If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period), it may specify the duration of the licence, subject to a minimum 3 months.

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. This Council will normally grant applications until 30 September 2021.

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 12 months.

Any licence granted or deemed to be granted will not be valid beyond 30 September 2021.

5.2 Conditions

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. As well as the Council's conditions there may be site specific conditions that are set by Essex County Council Highways department. These are non-negotiable.

Where a council 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.

However, this is not the case for the statutory 'no-obstruction' condition and the 'smoke-free seating' condition. These apply only to licences granted under the Business and Planning Act 2020.

The National 'no obstruction conditions and smoke-free seating condition are explained in more detail in Appendix 3.

6. Enforcement

6.1 Complying with legal obligations and licence conditions

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.

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, or social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

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

6.2 Revocation of a licence

The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued); or
2. Where:
 - **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
 - **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.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway 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. We will always give reasons where these powers are used.

7. Review Procedures

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licence generally, relevant social distancing measures, or as a result of local considerations within the Epping Forest District.



NOTICE OF APPLICATION FOR A PAVEMENT LICENCE

Business and Planning Act 2020

(1), Name of applicant

do hereby give notice that on *(2) Date application made* an application has been made to Epping Forest District Council for a Pavement Licence at:

(4) Name and address of business

The application is for: *(5) proposed use of the furniture*

Any person wishing to make representations regarding this application may do so by email to: licensing@eppingforestdc.gov.uk

by: *(6) date 7 days from date of application*

The application and information submitted with it can be viewed on the www.eppingforestdc.gov.uk/licensing

Signed

Regulatory Service Manager



Pavement Licence Conditions: Business and Planning Act 2020

Please note this licence can be revoked if there is failure to comply with these conditions.

1. The licence holder must conform with latest Government guidance on social distancing and hygiene measures to ensure the licensed area is covid- safe for staff and customers, as far as reasonably practical.
2. The licence holder(s) shall at all times comply with all statutes, statutory instruments, regulations and by-laws. Particular attention should be paid to the requirements of the Health and Safety at Work Act 1974, the Food Safety Act 1990, The Food Hygiene (England) Regulations 2013 and associated European Regulations, particularly, but not exclusively EC Reg 852/2004, The Smoke-free (Premises and Enforcement) Regulations 2006, The Coronavirus Act 2020 and related Regulations; and the Business and Planning Act 2020.
3. The licence holder must ensure that business operations from the licenced area align with existing local business arrangements and charters, including regular markets and street trading consents.
4. Except with the previous written consent of the Council, only the amenities detailed on the licence are to be placed on the public highway, in accordance with the plan layout, and the amenities are only to be placed on the public highway between the times detailed on the licence and on the permitted area specified in the licence.
5. The Council may require the boundary of the permitted area to be defined by a fixed barrier system, that is suitably stable so as not to be easily blown or knocked over. Any proposed facility used to define the licenced area, for example fencing, rope stands, planters must take account of the needs of disabled people and will require approval by the Council as part of the application.
6. Clear routes of access along the highway must be maintained, taking into account the needs of disabled people, older people and those with mobility needs. The available route must be entirely clear and must not pass through any area with tables and chairs. A width of 2m should be maintained but where this is not possible, 1.5m will be the minimum width allowed. Clear access to the entrance of the adjoining premises must always be maintained, including access for disabled people.
7. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval of the Responsible Highway Authority (Essex County Council).

8. The licence holder is not permitted to erect the amenities other than in accordance with the provisions of the licence.
9. The licence holder(s) shall not cause any nuisance or annoyance to any other user of the highway, or any adjacent land or premises. The licence holder is responsible for keeping good order including the control of all litter and rubbish within the boundary of the permitted area.
10. Any music, emanating from the premises and licenced area shall not be audible at the boundary of nearest noise sensitive area so as to cause a public nuisance.
11. All furniture, including tables, chairs and barriers used on the licensed area must be portable and must be removed at the end of the trading period for the pavement area, as specified on the licence, to either inside the premises or within its own premises boundary and off the highway. Any amenities left outside must be secured fixed and locked to the building to prevent removal.
12. Otherwise than stated on the specific premises licence, the following time restrictions apply:
- (a) Pavement furniture will not be put out on the licensable area before 8am on any day
- (b) The licensable area must be cleared of furniture and customers by no later than 21:00 Sunday to Thursday and 22:00 Friday and Saturday.
13. The tables & chairs and other furniture shall be kept in a clean, safe and well-maintained condition, to the satisfaction of the Council. It must be of a design and construction that it cannot easily be pushed or blown over by the wind, so as to cause obstruction.
14. The licenced area is to be used for seated customers only so that social distancing of customers can be managed.
15. Where tables and chairs are put on the licenced area for consumption of food and drink, reasonable provision must be made for seating, in a designated area, where no smoking is permitted. This may include:
- Clear 'smoking' and 'non- smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' areas.
 - No ash trays or similar receptacles to be provided or permitted to be left on furniture where a smoke-free seating is identified.
 - Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.
- The licence holder must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006.
16. Where the consumption of alcohol is to take place then only plastic or toughened glass and bottles are to be permitted within the licenced area.
17. Where heating is proposed for colder weather, electric heating is preferred to LPG, to minimise the carbon usage. Fire pits are prohibited. Alternative options of temporary screens (subject to Council approval) and rugs, cushions and blankets can also be considered as climate friendly solution.

18. All outside electrical heating must be suitable for the use intended and installed and located to eliminate any risk posed by power supply cables, including tripping hazards. All electrical equipment must be subject to regular visual inspection and must be safe, maintained free from 'danger' and not pose a risk. Where necessary, electrical equipment must receive an appropriate safety examination, to ensure that it remains safe, maintained free from 'danger' and not pose a risk.
19. All full and nominally empty gas cylinders for patio heaters or other liquid gas fired appliances, must be stored outside either in a secure cage or suitably secure location, bear the correct signage and located away from drains and gullies (min 2M). The maximum number of cylinders onsite (full and nominally empty) shall not exceed a volume of 100Kg. All gas cylinders must meet latest BS EN requirements.
20. The licenced area and pavements and road surfaces immediately adjacent, must be kept free of litter, detritus and rubbish, including staining of the highway surface from food and drink spillages.
21. Litter and rubbish associated with the business must be removed from pedestrian walkways as required, to maintain a clean, litter free area, for a distance of up to 5 metres from the boundary of the permitted area.
22. Litter and Trade Waste arising from the activities shall be removed from the licensed area daily and disposed of in an approved manner.
23. No water, rubbish or waste material associated with the business shall be discharged or deposited on the highway or onto any adjacent property or into any surface water inspection chamber or gully or other watercourse.
24. At the instruction of the Council, the licence holder must remove the Street Furniture during the permit period for the purpose of:
 - (a) Works in or under or over the highway or for using it in connection with works in, under or over land adjacent to or adjoining it as may be required by Epping Forest District Council, the local highways authority or any statutory undertaker or other person authorised by the Council.
 - (b) Use by emergency services.
 - (c) Any other reasonable cause.
25. All amenities must be immediately removed at the end of the licence period or if the licence is revoked.
26. In the event of a breach of the licence, the highway must be reinstated to original condition. The licence holder will be required to reimburse the Council, if, as a result of a breach of the licence conditions, it is required to carry out any reinstatement works.
27. The licence holder shall not make any claim against the Council in the event of any property of the licence holders becoming lost or damaged in any way from whatever cause.
28. The licence holder must indemnify and keep indemnified the Council from and against all actions, costs, claims, proceedings, demands and liability, which may at any time arise or be incurred in consequence of the placing and maintaining the amenities on the highway or their removal from the highway.
29. The licence holder must hold a Public Liability Insurance indemnity policy throughout the term of the licence up to the value of £5 million against any liability, loss or damage, claim of proceeding whatsoever arising under Statute or Common Law in

respect of the placing and maintaining the Street Furniture on the highway or their removal. The applicant is required to submit proof of this insurance prior to the licence being issued and on the anniversary of the issuing of the policy as long as the licence is in operation.

30. This licence shall not be assigned to any other person, firm or organisation.

31. The licence holder shall make available these general conditions to every person engaged in supplying food and drink to customers on the premises subject to this licence.

32. Failure to comply with these conditions may lead to revocation of the licence and or prosecution of the licence holder.

Note: Permission to place tables and chairs on the highway does not exempt the applicant from complying with any other legislation applying to the premises.

A separate set of conditions will apply to a licence for the erection and use of advertising boards and awnings or canopies fitted to the premises.

Diagrammatic examples of suitable LPG storage



Appendix 3: National 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.

How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?

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

- Section 3.1 of the Governments guidance on [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.

What is reasonable provision for seating where smoking is not permitted?

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

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.

Public Health England has published [guidance for smokers and vapers during the COVID pandemic](#).