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Pavement Licensing Policy

2024-2029

Business & Planning Act 2020

Effective: 22 July 2020

Spelthorne Borough Council Pavement Licensing Policy

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Version 1 – First Policy

~~July 2020~~ Version 2 Amended - **insert date**

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1. 1. Introduction

The Council will review this policy every five years, or sooner in light of any significant changes to legislation or guidance and consult on any proposed amendments. If the Council make any changes, then the policy will be re-published.

Minor amendments to the Policy can be approved by Deputy Chief Executive and the Chairman of the Licensing Committee.

Background

~~In 2020~~ The Covid-19 pandemic ~~has~~ affected businesses across the economy causing many to cease trading for several months while others ~~have~~ had to significantly modify their operations.

As the economy ~~started~~ starts to re-open, on 25 June 2020 the Government announced ~~a~~ further ~~and~~ urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown, ~~by removing short-term obstacles that could~~ stifle recovery ~~get in the way.~~

The Business and Planning Act 2020 ('the Act') ~~made~~ makes it easier for premises serving food and drink such as bars, restaurants and pubs to operate, as lockdown restrictions ~~were~~ lifted but social distancing guidelines remain ~~ed~~ in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

~~The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.~~

The Act also introduces ~~ds~~ a ~~temporary~~ fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from Spelthorne Borough Council for the placement of furniture such as tables and chairs on the pavement outside their premises, which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Previously, tables and chairs permissions were granted as pavement licences by Surrey County Council, the Highways Authority, under Part 7A of the Highways Act 1980. ~~The fee varies between local authorities and there was a 28 day consultation period.~~

~~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 quick and cost effective manner aiding to their financial recovery.~~

Current Position

The regulations under the Business and Planning Act 2020 in respect of pavement licensing have been amended and made permanent by the Levelling Up and Regeneration Act 2023 which received Royal Assent 26 October 2023. The amendments include:

- Increasing the public consultation period to 14 days (with ~~a~~ further 14 days to determine)

- ~~Increasing the statutory fee cap~~
- ~~Additional enforcement powers for unlicensed activity~~
- ~~Duration of licences – no longer a minimum of three months, and can be granted for up to two years.~~

~~Duration of licences – no longer a minimum of three months, and can be granted for up to two years.~~

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 ~~permits allows~~ the licence-holder to place removable furniture ~~over certain on the public~~ 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.

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).

2.4 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, ~~and~~ this means it ~~is cannot 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.~~

2.5 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 done pursuant to the licence while the licence is valid.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

An Applications for a new and the renewal of Pavement Licences must be made electronically to the Council, and the following will be required to be submitted with the application:

- ~~You can apply for a pavement licence by completing the application form available on our website on the licensing webpage and this should be submitted via email, together with the following to licensing@spelthorne.gov.uk~~
- a completed Application Form.
- the required fee of £100, paid by credit or debit card, together with the receipt for the payment
- proof of the applicant's identity and right to work.
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified.
- 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 ~~to be placed on the highway that they~~ wish 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.
- ~~a risk assessment demonstrating how the applicant will manage social distancing and the conflict between pedestrians using the footway, those using the tables and those queuing to access the premises;~~
- the proposed days of the week and times of day on which, ~~and the times of day between which,~~ it is proposed to put furniture on the highway.
- the proposed duration of the licence. ~~(for e.g. 3 months, 6 months, or a year);~~
- photos or brochures showing the proposed ~~type of~~ furniture and information on potential siting of it within the area, ~~applied;~~
- (if applicable) reference of existing pavement licence currently under consideration by the local authority.
- 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~~); displayed
- ~~(upon grant of licence)~~ 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, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

NOTE: a renewal cannot be submitted after expiry of the current licence. A new application would be required.

3.2 Fees

The fee for applying for a licence ~~under the new process~~ are set locally, but are capped at ~~£500 for a new licence and £350 for a renewal. The Council has determined that the fee for applications will be £100.~~

Application fees must be paid by debit/credit card at the time the licence application is submitted to the council and the receipt must accompany the application in order for the application to be considered valid and for the consultation period to commence.

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.

3.3 Consultation

Applications are consulted upon for ~~seven (7)~~14 days, ~~starting with the day after which a valid application was received by the Council. with the first day of consultation being the day after a valid application was made to the Council.~~

The Council will publish details of the application on its website.

The 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:

- Spelthorne Borough Council Economic Development
- Spelthorne Borough Council Environmental Health Service
- Spelthorne Borough Council Asset Management
- Spelthorne Borough Council Planning
- Neighbourhood Services
- Spelthorne Borough Council Town Centre Management
- Surrey Fire & Rescue Service
- Surrey Police
- The appropriate Local Ward Councillor(s)
- The Spelthorne Business Improvement District
- ~~From time to time Spelthorne Borough Council's Anti-Social Behaviour Team~~ Spelthorne Borough Council Community Safety Team
- Counter Terrorism Policing South East

Members of the public and others listed above can contact the Council to make representations at licensing@spelthorne.gov.uk

The Council must take into account representations received during the public consultation period and consider these when determining the application. The full names and address of the representee should be submitted.

3.4 Site Notice

On the day an application for a pavement licence is made, the applicant must 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 the site notice requirement must be supplied to the Council.

The Site Notice must:

- state that the application has been made and the date on which it was made;
- state the statutory provisions under which the application is made;
- state the address of the premises and name of the business;
- describe the proposed use of the furniture;
- 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;
- state the Council's website where the application and any accompanying material can be viewed during the consultation period;
- state the address and email (licensing@spelthorne.gov.uk) to which representations should be sent during the consultation period; and
- the end date of the consultation (~~6 working days~~ 14 days starting the day after the application is submitted to the authority).

A template Site Notice is shown as Appendix 1.

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

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

3.6 Determination

Once the application is submitted the Council has ~~28~~44 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of ~~14~~7 days for public consultation, and then ~~14~~7 days to consider and determine the application after the consultation period has ended.

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,
- impose conditions ~~on any licence granted~~, or
- refuse the application.

If the local authority does not determine the application within the ~~14-28~~ day period, the application will be deemed to have been granted subject to any published local or national conditions.

3.7 Approval of Applications

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

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 in the circumstances of any particular case.

The Council generally will only permit pavement licences to apply 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.

3.8 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 end of the public consultation period, excluding public holidays) they can specify~~ the duration of the licence, ~~will be specified,~~ subject to a ~~minimum-maximum duration of 3 months of 2 years.~~

~~The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2021.~~

The Council will normally grant applications for two years unless a shorter period has been requested or it is necessary for good reason, such as known upcoming street works, for example.

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 period of two yearyears.

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

3.9 Refusal of Applications

If the site is deemed unsuitable for a pavement licence to be granted, 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.

3.10 Variation of licences

There is no provision in the legislation to apply for a variation of a pavement licence. Should the licence holder wish to vary the licence, they would need to submit a new application.

As an alternative to revoking the licence, the Licensing Authority may, with the consent of the licence holder, amend the licence if it considers that –

(a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted.

(b) As a result of the licence

I. There is a risk to public health or safety

II. Anti-social behaviour or public nuisance is being caused or risks being caused.

or

III. The highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence).

4. 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. ~~If the application is deemed approved the conditions will apply to the approval~~

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.

However, this is not the case for the statutory no-obstruction condition which is as applies to all licences. The national statutory 'no obstruction' condition is shown in Appendix 3.

5. Enforcement

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 licence~~ does not confer the holder with 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.

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.~~

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;
 - 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.
3. 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.

Unlicensed activity

Where a person/business puts removable furniture on a relevant highway and is not authorised to do so, the licensing authority may, by issuing a notice, require the person/business to:

- Remove the furniture before the date specified on the notice and
- Refrain from putting furniture on the highway unless authorised to do so.

Contravention of such a notice may lead to the authority removing the furniture and storing it, and require the person/business to pay the authority's reasonable costs in removing and storing the furniture and to refuse to return the furniture until those costs are paid.

If, within the period of three months beginning with the day on which the notice is given served, the person/business does not pay those reasonable costs, or does not recover the furniture, the local authority may-

- Dispose of the furniture by sale or in any other way it thinks fit, and
- Retain any proceeds of sale for any purpose it thinks fit

In this section, 'authorised' means authorised by –

- A pavement licence,
- Permission under Part 7A of the Highways Act 1980, or
- Permission granted under any other enactment

6. Policy Review

This Policy covers the ~~Temporary Permission processes and procedures~~ for Pavement Licences under the Business and Planning Act 2020 (as amended by the Levelling Up and Regeneration Act 2023), ~~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 licences generally, ~~relevant social distancing measures~~ or as a result of local considerations within the Spelthorne Borough.

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

NOTICE OF APPLICATION FOR A PAVEMENT LICENCE
Section 2(5) of the Business and Planning Act 2020.

I/We _____

(name of applicant),

do hereby give notice that on _____ *(date of application)*

I / we *(delete as applicable)* have applied to Spelthorne Borough Council for a 'Pavement Licence' at: _____

(postal address of premises)

known as _____

(name premises is known by)

The application is for: _____

(brief description of application)

Any person wishing to make representations to this application may do so by writing, preferably by email, licensing@spelthorne.gov.uk or: Environmental Health Spelthorne Borough Council, Council Offices, Knowle Green, Staines-Upon-Thames TW18 1XB

by: _____ *(5 working days starting the day after the date of application)*

The application and information submitted with it can be viewed on the Council's website: <https://www.spelthorne.gov.uk/article/19292/Licensing-applications-open-to-representations>

Signed _____

Dated *(date of application)* _____

This notice must be displayed from the date of application until the end of the public consultation period, which is 5 working days, starting the day after the application date. The date the notice is signed and the date of application must be the same date.

NOTICE OF APPLICATION FOR A PAVEMENT LICENCE
Section 2(5) of the Business and Planning Act 2020

I/We _____

(name of applicant),

do hereby give notice that on _____ *(date of application)*

I / we *(delete as applicable)* have applied to Spelthorne Borough Council for a 'Pavement Licence' at: _____

(postal address of premises)

known as _____

(name premises is known by)

The application is for: _____

(brief description of application)

Any person wishing to make representations to this application may do so by writing, preferably by email, licensing@spelthorne.gov.uk or: Environmental Health Spelthorne Borough Council, Council Offices, Knowle Green, Staines-Upon-Thames TW18 1XB

by: _____ *(14 days starting the day after the date of the application).*

The application and information submitted with it can be viewed on the Council's website: [Licensing applications open to representations - Spelthorne Borough Council](#)

Signed _____

Dated *(date of application)* _____

This notice must be displayed from the date of application until the end of the public consultation period, which is 14 consecutive days, starting the day after the application date (Christmas Day, Good Friday and a day that is a bank holiday in England cannot be counted). The date the notice is signed and the date of application must be the same date.

Appendix 2

Standard Pavement Licence Conditions

- ~~1. The licence holder will undertake a risk assessment (submitted as part of the application) and this must include suitable and sufficient control measures to prevent the transmission of Coronavirus (COVID-19). The licence holder must document this risk assessment, keep it under review and make it available upon the request of Spelthorne Borough Council. The positioning of the furniture must allow for social distancing to take place. The licence holder must comply with the guidance issued by central government for working safely during coronavirus (COVID-19).~~
- 2.1. 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 Spelthorne 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. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
- 3.2. Spelthorne Borough Council requires evidence that the licence holder has Public Liability Insurance for the operation of the pavement licence. This must indemnify Spelthorne 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.
- 4.3. 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.
- 5.4. Spelthorne Borough Council and/or Surrey County Council are empowered to remove and store or dispose of furniture from the highway, at the cost to 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.
- 6.5. The licence holder is not to make or cause to be made any claim Spelthorne Borough Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
- 7.6. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions issued by the Secretary of State.
- 8.7. 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 2 metre clear walkway must be maintained for the use of pedestrians.
- 9.8. Emergency routes to the premises and adjacent buildings must not be obstructed by the furniture set up in connection with this licence, which should not, in normal circumstances, extend beyond the width of the premises frontage.

- 40.9. 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 sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Spelthorne Borough Council's Licensing team.
- 44.10. 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.
- 42.11. The licence holder shall 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.
- 43.12. The operation of the area must not interfere with highway drainage arrangements.
- 44.13. 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.
- 45.14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) must be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and 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. 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.
- 46.15. 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 Spelthorne Borough Council or the Highway Authority.
- 47.16. The licence holder 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.
- 48.17. The licence holder 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 pavement licensed area outside the hours in force for the premises itself.
- 49.18. The licence must be displayed on the premises with a plan of the agreed layout of the pavement licence.
- 20.19. The licence holder must remove any tables, chairs and other furniture immediately at the expiry of the licence period date or on revocation of the licence.

~~24-20.~~ The licence holder must make sure the licensed area is regularly monitored to ensure that customers are not causing a noise disturbance or other forms of anti-social behaviour.

~~22-21.~~ The licence holder will ask customers causing a disturbance e.g. noise, anti-social behaviour to behave in an orderly manner and if they do not do so after warning then they will be asked to leave.

~~23-22.~~ The licence holder will display a sign/s in a prominent position to remind customers to be considerate towards neighbours

26. 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 whilst exercising privileges granted by this permission, that is audible outside the premises.

~~24-23.~~ The licence holder will only take orders/serve customers who are seated and must ensure that customers are not standing in the licensed area with food or drink.

~~25-24.~~ The licence holder will cease taking orders / serving customers 30 minutes prior to the time the licence permits the use of the seating area in order to ensure that the seating area is closed by the closing time specified on the pavement licence.

~~26-25.~~ The licence holder is to encourage customers to leave by the closing time specified on the pavement licence and also to leave quietly.

~~27-26.~~ Where the location of the premises is in a residential area, the licence holder shall provide rubber feet to chairs and tables to reduce noise when furniture is moved

~~28-27.~~ 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.

NOTES

These conditions should be read in conjunction with any mandatory national conditions concerning pavement licences, if the premises is licenced under the Licensing Act 2003, any relevant conditions attached to the premises licence, ~~the latest government requirements concerning coronavirus and social distancing~~ and any other relevant requirement of the Business and Planning Act 2020.

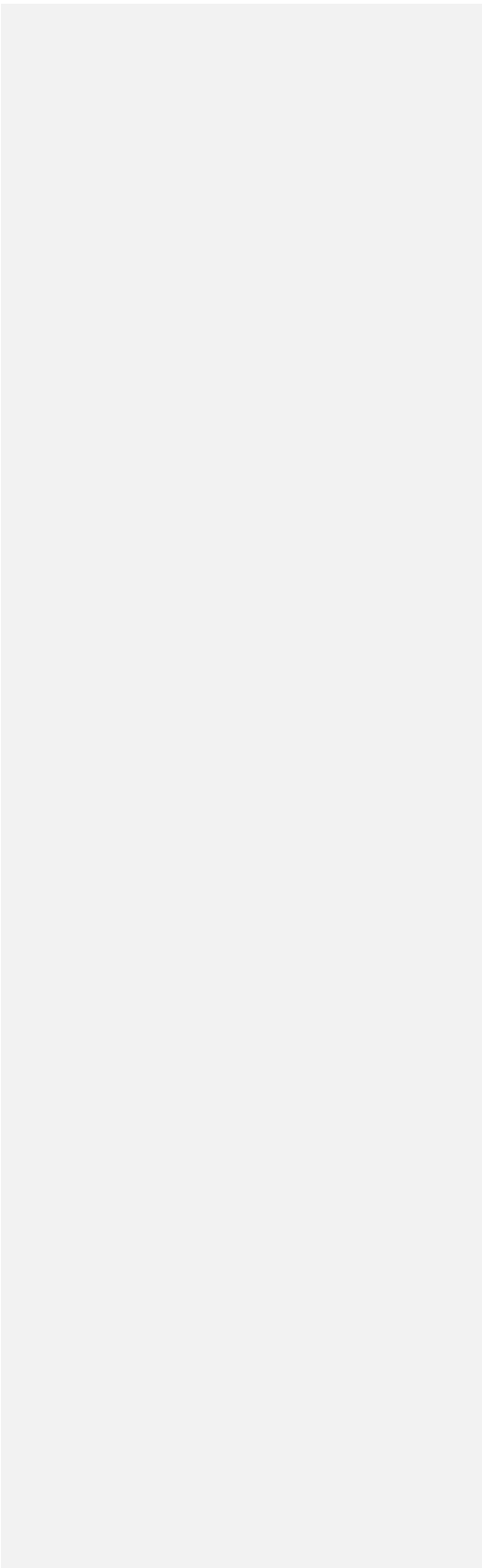
The licence holder is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The ~~l~~licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.

Should the licence holder not be on the premises then they must make arrangements for a responsible person to be on site who can ensure compliance with the conditions of the licence.

Spelthorne Borough Council reserves the right to revoke this licence at any time if any of the above conditions are not complied with.

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Appendix 3

National Conditions

Statutory conditions attached to a pavement licence

1. Anything done by the licence holder pursuant to the licence, or any activity of other persons which is enabled by the licence, must not have an effect specified in section 3(6). These effects are:
 - (a) preventing traffic, other than vehicular traffic, from:
 - (i) entering the relevant highway at a place where such traffic could otherwise enter it (ignoring any pedestrian planning order or traffic order made in relation to the highway).
 - (ii) passing along the relevant highway, or
 - (iii) having normal access to premises adjoining the relevant highway.
 - (b) preventing any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order.
 - (c) preventing statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
 - (d) preventing the operator of an electronic communications code network having access to any electronic communications apparatus kept installed for the purposes of that network under, in, on or over the highway.
2. Where the furniture to be put on the relevant highway consists of seating for use by persons for the purpose of consuming food or drink, the licence-holder must make reasonable provision for seating where smoking is not permitted.

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

1. **Condition relating to clear routes of access:**

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

- 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.

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 do not and foster or encourage good relations between people who share a protected characteristic and those who don't.

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

- To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility, the licence is granted subject to those requirements.

- ~~• To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.~~

2. Condition relating to smoke-free seating

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.

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.

Appendix 4

Inclusive Mobility

You can access more information on Inclusive Mobility and the Government's guide to best practice on improving access to public transport and creating a barrier-free pedestrian environment below:

[Inclusive mobility: making transport accessible for passengers and pedestrians - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/inclusive-mobility)
<https://www.gov.uk/government/publications/inclusive-mobility>