

Licensing Pavement Furniture Business and Planning Act 2020

13 October 2020



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

Background and Context

Government guidance encourages hospitality businesses to operate outdoors to facilitate social distancing and to prevent the spread of the virus. Accordingly, the Council commits to do everything it can within the law to make it easier for hospitality businesses to trade on street.

The Government has introduced a new type of licence, called a **Pavement Licence**, to make it easier for hospitality businesses to operate on street. Pavement Licences are like existing Tables and Chairs Licences but with more favourable conditions to help support businesses at this testing time. The granting of a Pavement Licence removes the need for Planning Permission. Pavement Licences can be issued on footways, temporary footway extensions (on suspended parking bays) or on closed roads.

During Summer 2020, the Council invited hospitality businesses to place pavement furniture on suspended parking bays for a trial period of three months. Approximately 40 businesses availed of the opportunity and established café terraces on our streets. This initiative has proven to be popular with businesses and many borough residents. Accordingly, the Council is offering businesses the opportunity to provide café terraces on temporary footway extensions until **30 September 2021**.

Pavement Licences on Footways

Pavement furniture or outdoor hospitality activity must not obstruct pedestrians, especially those with pushchairs or mobility needs. There should be a minimum of 2.5m of clear footway width to allow pedestrians to social distance and to prevent footways becoming congested. On our busiest high streets, 3.5m clear footway width is required. We will resist excessive encroachment onto the pavement, where walking on our streets becomes difficult, and the streets themselves become unattractive to use.

Pavement Licences on Footway Extensions

To help hospitality businesses the Council will take appropriate steps to temporarily extend footways at suitable locations to allow Pavement Licences to be issued. The Council will provide traffic cones to demarcate the extent of additional footway areas.

During the summer the Council learned that the key to successfully managing café terraces beyond the kerb is through the provision of a suitable enclosure to separate patrons from the roadway and to prevent activity spreading onto adjacent highway. Consequently, we require all proposals for café terraces to include decking or a similar enclosed platform. Examples are shown below.

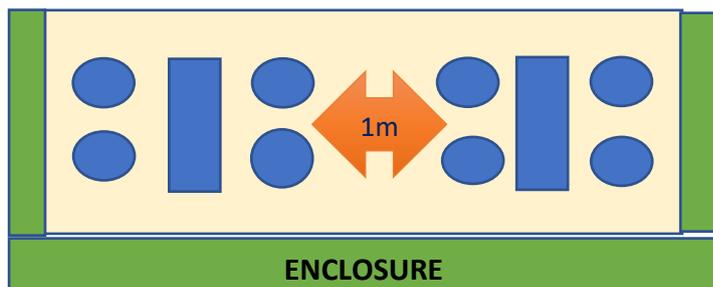


Public safety is vital and that is why we can only offer footway extensions in locations with limited traffic. Busier roads, usually those with bus routes, would not be suitable for footway extensions. Even in quieter locations, careful consideration will be given to the risks to public safety of any proposal.

Café terraces on footway extensions can occupy up to two on-street parking bays (or an equivalent surface area where there is single yellow line). The Council will only extend the footway and issue a Pavement Licence in respect of proposals that include a platform that is open to the footway and separated from the roadway. An indicative layout is shown on the next page.

Recommended Layout on Footway Extensions

With the requirement for social distancing there is a limit to how much seating can be accommodated on temporarily extended areas of footway. An indicative layout with two tables and eight seats is shown below, for a single five-metre-long parking bay. Four tables and 16 chairs can be accommodated on a footway extension ten metres long.



Traffic Cones



What pavement furniture can be licensed?

In appropriate locations, the Council will license any pavement furniture items reasonably associated with external dining or the serving of food or drink.

The following items could potentially be licensed:

- 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;
- removable decking to achieve a level surface (roads slope down to the kerb);
- heaters;
- planters; and,
- umbrellas, barriers and other articles used in connection with the outdoor consumption of food or drink.

What Conditions Will Apply?

The application site must be directly in front of the premises or alternatively to the side where the premises is on a street corner. We will only license café terraces in front of contiguous frontages if we are satisfied that those neighbouring businesses support the pavement licence application. Applicants should provide evidence within their application submission to that end.

In order to limit the impact of external seating areas on residential amenity, licensed hours will normally be limited to between 8am and 10pm, Monday to Sunday. Any departure from these normal hours would need to be fully justified. Businesses that have a licence with a terminal hour of later than 10pm shall be granted a new licence with their previously licensed hours (subject to due process being followed).

We require all licensed pavement furniture on footways to be easily removable. At the end time for the use of tables and chairs, they must be brought inside the premises. In the case of Pavement Licences issued in respect of footway extensions, it may be sufficient for the tables and chairs to be put out of use, in a safe manner. Planters, platforms and other means of enclosure can be left on street so long as they are secure, safe, illuminated and protected by a line of traffic cones.

It is vital that any external facilities proposed on the highway (including on public footways) are covered by the applicant's insurance policy. We require public liability insurance to the value of £5 million. Any licence application for pavement furniture will be unsuccessful without proof of insurance.

Under the Business and Planning Act 2020, applicants must make reasonable provision for seating where smoking is not permitted. The application drawing should indicate which tables are to be smoke free. Smoke free seating areas must be a minimum of 2 metres from any tables where smoking is permitted.

We will generally grant Pavement Licences until 30 September 2021, the final date of the Government's emergency measures. In circumstances where we consider that issuing a licence for a shorter period would be prudent to monitor the impact of a proposal, we will issue a licence for three months.

Standard National and Local Pavement Licence conditions

Conditions 1 and 2 (below) are national conditions. The remainder are conditions that apply within the Royal Borough of Kensington and Chelsea.

1. The Licensee must ensure that clear routes of access along the highway are 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 persons are provided at all times the licence is in operation.
2. Where the furniture on the relevant highways 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.
3. This licence only permits the use of table and chairs or other authorised furniture on the highway in the area designated on the plan attached to the licence.
4. Any tables and chairs or other authorised furniture for use pursuant to this licence is only authorised in connection with an adjacent premise which is to be used for the sale of food or drink for consumption on or off the premises.
5. No alcohol is to be sold or consumed from the designated area identified unless that sale and/or consumption is approved under the Licensing Act 2003 which includes any temporary authorisations for the sale of alcohol permitted pursuant to the Business and Planning Act 2020.
6. No furniture may be placed within the designated area identified on the plan other than that expressly permitted by the licence.
7. This Licence does not allow the use of loudspeakers, amplification or other similar equipment.
8. All furniture approved for use, including tables, chairs, barriers, lights and heaters must be safe for public use and must be kept in good repair and condition.
9. Operators are required to manage their premises and outdoor seating areas in accordance with current social distancing measures and government guidance.

10. The Licensee must ensure that good order and behaviour is maintained at all times by people using any tables and chairs or other authorised furniture pursuant to this licence and that no nuisance is caused to residential or business neighbours.
11. The number of persons seated in the licensed area shall not exceed either the maximum capacity stated on the pavement licence.
12. The number of tables and chairs or other authorised furniture detailed on the pavement licence shall not be exceeded.
13. If a pavement licence is deemed to be granted, the number of tables and chairs or other authorised furniture shall not exceed the number specified in the application form and the licence must not exceed any other limitations on use that have been specified in the application form.
14. The layout of tables, chairs and other authorised furniture must be in accordance with the plan appended to the licence at all times that the licence is in use.
15. All tables and chairs and other authorised furniture shall be removed immediately from the highway when reasonably required by the Council, Metropolitan Police, emergency services, or any statutory undertaker or utility.
16. The tables and chairs and other authorised furniture shall not be placed on the highway before the time specified and is to be put out of use no later than 22:00 hours. Service at the tables should cease at 21:30 hours in order for this to be achieved. Trading may only take place on the days and during the times specified on the licence.
17. All tables and chairs and other authorised furniture that is used in connection with a Pavement Licence must be removable which means that it is not a permanent fixed structure and is able to be moved easily, and stored securely at the end of use for the day.
18. A copy of the licence shall be displayed during the hours of trading in a prominent position agreed by the Council, either in the front window of the premises or nearby so as to be clearly visible from the outside to anyone wishing to inspect it.
19. No fixtures to or excavation of any kind shall be made in the surface of the highway, which shall be left entirely undisturbed.

20. The Licensee shall not use this licence unless it has public liability insurance cover in the sum of not less than £5 million and has provided a copy of that policy to the Council.
21. Tables and chairs and other authorised furniture must be stored in such a way that they cannot be moved or used overnight.
22. Staff must regularly monitor the licensed area to ensure it is kept clean and tidy. Any litter or waste arising from use of the licensed area must be cleared away as soon as is practicable. The licence holder shall ensure that any spillages are promptly removed from the highway and restore the affected area of highway to a clean and safe condition. It is the responsibility of the licence holder to ensure that the licensed area is washed down on a daily basis. The Council will recharge the licence-holder the full cost of any remedial work to remove any residual staining of the highway outside his or her premises, including the replacement of the paving stones if necessary, by pavement stones of an equivalent quality and to an equivalent standard.
23. If the Council serves a Notice on the licence holder requiring him/her to take such steps as are necessary to remedy any breach of the terms of this licence, and the licence holder fails to comply with the notice the Council may itself take the steps required by the Notice and recover from the licence holder any expenses incurred.
24. Heaters shall only be used between 1 October 2020 and 31 March 2021 to limit their impact on the environment (The Council hopes businesses will look to offset the environmental impact of the heaters through accredited sites).
25. All pavement furniture placed on footway extensions shall be provided on decking or a similar enclosed platform.
26. On footway extensions, planters, barriers, traffic cones and other prominent objects must be positioned on the roadway side of the licensed area to make it clearly visible and to physically separate the licensed area from trafficked areas. Objects on the boundary of the licensed area must be painted brightly with appropriate reflective markings so that they can be easily seen after dark.
27. The Council reserves the right to add additional conditions to individual licence applications where it is appropriate to do so.
28. If a Pavement Licence is deemed to be granted, it will be subject to these standard local conditions.

Adhering to a Pavement Licence

The Council is giving businesses the opportunity to trade from the public realm in expectation that they will act considerately and adhere to all licence conditions at all time. The Council has discretion in the granting of Pavement Licences and the Council has broad powers to revoke Pavement Licences and to require that pavement furniture be removed.

The Council will take action to revoke any Pavement Licences that it considers to result in –

- (i) undue risks to public health or safety;
- (ii) anti-social behaviour or public nuisance or;
- (iii) the highway being obstructed (other than by anything done by the licence-holder pursuant to the licence).

How to apply for a Pavement Licence

Please apply online using our online application form at.

<https://www.rbkc.gov.uk/business-and-enterprise/regulation/apply-pavement-licence>

The application fee is **£100**. We will process your application within two weeks.

On the application form we will ask you to:

- specify whether the application is for external seating or for the serving/ vending of food or drink or for both purposes;
- specify the part of the relevant highway to which the application relates;
- describe the type of furniture to which the application relates;
- **a scale plan** (drawing) is required;

- specify the days of the week on which, and the hours between which it is proposed to put furniture on the highway;
- **supply evidence of public liability insurance (£5 million);** and,
- confirm whether or not alcohol is to be served.

Following submission of the application form you will receive an acknowledgement by email within half an hour. Attached will be a site notice. **You are required by law to print the site notice and to post it in a prominent position on the premises frontage on the application date.** Take a photo of the site notice in position and please send a copy of the photo you have taken to tablesandchairs@rbkc.gov.uk on the application date.

There will be a one-week consultation period. The details of the application will be published online. The Council will take all representations into account before issuing any licence. Accordingly, there is a possibility that any licence application will be refused. But be assured, our intention is to license any proposal that adheres to this guidance.

The Council will grant you a Pavement Licence, if we are satisfied that your proposal:

- does not impede pedestrian movement;
- is safe;
- facilitates social distancing;
- would not unduly impact on parking supply; and,
- would not unduly impact on residential amenity;
- would not unduly impact on visual amenity.