

## Pavement Licences

Application Guidance Notes and Conditions - July 2024

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# Guidance Notes

The notes provided below reproduce guidance prepared by the Government to provide further information to applicants making an application for a pavement licence together with clarification on what PCC requirements are.

This document also sets out the conditions that will be attached to the grant of a pavement licence.

## 1.0 Pavement licences

### 1.1 What is a 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. [The Levelling Up and Regeneration Act 2023](#) makes permanent the provisions set out in the [Business and Planning Act \(BPA\) 2020](#) that streamlined the process to allow businesses to secure these licences quickly.

Licences that are deemed to have been granted, should remain in place for such period as the local authority may specify in the licence, with a maximum limit of two years. Existing licences with no end date are extended to 2 years from the commencement date. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

### 1.2 What is the purpose of the Business and Planning Act 2020 process for pavement licences?

The Business and Planning Act process provides a streamlined and cheaper route for businesses such as cafes, restaurants, and bars to secure a licence to place furniture on the highway. This will provide much needed income for businesses and protect as many hospitality jobs as possible, particularly during times of increasing living costs.

### 1.3 What does the Levelling Up and Regeneration Act do to the pavement licensing regime?

The Levelling Up and Regeneration Act makes permanent the pavement licensing regime under the Business and Planning Act 2020, with a number of changes. The Levelling Up and Regeneration Act introduces a standard fee cap for both new and renewals of licences as well as increased consultation and determination periods, lengthens the maximum duration of licences and provides local authorities with new powers to remove unlicensed furniture.

### 1.4 How does the process for pavement licences work?

Permission to place objects or structures on the highway are otherwise granted primarily under Part 7A of the Highways Act 1980. The fee for the Highways Act process varies between local authorities and there is a minimum 28 calendar day consultation period.

The Business and Planning Act process provides a cheaper, easier and quicker way for businesses to obtain a licence.

The fee for applying for a licence under the Business and Planning Act process is capped at £500 for first time applications and £350 for renewals and the public consultation period is 14 days (excluding public holidays), starting the day after the application is sent electronically to authority.

If the local authority does not determine the application before the end of the determination period (which is 14 days beginning with the first day after the end of the public consultation period, excluding public holidays), the licence is deemed to have been granted for two years and the business can place the proposed furniture such as tables and chairs within the area set out in the application for the purpose or purposes proposed.

## **1.5 What businesses are eligible?**

A business which uses (or proposes to use) premises for the sale 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 their 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.

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

## **1.6 What furniture can be permitted by a licence?**

The furniture which may be placed on the pavement include:

- 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 related to the serving, sale and consumption of food or drink. The licensing authority will be pragmatic when determining what is "removable" but in principle this means it is not a permanent fixed structure and is able to be moved easily, and stored away at night.

## 1.7 What furniture is not permitted by a licence?

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence.

Advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007.

Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

## 1.8 Gazebos and other similar structures

For applicants wishing to make use of gazebos or similar temporary structures, further advice and guidance is outlined below. As these types of structures will be temporary, and taken down every day, they will be exempt from requiring building regulation approval.

### General

In terms of public safety, full manufacturer's details including dimensions, flammability of fabric, ballasting or anchoring requirements in respect of maximum wind loading/speed, and a weather management plan with trigger actions for increasing wind speed will all be necessary prior to erection. Applicants are advised that they should ensure that this information is made available to them before purchase. The positioning of the gazebos will need to be agreed as part of the agreed site plan in order not to impede any means of escape routes and if any permanent anchor points are proposed, a survey of underground services at the location are likely to be necessary.

**Any costs arising from such installations, including any surveys and works will be met by the applicant.**

### Risk Assessment

A suitable risk assessment to cover the erection, dismantling, use and anchoring of the structures must be prepared and submitted to the Licensing Authority when the application is made. This is in conjunction with assessments of the fire risk and the risks to the means of escape in case of fire or similar hazard.

These documents should be available from the supplier and applicants must ensure that these are made available to both themselves and other relevant staff for reference.

Any marquee or gazebo must be checked to ensure that they are in a good condition and fit for purpose and that the people erecting and dismantling the structures are competent to do so and have received adequate training.

If a small domestic type gazebo is to be used, the manufacturer's literature must show:

- (a) that it will be suitable for the proposed use,
- (b) that the materials are or have been treated with a fire retardant,
- (c) the method of adequately anchoring or fixing the structure down and



- (d) the maximum safe wind speed that the structure can be safely used in should also be known.

## **Anchoring down the structure**

The person carrying out the erection should follow the manufacturers' advice, guidelines and recommendations for the anchoring of the marquee or gazebo.

- All anchor points and ropes should be in good condition and fit for purpose and be regularly checked by a competent person while the structure is erected; if the weather changes/deteriorates the number of checks should be increased.
- The number of anchor points available for use should be in accordance with the manufacturer's instructions.
- If ballast is to be used the amount required should be obtained from the manufacturer and it should be positioned and fixed in accordance with their instructions.
- If stakes are to be used, the length, type and number to be provided should be determined by the manufacturer of the structure. If the manufacturers can make no recommendations suitable for the ground where the structure is to be sited a structural engineer should be consulted to provide the relevant information.
- If an alternative means of anchoring to stakes or ballast is to be used the applicant/licence holder should consult with the manufacturer to ascertain if the proposed alternative method is adequate.

## **Wind Speed**

Wind is a potential hazard during the erection, the operation and the dismantling phases of a structure. You should check with the manufacturer to ascertain the operational wind speed for the safe use of the marquee or gazebo to be used.

To determine the level of monitoring and management that will be required while the structure is in place refer to local weather forecasting services.

A competent person must be appointed to check the wind speed at regular intervals while the structure is erected. Should the weather change/deteriorate the number of checks should be increased.

If the maximum safe wind speed is exceeded, the use of the structure should cease and it should be dismantled if necessary and safe to do so. If the maximum safe wind speed is exceeded the use of the structure should cease and the area should be cleared. The structure should then be dismantled, when safe to do so.

## **Means of escape**

When considering the proposed use of marquees or gazebos, a fire risk assessment must be carried out. The assessment will need to consider the availability of safe and suitable means of escape fire exit points and how any movement of people or structures can have an impact on the means of escape routes available and the safety of the public.

If any marquee or gazebo is over 30m<sup>2</sup> in floor area or its use involves hazards such as hot cooking surfaces etc., an alternative means of escape will be required remote from the main entrance. Dependent on its size, the number of occupant's and the use, more than one alternative emergency exit may be required. Advice regarding the position, number and width of access/exit routes and final exits etc. may be required a Building Control Consultant or alternatively the Fire Prevention Officer at the Fire Service.

The fire risk assessment should also determine if suitable fire extinguishers should be provided and at what locations they should be positioned.

All emergency exits are required to be indicated using appropriate fire exit signage to BS 5499.

### **Night time use**

If the marquees or gazebos are to be used during the hours of darkness, or if ambient light levels are low, suitable emergency lighting will be required to indicate exits and a safe route of travel inside the structure and externally to a safe place of refuge. The required standards for lighting, emergency lighting, ingress and egress remain the same for temporary and permanent structures.

### **Heating**

The provision of heaters must take into account the fire risks associated with all equipment, fabrics and combustible material within or forming part of the structure. Any provision of power supply must not impede or cause a hazard to persons using the highway.

### **Parking of Vehicles**

Parking of vehicles, and storage of flammable materials, must take into account fire risks to structures and the escape routes from and around such structures.

## **1.9 How much do applications cost?**

Fees will be set locally, and it is for the licensing authority to determine the appropriate charge. Fees are capped at a maximum of £500 for first time applications and £350 for renewals.

**The fees payable to Portsmouth City Council will be £500 for first time applications and £350 for renewals.**

## **1.10 Are there any exclusions from this provision?**

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

A pavement licence does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.

## 1.11 Where does this new process apply?

This process applies to England only, including London and other areas where statutory regimes other than the regime in the Highways Act 1980 may be relevant to the grant of licences for street furniture.

## 1.12 How does the authority exercise its pavement licence functions?

Section 8 of the Business and Planning Act 2020 amends Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ([S.I. 2000/2853](#)). This amendment means that the pavement licence regime is not to be the responsibility of an authority's executive.

Therefore, it is the council that may delegate decisions to a committee, or officer of the authority.

## 1.13 How does this interact with other regulatory process, such as alcohol licensing?

It is important to note the grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

Temporary amendments to the Licensing Act 2003, under the Business and Planning Act 2020, allow the sale of alcohol by eligible holders of an on-sale licence for consumption off the premises without needing to apply for a variation of their licence. These temporary amendments apply if the premises had a licence that permitted sales of alcohol only for consumption on the premises on 22 July 2020 and the premises still retain that licence.

More details can be found in the [guidance accompanying the Business and Planning Act 2020](#). This is currently in place until 31 March 2025. It will remain legally independent and separate from the pavement licences process.

Local authorities must have regard to the Public Sector Equality Duty, under the Equality Act 2010 when devising and implementing the 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 section 29 of the Act not to discriminate in providing their service and the duty to make reasonable adjustments.

## 1.14 Does the applicant need planning permission as well as the licence?

No. 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.

## 2.0 Duration

### 2.1 How long are pavement licences valid for?

If a local authority determines an application before the end of the determination. (which is 14 calendar days, beginning with the first day after the end of the public consultation., excluding public holidays), the authority can specify the duration of the licence. To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum two years, unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space.

If a licence is "deemed" granted because the authority does not make a decision on an application before the end of the determination, then the licence will be valid for two years starting with the first day after the determination period. However, if, when implemented, a licence that has been deemed granted does not meet the conditions set out in the legislation or any local conditions, it can be revoked at any time on the grounds that it has breached the conditions.

### 2.2 When will the permanent pavement licensing come into force?

The permanent pavement licensing regime and changes provided for in Levelling Up and Regeneration Act will come into effect on 31 March 2024 (the commencement date). This means that local authorities are able to grant pavement licences to new applicants under this regime effectively immediately from this date.

### 2.3 How long will the pavement licensing process set out in the Business and Planning Act be in place?

The process set out in the Business and Planning Act is made permanent as amended by the Levelling Up and Regeneration Act.

## 3.0 Applications

### 3.1 What information does an applicant need to provide?

An application to the local authority must:

- specify the premises and, the part of the relevant highway to which the application relates;
- specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence-holder to sell or serve food or drink, and/or for use by other people for the consumption of food or drink. In both cases the food or drink must be supplied from, or in connection with relevant use of the premises;
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway;
- describe the type of furniture to which the application relates, for example: tables, chairs, and/or stalls;
- specify the date on which the application is made;



- contain or be accompanied by such evidence of public liability insurance in respect of anything to be done pursuant to the licence as the authority may require; and
- contain or be accompanied by such other information or material as the local authority may require, for example how national and local conditions have been satisfied.

Local authorities may require applications to be made on a standard application form.

**PCC has prepared an application form which will be available both on the Council's website and/or emailed direct to interested persons on request.**

### **3.2 What other information may the local authority require?**

Local authorities may require the applicant to provide other information or material to help them make a swift determination. This could be included in their standard application form. Publicising information requirements, and applicants ensuring that they have provided all relevant information to meet these requirements, is beneficial to all parties involved in the process and can speed up decision making. Any requirements imposed should be reasonable and should be kept as minimal as possible. Examples of the information a local authority might require include:

- A plan showing the location of the premises shown by a red line, so the application site can be clearly identified (some authorities may require this on an OS Base Map);
- 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 proposed duration of the licence (for e.g. 3 months, 6 months, a year etc.)
- Evidence of the right to occupy the premises e.g. the lease;
- Contact details of the applicant;
- Photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- Evidence that the applicant has met the requirement to give notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- Any other evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and/or other appropriate measures); and
- Any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the "no-obstruction" condition.

**PCC have provided a checklist on the application form which sets out what information is needed.**

### **3.3 What are the transitional arrangements?**

Existing pavement licences granted under the Business and Planning Act 2020, prior to the commencement date, will remain valid until the expiration date on the licence, given to them by the licensing authority. Once this has expired, businesses will need to apply for a new licence.

Licensing authorities should treat this as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

Licences determined before the 31 March 2024 will be subject to the enforcement powers set out in the permanent regime.

Any pavement licence that was granted under the Business and Planning Act 2020 before the commencement date with no limit on its duration, or that was deemed to be granted will expire 2 years from the commencement date.

Any permission that was granted by a council under the Highways Act 1980 before the commencement date will continue under that legislation.

Applications made (and submitted to the local authority) on or before 30 March 2024 but determined on or after 31 March 2024 will be subject to a 7-day consultation, 7-day determination period. The maximum fee that can be charged for applications during this timeframe is £100. However, these licences can be granted for up to 2 years.

### **3.4 How should applications for renewals of licences granted under the temporary provisions be submitted?**

To obtain a licence for any period after 31 March 2024, a new application will need to be made even if the premises already had a licence until 31 March 2024.

An application will need to have been made after the commencement date for it to be treated as a renewal. Local authorities are encouraged to take a proportionate approach to information requirements for businesses seeking a new pavement licence where a licence has existed, so that this is as convenient as possible for businesses and members of the public. An example of a proportionate approach could be allowing applicants to re-use application material from their original application, updating where relevant to ensure they still comply with local national conditions.

Businesses who have had a licence under the previous regime and are seeking a new licence should be treated as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

### **3.5 Can licensable activities still be granted under the Highways Act?**

Any licence applications for activities in England licensable under pavement licensing legislation in the Business and Planning Act 2020 must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980.

Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Examples of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.

### **3.6 What happens if an applicant has already made an application under the Highways Act 1980 regime?**

It remains open for an applicant to apply for permission to place furniture on the highway under the Highways Act 1980. If the applicant has applied for permission under the Highways Act before the commencement date, but the Highways Authority has not determined the application, the applicant can instead apply for a pavement licence under the Business and Planning Act 2020. In those circumstances the pending application will be deemed to have been withdrawn. If the fee for the pending application was paid the authority will not be permitted to charge a fee for the new application for a pavement licence.

From the commencement date, a council may not grant an applicant permission to do anything which is capable of being authorised by a pavement licence under the Business and Planning Act 2020.

### **3.7 What happens if an applicant has already made an application under the Business and Planning Act 2020 regime?**

Licences applied for prior to the commencement date, but not yet determined by the local authority until after the commencement date, will be subject to the 7-day consultation and 7-day determination period. Though the maximum duration a local authority can grant the licence can be up to 2 years.

## **4.0 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.

### **4.1 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 in light of the no-obstruction condition, the provisions require that local 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.

## **4.2 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 are able to sit outside.

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

- Clear "smoking" and "non-smoking" areas, with "no smoking" signage displayed in designated "smoke-free" zones in accordance with [The Smoke-free \(Signs\) Regulations 2012](#).

- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provided a minimum 2m distance between non-smoking and smoking areas, wherever possible.

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

### **4.3 Where an authority has set a local condition covering the same matter as a national condition, which takes precedence?**

Where a local authority sets a local condition that covers the same matter as set out in national conditions, then the locally set condition would take precedence over the national condition where there is reasonable justification to do so.

## **5. Determining the application**

### **5.1 What happens once the information is submitted to the local authority?**

Once the information is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

### **5.2 What will a local authority consider when deciding whether to grant a pavement licence?**

The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether local conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

The Secretary of State may specify conditions for pavement licences, in Regulations (although to date there has not been a need to do so). This is in addition to the statutory "no obstruction" condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 and "smoke-free" seating condition.

Authorities are encouraged to publish local conditions subject to which they propose to grant pavement licences so that applicants and those making representations are aware of them. When considering their powers in relation to local conditions they should bear in mind the requirements of the no-obstruction condition and the smoke free seating condition. They should also take into account any national conditions which may be specified in the future in Regulations.



When setting local conditions and determining applications, issues that authorities will also want to consider include:

- Public health and safety including security - for example, 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;
- 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:
  - Considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people;
  - 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 fixed structures in place on the footway that already reduce access; and
  - Other users of the space, for example if there are high levels of pedestrian or cycle movements.

### 5.3 How can local authorities consider security?

When considering public health and safety, local authorities should seek to ensure a balanced consideration for security implications, particularly the risk to groups of people from interaction with hostile vehicles, and the creation of large crowds in new public spaces.

The impact of several pavement licences in an area may result in larger, distributed, or dense crowds of people. Local authorities should factor this into the security planning process and ensure the [overall security arrangements for an area are adapted as appropriate](#). Examples of appropriate measures could include increased CCTV surveillance, manned guarding, vehicle security barriers and ACT (Action Counters Terrorism) training for businesses. Find more information about [ACT Awareness Products](#).

Local authorities should consider consulting with Police Licensing Teams, Designing Out Crime Officers and Counter Terrorism Security Advisors for relevant advice.

Additional [guidance is available for managing the most common security implications](#) and how to protect crowds and [queues of people](#). This includes information on suggested Counter Terrorism licence considerations, which local authorities are encouraged to consider when determining pavement licence applications.

### 5.4 Can local authorities impose conditions which are not published?

Yes. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront. There is an expectation these will be supported by a clear justification for the need of a condition, such as evidence raised during the consultation, which is in addition to any published local conditions. Conditions might, for example, limit the maximum

number of chairs and tables, or type of furniture, time and days of operation with justification for this. Conditions imposed by the local authority should be proportionate and tailored to the applicant's premises.

**PCC will publish its local conditions subject to which licences will be granted on its website at [www.portmouthcc.gov.uk](http://www.portmouthcc.gov.uk) and will also attach those conditions to any licence granted so that licence holders are aware of the conditions they are expected to comply with.**

**PCC strongly recommends the use of barriers around the proposed area to stop people using the facilities spilling out onto the surrounding footway and restricting access for vulnerable residents. Also, the barrier provides a tap rail for visually impaired pedestrians so they can negotiate the obstruction safely.**

## **5.5 How can local authorities and applicants maintain outdoor spaces safely, following confirmation of the removal of social distancing measures?**

There are no COVID-19 restrictions in the UK and since 19 July 2021, social distancing guidance no longer applies. This means that local authorities and businesses are not expected to adhere to COVID-19 regulations and do not need to implement social distancing (2m or 1m+) and the public do not need to keep apart from people they don't live with. However local authorities and businesses may wish to consider that some people may make a personal choice and limit their close contact with others. Businesses still have a legal duty to manage risks to those affected by their business. The way to do this is to carry out a health and safety risk assessment and to take reasonable steps to mitigate the risks businesses identify from the assessment.

## **5.6 What are the outcomes of an application?**

If the local authority determines the application before the end of the determination period, the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

To the extent that conditions imposed on a licence by the local authority do not have the effects specified in the statutory conditions (see [paragraph 4.1](#) and [paragraph 4.2](#)) the licence is granted subject to those requirements.

## **5.7 Is there a route to appeal a decision?**

There is no statutory appeal process for these decisions, however, councils may wish to consider the scope for an internal review process, for example permitting appeals to their Licensing committee.

## 6. Consultation

### 6.1 What steps should an applicant take to engage with their community?

The applicant is required to affix a notice to the premises, so it is easily visible and legible to the public on the day they submit the application to the local authority. They must ensure the notice remains in place for the duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority. When counting 'days' public holidays are not included. Applicants are encouraged to keep evidence of this. Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

### 6.2 What must a notice contain?

The notice must:

- be in the form which the local authority prescribes, if it prescribes one;
- state that the application has been made and the date on which it was made;
- indicate that representations relating to the application may be made to that local authority during the public consultation period and when that period comes to an end; and
- contain such other information or material as that local authority may require, for example a description of how the applicant will adhere to the national conditions.

The applicant is 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.

### 6.3 What information may local authorities require to be displayed on the site notice?

The local authority may require that other information is included in the notice such as:

- the statutory provisions under which the application is made;
- description of the proposed use of the furniture;
- address of the premises and name of the business;
- website for the council where the application and any accompanying material can be viewed during the consultation period;
- address (which might be an email address) to which representations should be sent during the consultation period.

A template site notice local authorities may wish to adapt is contained in [Annex A](#).

**PCC will provide the site notice on its website or can be emailed direct to you, on request, along with the application form and these guidance notes.**

## 6.4 Who must local authorities consult?

The local authority must consult the highways authority to which the application relates, if they are not the highways authority; this is usually the County Council in a two-tier area. Transport for London is the highway authority for some roads in London. For security advice, local authorities should consult Police Licensing Teams, Designing Out Crime Officers or Counter Terrorism Security Advisors. The authority must also consult such other persons as the local authority considers appropriate.

**PCC will consult with the following services/partners when considering your application:**

- **Highways Authority**
- **Hampshire Constabulary**
- **Hampshire Fire and Rescue Services**
- **Parking Services**
- **Seafront Services**
- **Economic Growth and Regeneration**
- **Planning Services**
- **Highways PFI**
- **Housing and Property Services**
- **Community Safety and Environment**
- **Access and Equalities**
- **Traffic Safety**
- **Ward Councillors**
- **Building Control (in respect of marquees or gazebos)**

## 6.5 How can members of the public make representations about the application?

Members of the public can contact the council to make representations. Local authorities must take into account representations received from members of the public during the public consultation period, which is the period of 14 days starting the day after the application is submitted. In order to promote accessibility to those unable to access printed notices, Local authorities are encouraged to consider using digital methods of publicity. They should also consider the needs of those who may find it more difficult to access online publications and should consider ensuring that all formats of consultation are available at the same time, so that all representations can be considered equally.

## 6.6 How must local authorities publicise the application and seek representations from local communities and other stakeholders?

The local authority is required to publish the application and any information or material which the applicant has submitted with it to meet the requirements of the authority, in such a manner as it considers appropriate, for example, on their website or via an online portal.

The local authority is also required to publicise the fact that representations may be made during the public consultation period and when that period comes to an end. Local authorities might consider using digital methods of publicity, such as automatic notices, which members of the

public can opt in to receive. In deciding what steps to take local authorities should consider the needs of those who may find it more difficult to access online publications.

When publishing applications and publicising the fact that representations can be made, authorities will need to have regard to their duties under the Equality Act 2010 and will need to meet the requirements in the Public Sector Bodies (Websites and Mobile Applications) (No 2) Accessibility Regulations 2018, and therefore ensure that these are made accessible.

**PCC will publish details of applications received on its website at**

**<https://www.portsmouth.gov.uk/ext/licensing/apply-for-licences/licensing-online-applications-and-public-register>.**

**Members of the public can register on this site to be notified of applications should they wish to do so. For those persons who may find it difficult to access information online, notifications of applications will be given to ward councillors as and when applications are made.**

## 7. Enforcement

### 7.1 In what circumstances can the local authority enforce or revoke a licence?

If a condition imposed on a licence (either by the local authority or nationally) is breached, the local authority will be able to issue a notice requiring the breach to be remedied.

If the licence-holder fails to do so, the local authority may amend the licence, with the consent of the licence-holder, revoke the licence or itself take steps to remedy the breach and can take action to recover any costs of so doing. Local authorities are encouraged to regularly review licences and enforce any breaches.

The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

1. If it considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licensed area (or road adjacent) is no longer to be pedestrianised.
2. Or if there is evidence that:
  - there are risks to public health or safety – for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion (this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level);
  - this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition – for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway; or
  - the use is causing, or risks causing, 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 local authority may revoke a licence in the following circumstances:

1. For a breach of condition, (whether a remediation notice has been issued or not) or
2. 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
3. The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

It is good practice for local authorities to give reasons where these powers are used.

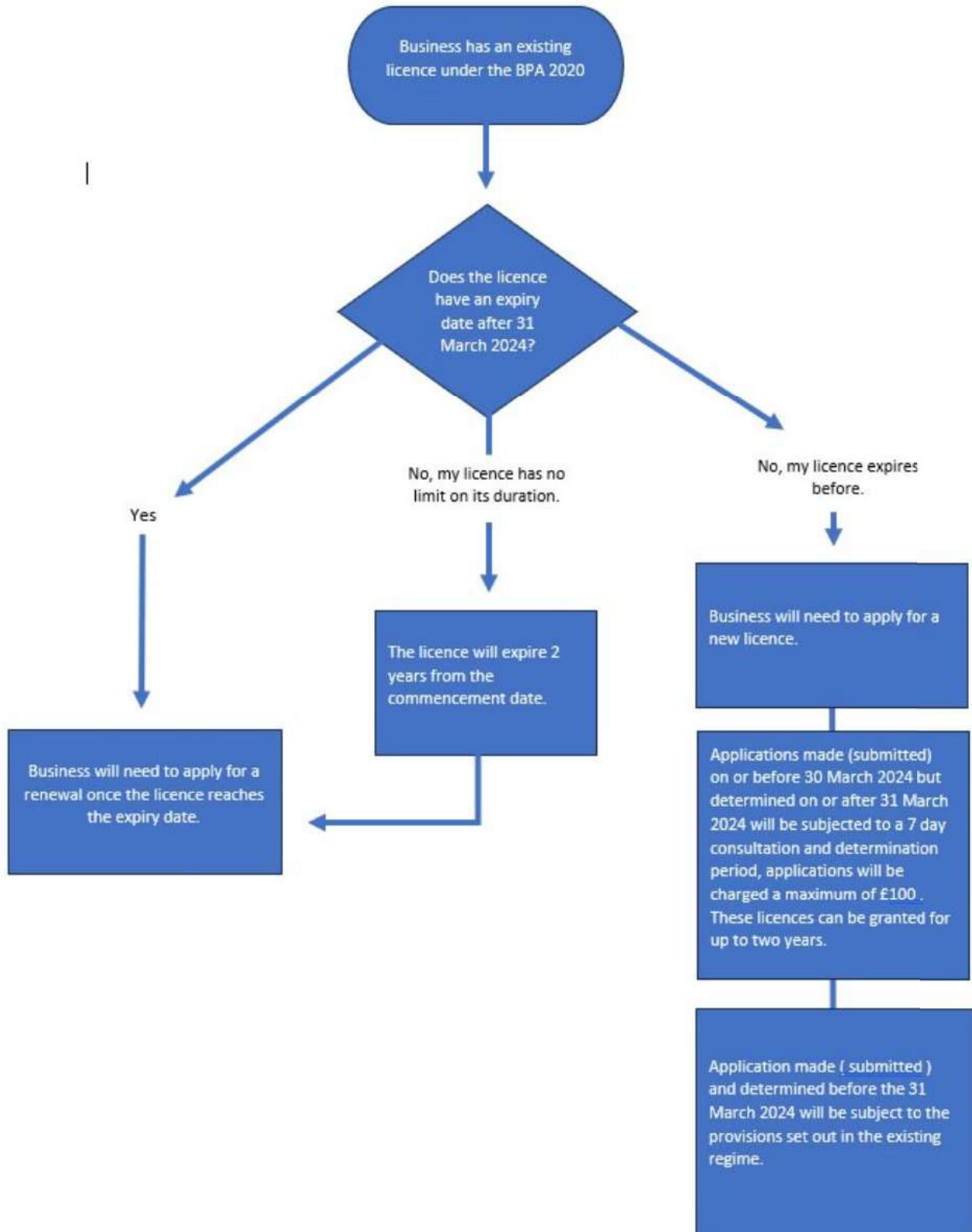
## **7.2 When can furniture be removed?**

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.

If furniture continues to be placed on the highway, in violation of the notice, the authority may remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

# 8. Annex

## 8.1 Transitional arrangements flowchart



### Standard Conditions for Pavement Licences

1. The holder shall provide Third Party Liability Insurance to the amount of £5,000,000 to indemnify the Council against all claims for damage or injury arising out of the use of the highway and shall provide the City Council with a copy of the certificate of insurance on request.
2. Adequate provisions shall be provided for the disposal of litter.
3. Any damage sustained to the highway resulting from furniture being placed on the highway in accordance with this permission shall be repaired at the expense of the holder to the requirements and satisfaction of the Council.
4. The furniture must be kept strictly within the area approved by the Council and must not encroach on the adjoining or adjacent businesses or properties, or restrict the public thoroughfare to any extent where it would become a nuisance.
5. No additions or alterations to the furniture shall be made without prior written consent of the Council.
6. The maximum height of any barrier shall not exceed 1.5 metres.
7. In areas where street illumination is sparse, the furniture shall be adequately illuminated.
8. All furniture shall be removed from the highway by no later than 21:00 hours.
9. When the establishment for which the permission was granted is closed for business, the furniture shall be removed from the highway, unless previously agreed by the council.
10. Any authorised officer of the Council may require the holder to comply with any order or directive to prevent a breach of these conditions and/or any special conditions.
11. The Council reserves the right to require the removal of furniture to allow for:
  - Maintenance
  - Emergencies
  - Public events, exhibitions and markets
  - Access
  - Any other reasonable cause
12. Items displayed or used in the designated area should be of sufficient solidity or properly secured to prevent them falling or being blown onto the highway.
13. The holder of the pavement licence shall prominently display the prescribed approval notice from the frontage of the premises in order to be plainly visible to the public. This notice MUST be returned to the council in the event of a permission being suspended or revoked.
14. The licence holder shall ensure that the use of the pavement licence conforms to the latest guidance on social distancing, any reasonable crowd management measures, and cleaning procedures needed as a result of a licence being granted and businesses reopening. This shall include sufficient measures to supervise persons purchasing off-sales from their premises and to dissuade customers from congregating in those areas on the highway where safe and unobstructed pedestrian movement is required.

15. The sale of alcohol from the premises shall be in compliance with an authorisation granted by Portsmouth City Council, as the Licensing Authority, in accordance with the Licensing Act 2003.
16. In those circumstances where tables and chairs are provided in accordance with the licence, all persons using the approved area shall be seated in order to control numbers and minimise the impact of rowdy or anti-social behaviour.
17. The furniture design shall be approved by the Council and no changes must be made to the design without prior written approval.
18. The approved area shall be maintained in a clean and litter free condition at all times.
19. The floor area of the approved site shall be cleaned a minimum of twice weekly using a detergent to the satisfaction of the Council.
20. No external speakers, background music, recorded or live music shall be played into the designated pavement area.
21. The licence holder is required to keep tables, chairs, benches etc in good decorative order.
22. In those circumstances where additional highway has been utilised by virtue of traffic management measures issued under regulations associated with the COVID-19 pandemic, the licence holder will be required to provide suitable physical infrastructure at the boundary between the pedestrian route and active carriageway. Such infrastructure will be clearly outlined in the application for the licence. The licence holder will be responsible for ensuring that any structures are suitably maintained and supervised so as to ensure the safety of pedestrians using the extended highway.
23. The Licence Holder must ensure that any activities undertaken pursuant to this licence do not have an effect on:
  - (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;
  - (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;
  - (e) the needs of disabled people; and
  - (f) the recommended distances required for access by disabled people as set out in the guidance issued by the Secretary of State.
24. Where furniture is provided on the relevant highway which 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.

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Civic Offices  
Guildhall Square, Portsmouth  
PO1 2AL

Telephone: 023 9283 4073  
Email: [licensing@portsmouthcc.gov.uk](mailto:licensing@portsmouthcc.gov.uk)

[www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

You can get this  
Portsmouth City  
Council information  
in large print, Braille,  
audio or in another  
language by calling  
83 4607.

