

## **Regulatory Services Partnership**

### **Business and Planning Act 2020 - Pavement Licence Policy**

#### **Introduction**

This Policy sets out how the Regulatory Services Partnership, on behalf of the London Boroughs of Merton and Richmond (“the Council”) will determine applications for Pavement Licences under the Business and Planning Act 2020. This Policy also provides guidance for applicants on how to make applications, conditions that may be imposed on Pavement Licences, and what factors the Council will take into account when determining an application.

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.

The Business and Planning Act 2020 makes it easier for premises serving food and drink such as bars, restaurants and pubs, as lockdown restrictions are lifted but social distancing guidelines remain 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 a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, from the 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.

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.

## **Section 1 - Overview of Pavement Licences**

- 1.1. A Pavement Licence is a Licence granted by the Council, or deemed to have been granted, under the Business and Planning Act 2020 (“the Act”) 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.
- 1.2. A Pavement Licence removes the requirement for the Licence Holder to apply for a Street Trading Licence in respect of the activity permitted by the Pavement Licence.
- 1.3. A Pavement Licence may only be granted for use in connection with a relevant premises and for an area of the highway adjacent to that premises. A Pavement Licence cannot be used to licence activity unconnected with a relevant premises, or by a relevant premises for an alternative location to the business premises being used.
- 1.4. All applications shall be subject to a 7-day consultation period, and shall be determined no later than 7 days after the end of that period.
- 1.5. A Street Trading Licence will still be required in some circumstances, and applicants may choose to apply for a Street Trading Licence instead of a Pavement Licence or before the Pavement Licence expires.
- 1.6. All Pavement Licences will expire at the end of the 30<sup>th</sup> September 2021 at the latest, which is a date that has been fixed in the Act
- 1.7. If a licence is ‘deemed’ granted because the Council does not make a decision on an application before the end of the determination period, then the licence will be valid for 12 months starting from the day after the last date the application could have been determined by the Council.

### Eligible Premises

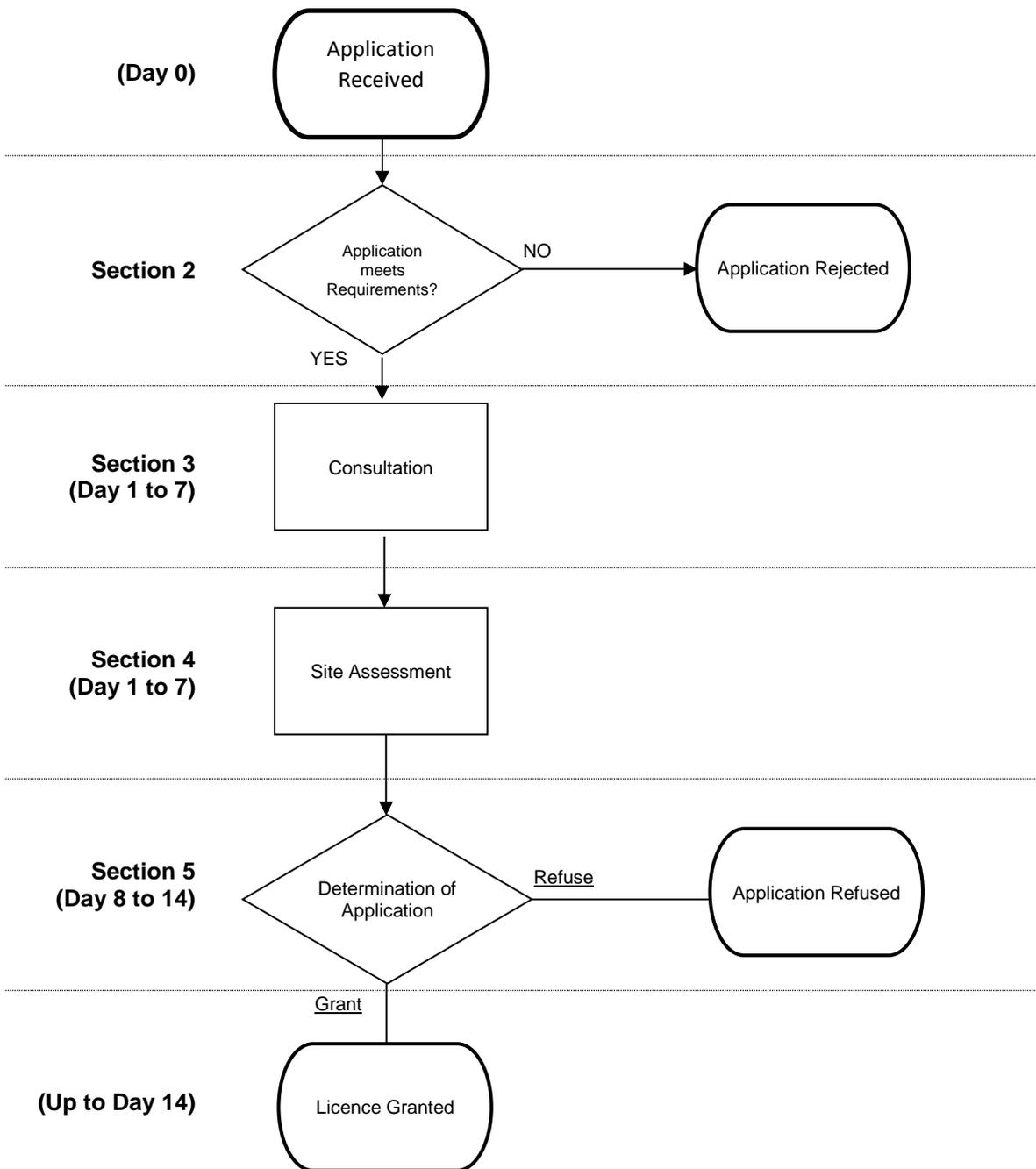
- 1.8. A relevant premises is a premises that is used (or proposed to be used) for the sale of food or drink for consumption (on or off the premises). Premises that are eligible can include: public houses, cafes, bars, restaurants, snack bars, coffee shops, or other similar premises.
- 1.9. A licence permits 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.

### Eligible Locations

- 1.10. Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.
- 1.11. Generally, these are pavements or other 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).

### Summary of the Process

1.12. The process that will be followed by the Council in all cases is summarised in the flow chart below.



## Section 2 - Application Requirements

### Submission of the Application

- 2.1. An application for a Pavement Licence must be made to the Council, and the following will be required to be submitted with the application:
- A completed Application Form, with the following matters specified:
    - Name and address of the applicant
    - A contact email address and phone number
    - Details of the business premises for the location of the Pavement Licence
    - The relevant use of the premises and the purpose to which the application relates
    - Details of the area of highway proposed to be used
    - Details of furniture to be placed on the highway
    - Days and times requested to be licensed
    - Details for any standard conditions to be removed and/or additional conditions proposed
    - Details of any other relevant licences held
  - The required fee, if applicable, paid by credit or debit card
  - A plan clearing showing the location of the premises and the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that the applicant wishes to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
  - A copy of a current Public Liability Insurance Certificate that covers the proposed use for the Pavement Licence
- 2.2. Applicants are also requested to provide evidence that the advertising requirements have been met by providing a photograph of the notice at the premises (once the application has been made, and during the 7-day consultation period)
- 2.3. The following information may be provided to support the application, but is optional:
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied for;
  - any other evidence or supporting statements to demonstrate how the Council's local conditions, and any national conditions will be satisfied.
  - Any other information the applicant considers necessary to support the application
- 2.4. Applicants are advised that due to the short time scales allowed by the Act, the Council may not be able to contact every person who makes an application to query any points, and therefore applications should be clear and legible in the first instance with sufficient information provided for a decision to be made.
- 2.5. All applications should be made on the form provided by the Council and sent by email to [[licensing@merton.gov.uk](mailto:licensing@merton.gov.uk)] for applications to Merton or Richmond.

Applications for Wandsworth are not processed or determined by the Regulatory Services Partnership and should be sent to [\[tablesandchairs@richmondandwandsworth.gov.uk\]](mailto:tablesandchairs@richmondandwandsworth.gov.uk)

### Type of furniture permitted

- 2.6. 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, and other articles used in connection with the outdoor consumption of food or drink.
- 2.7. This furniture is required to be removable, which in principle means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

### Times for furniture to be used

- 2.8. The Councils Standard Conditions for Pavement Licences include a condition that all customers leave the area by 23:00 and that furniture is removed by 23:30. Applications that are seeking times in excess of this must also apply to vary or remove these two conditions.
- 2.9. Where the Council grants a licence for an application requesting extended hours but not requesting to vary or remove the conditions on times, these are likely to be granted with times matching the Standard Conditions, depending on the individual circumstances
- 2.10. When considering any request to vary or remove the Standard Conditions on hours, the Council will have particular regard to:
- Any alternative conditions offered by the applicant and the suitability of the overall proposals,
  - The location of the site and the proximity to other premises
  - Any representations that are received

### Fees

- 2.11. The fees for Merton and Richmond are currently:

Merton - £100

Richmond - £0

- 2.12. Application fees, where required, must accompany the application in order for the application to be considered valid and for the consultation period to commence.

2.13. The fee is an 'application' fee for the processing of the application. Any fee paid will not be refunded if the application is withdrawn, refused or if a licence is surrendered or revoked before expiration.

### Site Notice

2.14. An applicant for a pavement licence must on the day after the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must remain in place until the end of the public consultation period.

2.15. Applications that are not properly advertised may be rejected, or if a licence is granted, that licence may be revoked. Applicants are therefore requested to provide evidence of compliance with the site notice requirement in the form of a photograph sent to the Council.

2.16. 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 to which representations should be sent during the consultation period; and
- the end date of the consultation (7 days starting the day after the application is submitted to the authority).

2.17. A template Site Notice is available from the Councils website or by emailing [licensing@merton.gov.uk](mailto:licensing@merton.gov.uk)

### **Section 3 - Consultation and Representations**

- 3.1. A 7 day consultation period applies to all applications, starting with the day after the day on which a valid application was made to the Council.
- 3.2. The Council is required by law to consult with the Highways Authority. In addition, and to ensure that there are no detrimental effects from the proposal, the Council may consult with other relevant teams and Agencies, including:
  - The Metropolitan Police
  - Environmental Health Officers responsible for Noise Pollution, Health and Safety and Food Safety
  - Any other person considered necessary
- 3.3. Members of the public are entitled to make representations to applications, and any person must make representations within the 7-day consultation period.
- 3.4. Representations received after this time will not normally be considered. In exceptional circumstances the Council has discretion to consider late objections if the application has not yet been determined. Such circumstances may be, but not limited to, where the representation was not received in time either through a technical fault or administrative error.
- 3.5. Any representation should relate directly to the application for a Pavement Licence and the purpose to which the application relates. Any representations that are made about other matters in connection with the premises, or more generally, may be given less weight when the application is determined.
- 3.6. Any application that is not determined by the Council within 14 days will be deemed granted, and the Council will not be able to reject the application, regardless of any representations received.
- 3.7. Due to these short timescales, the Council will not be able to contact every person who makes a representation to query any points raised, and therefore representations should be relevant, clear and legible in the first instance.

## Section 4 - Site Assessment

- 4.1. The Council will assess the suitability of the site as part of the application process and determination of the application. This may be done by one or more of the following, subject to the circumstances:
- A site visit of the proposed location
  - A desktop assessment of the proposed location using available documents and maps, including online maps
  - Reliance on representations made, in particular from the Highways Authority and Police
  - Evidence supplied by the applicant
- 4.2. The following, non-exhaustive, list of matters may be taken into account by the Council in considering the suitability of the proposed site and the application:
- public health and safety – for example, ensuring that users conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
  - public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, excessive noise 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, 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 of access and egress to the premises
    - 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.

## Section 5 - Determination of applications and conditions

- 5.1. The Councils procedure to determine applications is set out at **Appendix A**
- 5.2. The options available to the Council are, in all cases:
  - grant the application in respect of any or all of the purposes specified in the application,
  - grant the application for some or all of the part of the highway specified in the application,
  - impose conditions on any licence granted, or
  - refuse the application.
- 5.3. The starting point for the Council will be that the Standard and National Conditions are imposed by default on all Pavement Licences, which have been considered suitable by the Council in most cases in accordance with the Act. Standard or National Conditions will normally only be removed or varied if a good reason to do so is provided by the applicant, and where the applicant has provided proposals to prevent or limit potential public nuisance to nearby occupiers, or address other relevant concerns
- 5.4. The Council's standard conditions are set out at **Appendix B**. The national no-obstruction and smoke free conditions apply to all Licences and are included in the Councils Standard Conditions.
- 5.5. When making a determination on an application, the Council shall have regard to the needs of disabled people and recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State. It is expected that any relevant issues will be identified during the consultation period and/or the site assessment, and shall be relied upon when making a determination.
- 5.6. If the site is deemed unsuitable for a Pavement licence, or if representations are made which cannot be mitigated by imposing conditions, then the application may be refused in accordance with the Councils procedure. A non-exhaustive list of reasons for refusal is included at **Table 1** in **Appendix A**
- 5.7. There is no statutory appeal process against a decision to refuse an application, however an applicant may make a further application where the concerns that have led to a refusal can be addressed.
- 5.8. Applications that are not determined within 14 days from the day after the application was received shall be deemed granted and may not be rejected by the Council. Applications that are deemed granted will have the Councils Standard Conditions attached by default, and where there is a conflict between a proposal in the application and the Standard Conditions, those Standard Conditions shall take precedence.

## Section 6 - Enforcement and Revocation of Licences

- 6.1. The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.
- 6.2. If a condition imposed on a licence either by the Council or via a National Condition is breached, the Council may issue a notice requiring the breach to be remedied. If the notice is not complied with, the Council may revoke the licence or take the required steps itself and recover the costs of doing so.
- 6.3. The Council will only consider revoking a licence following a request to consider revocation from a Police Officer, Highways Officer, Licensing Officer or other relevant Council Officer. Such a request could, but does not need to, follow a complaint from a member of the public being substantiated.
- 6.4. Where this happens, the Council shall have regard to any Guidance issued by the Secretary of State, and the general procedure set out for determining applications shall be followed, with the reasons set out in **Table 1** in **Appendix A** also being relevant factors to consider for revocation. In addition to that procedure, the Licence Holder will be notified of any such requests for revocation, and given an opportunity to respond before any decision is made.
- 6.5. The person making the revocation request shall not be the officer making the decision, or be a member of the Panel making the decision, but may provide evidence to that officer or Panel.

## Appendix A – Procedure to Determine Applications

- A.1. This procedure applies to all applications that are not ‘deemed granted’ under the Act, and with reference to all other parts of this Policy
- A.2. All applications will be considered on their own merits on a case by case basis, and will be determined by a single officer decision or by the Pavement Licence Panel (“the Panel”), which shall consist of relevant officers of the Council. In addition, Panel members may also include persons from other relevant agencies, such as the Police.
- A.3. Any application may be determined by the Panel, including, but not limited to:
- Applications that request changes to the Standard or National Conditions
  - Applications that have received representations
  - The complexity of the individual case requires the Panel to consider it
- A.4. The determining officer or the Panel (“the Council”) will always strive to ensure that when it is considering an application all persons get a proper and fair hearing through:
- a) Considering each case on its merits.
  - b) Using this Policy to assess applications and make a determination
  - c) Dealing with the application in a balanced and impartial manner.
  - d) Ensuring that the rules of natural justice are applied in any hearings held.
  - e) Whenever possible, giving a person making an application sufficient opportunity to present information for consideration in support of their application.
- A.5. To ensure application costs are kept to a minimum and that applications can be determined as promptly as possible, the Council will determine applications according to written documents provided by the applicant.
- A.6. The Council will consider the application and representations (if any), and whether the application should be granted or refused according the reasons set out in **Table 1** below.
- A.7. In most cases the Council will determine the application on the basis of the information provided in the application and any supporting documents provided by the applicant at the time of the application, together with any representations that are received.
- A.8. In exceptional circumstances, and where it is considered necessary, the applicant will be informed of any relevant issues or representations and will have the opportunity to respond. This may be where a particular issue of concern is identified from a site assessment or raised in representations, and that the applicant has not taken it into account when making the application. Where this happens, the applicant will have the opportunity to provide any additional information that they wish to provide in support of their application.
- A.9. Due to the limited time allowed by the Act, all communication will be via email or telephone. If no response is received within a day of any request for further information the Council will proceed with determining the application in the absence

of a response from the applicant. In exceptional circumstances more time may be allowed for the applicant to respond, subject to there being sufficient time to determine the application within 14 days of the application being received.

A.10. Circumstances where it is not possible to notify the applicant of representations, or other concerns, and wait for a response before determining the application include, but are not limited to, one or more of the following:

- the application will not otherwise be determined within 14 days
- the contact email address and/or phone number in the application form is incorrect
- no response or acknowledgement is received from the applicant

**Table 1 – Refusal of applications**

<b>Refusal reason</b>	<b>Relevant considerations include</b>
That the application does not meet mandatory requirements	<ul style="list-style-type: none"> <li>• The required information has not been provided with the application</li> <li>• The area applied for is not a 'relevant highway'</li> <li>• The premises does not have a 'relevant use'</li> <li>• The purpose for the furniture proposed is not for, on in connection with, a relevant use.</li> <li>• The application has not been advertised by the applicant as required</li> </ul>
That there is not enough space on the Highway in respect of which the application is made, or the site is otherwise unsuitable	<ul style="list-style-type: none"> <li>• Site assessments of the suitability of the location</li> <li>• Width of the highway and proposed area to be licensed</li> <li>• Proximity to road junctions, pedestrian crossings, stations, bus stops etc.</li> <li>• Advice from Highways, the Police or relevant Council officers</li> <li>• There will be, or is planned to be, work carried out to the highway which will make the location unsuitable</li> <li>• The location is, or is proposed to be, no longer pedestrianised</li> </ul>
That there is a likelihood of anti-social behaviour or public nuisance being caused to the occupiers of premises in the vicinity of location in respect of which the application is made	<ul style="list-style-type: none"> <li>• Site assessments of the suitability of the location</li> <li>• The type of equipment or furniture being used</li> <li>• Proximity to relevant premises, such as residential properties</li> <li>• Previous complaints connected with outside eating/drinking at that location</li> <li>• There is evidence of non-compliance with conditions on a Pavement Licence or other relevant licence</li> <li>• Advice from Highways, the Police or relevant Council officers</li> </ul>
That there is a risk to public health or safety to customers, to staff working at the premises, or to other persons using the highway	<ul style="list-style-type: none"> <li>• The Governments guidance on social distancing or working safely during Coronavirus is not being followed</li> <li>• There is evidence of non-compliance with conditions on a Pavement Licence or other relevant licence</li> <li>• Advice from the Police or relevant Council officers</li> </ul>

## Appendix B - Pavement Licence Conditions

These Standard Conditions are made pursuant to Section 5 (2) of the Act by the London Local Authority of [Merton] [Richmond] [Wandsworth]

Pavement Licences under the Act are permissible only for a business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises). Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

### Part A – Standard Conditions

The following Standard Conditions are attached by default to every Pavement Licence (“a Licence”) granted by the [Wandsworth Inspections and Enforcement Team] [Regulatory Services Partnership (“the RSP”)] on behalf of the London Borough of [Merton] [Richmond] [Wandsworth] and will be applied to every licence deemed granted under Section 3(8) of the Act. The conditions may only be removed or varied on a licence on application, and following that application being determined under Section 3(3) of the Act.

1. The Licence only permits the area of the highway (“the Authorised Area”) and furniture specified on the licence to be used.
2. The Authorised Area must be supervised at all times. The Licence Holder must ensure that there are sufficient staff at any one time to supervise and control the Authorised Area to:
  - deter and prevent noise nuisance, antisocial behaviour and criminal activity
  - ensure the safety of customers and staff in line the Covid-19 Risk Assessment for the Premises to reduce or eliminate the spread of Covid-19
  - ensure that the area is kept clean, tidy and free of litter
3. All additional outdoor areas must be seated. All customers in the Authorised Area must be seated at all times, save for access to and egress from the seating area. Sufficient numbers of tables and chairs must be provided by the Licence Holder for the number of customers allowed into the Authorised Area, and not exceeding the number of tables and chairs permitted by the Licence.
4. All outdoor areas must be clearly defined/delineated in accordance with the submitted plan which forms part of the licence.
5. Any use of an outdoor area must retain 1.2m of pavement for general pedestrian traffic taking into account other restrictions from other obstructions such as street furniture and planting.
6. All seating areas must be set in 0.5m from an adjoining/adjacent premises unless written consent is given by the owner or operator of that premises to allow additional space to be used.
7. Any furniture must not prevent access from or egress to the premises or the pavement including in the event of an emergency.

8. All furniture must be removed from the Authorised Area by 23:30, or otherwise secured in such a manner that they cannot be moved or used overnight where removal is not possible and with prior written agreement from the relevant Local Authority.
9. All customers must be asked to leave and be away from the seating areas by 23:00 unless otherwise specified on the licence. The hours of operation for the pavement licence must not exceed the hours specified for the sale of alcohol should the premises hold such a licence.
10. Premises must check and confirm that their use of the outside space is covered by the appropriate insurance, including Public liability insurance to the same extent as any normal operation.
11. The Licence Holder must consider how outdoor seating will impact on toilet facilities available and how it will be managed (queues, cleaning routines).
12. The Licence Holder shall ensure that all customers have access to toilet facilities at the premises, and that the use of these facilities is considered under the Covid-19 Risk Assessment for the Premises.
13. Queuing for the entry to the premises shall only take place within the Authorised Area and not encroach onto the pavement thoroughfare at any time
14. The licence holder is responsible for controlling antisocial behaviour, noise and other nuisance such as smoke, odour of light from the premises and outside area to an absolute minimum so as not to cause nuisance to adjoining properties or nearby residents.

## Part B – National Conditions

The following National Conditions apply to every Pavement Licence granted or deemed granted unless otherwise specified on the Licence:

1. 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 issued by the Department for Transport (“the DfT”). These requirements include, (unless subsequently amended by the DfT):
  - a. A clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another.
  - b. The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted width should be 6 metres. If there are local restrictions or obstacles causing this sort of reduction in width they should be grouped in a logical and regular pattern to assist visually impaired people.
  
2. Where the Pavement Licence includes seating for customers to consume food or drink, the Licence Holder must make reasonable provision for seating where smoking is not permitted. In accordance with Guidance issued by the Secretary of State, steps that the Licence Holder may take to comply with this condition include:
  - a. Clear ‘smoking’ and ‘non-smoking’ areas, with ‘no smoking’ signage displayed in designated ‘smoke-free’ zones in accordance with Smoke-free (signs) regulations 2012
  - b. No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified
  - c. Licence holders should provide a minimum 2m distance between non-smoking and smoking areas, wherever possible.