



MANCHESTER
CITY COUNCIL

Pavement licence Guidelines

Updated March 2021

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General requirements for Pavement licences

1. Introduction

On 22 July 2020, the Business and Planning Act 2020 came into effect, introducing a new temporary 'pavement licence' process. This provides a streamlined consent route to allow businesses such as cafes, bars and restaurants to obtain a licence to place temporary furniture, such as tables and chairs, on the public highway adjacent to their premises. It is intended that this will support them to operate safely while social distancing measures remain in place and will provide much needed income and protect as many hospitality jobs as possible.

We aim to balance enabling businesses to provide outdoor seating whilst ensuring that members of the public can still safely and conveniently use of the highway. It is essential that we maintain sufficient space for safe and convenient pedestrian movement, to enable wheelchairs and prams to pass comfortably and provide a reliable, safe route for blind and partially-sighted pedestrians.

This guide explains the pavement licence process and gives details on how the applications will be dealt with and licensed areas are expected to be managed.

In general,

- a minimum width of unobstructed footway of 1.8 metres must be provided. However, additional width may be required in streets where there is a high level of pedestrian activity or permanent obstructions such as street furniture, or where required for effective social distancing.
- the positioning of tables and chairs should never discourage persons from using the footway. The available route past must be straight, obvious and unobstructed; it should not pass through the area used by the tables and chairs.
- the furniture should be placed so as not to obstruct drivers' sightlines or obstruct highway signs.

- all activities and furniture associated with the licensed area must be contained within the approved boundary including all tables, chairs, menu boards etc. All such items must be removed at the terminal hour.
- all customers must be seated. We will not licence areas or equipment designed for drinking whilst standing outside premises.
- smoking is not permitted in the licensed area.
- emergency routes from adjacent buildings and your own must not be obstructed by the licensed area.
- the use of all furniture should consider the needs of all users, including disabled people.

COVID-Secure arrangements

All pavement licence areas must be appropriately risk assessed in line with government Guidelines to ensure they are 'COVID-Secure'.

Operators must also ensure that all COVID-related legal requirements are in place and practised. Regulations can be subject to change, but notable examples are the requirements to ensure that (subject to national exemptions):

- social distancing requirements are followed including tables are set apart at an "appropriate distance" (defined as two metres, or at least one metre if certain measures are in place, such as barriers or screens);
- required signage is in place;
- customer group limits (a group of 6 people or 2 households outdoors) and prohibitions on mixing are adhered to;
- necessary information is recorded to support Test and Trace; and
- the appropriate use of face coverings.

Failure to do so may result in enforcement action being taken, which could include revocation of the pavement licence as well as appropriate sanctions under other relevant legislation.

Limitations on use in line with the government's roadmap out of lockdown

In accordance with government roadmap out of lockdown, Step 2, which will be no earlier than 12 April, will see hospitality venues allowed to serve people outdoors and there will be no need for customers to order a substantial meal with alcoholic drinks and no curfew, although customers must order, eat and drink while seated ('table service'). Wider social contact rules will apply in all these settings to prevent indoor mixing between different households.

A place is indoors if it would be considered to be enclosed, or substantially enclosed, for the purposes of section 2 of the Health Act 2006(a), under the Smoke-free (Premises and Enforcement) Regulations 2006.

Any structure used on a pavement licence area must not be enclosed or substantially enclosed at any time that coronavirus regulations prohibit indoor service (i.e. at any time before Step 3).

How an Area is Classed as Enclosed or Substantially Enclosed

Enclosed:

This is an area with permanent walls and doors without any gaps. Windows and doors aren't classed as gaps. An enclosed structure may be permanent i.e. a building or even a marquee (temporary).

Substantially Enclosed:

This would be a structure (with a roof/ceiling) with an opening in the walls where the opening would make up less than half of the area of the total wall space. Again, doors and windows are not classed as gaps.

If in any doubt about whether their building or structure is enclosed, substantially enclosed or open enough to allow smoking in the wisest course of action for

businesses would be to contact the Licensing and Out of Hours team for advice and clarification.

2. Applicants

Applications must be made by “a person¹”, which can include a company, partnership, LLP or unincorporated association.

Eligible businesses

The business premises must be used:

- (a) as a public house, wine bar or other drinking establishment; and/or
- (b) for the sale of food or drink for consumption on or off the premises.

Off Licence Premises

Pavement licences will not normally be granted to premises that primarily ‘off-licence’ businesses i.e. licensed for the sale of alcohol for consumption off the premises, save in exceptional circumstances where the applicant can demonstrate a satisfactory level of quality of operation and suitable experience.

Off-licence businesses will need as part of their application to demonstrate how they will promote the four licensing objectives of the Licensing Act 2003 before they are granted such authorisation. Therefore, any off licence business who apply may wish to supply supporting information with their application to demonstrate why their application should be granted.

However, the council’s general position is that a pavement licence is not an appropriate mechanism to control the carrying on of licensable activities under the Licensing Act 2003. Premises licences for off-licence businesses will typically not include conditions relevant to the sale and service of alcohol on the premises, and the lack of any enforceable controls will be a relevant consideration.

¹ Interpretation Act 1978, s.5 and Schedule 1z

3. Where can pavement licences be granted for?

The land to be used must be 'relevant highway' and 'adjacent' to the business premises.

'Relevant highway'

This means a highway to which Part 7a of the Highways Act 1980 applies and it includes:

- pavements ("footways" as they are defined in the Act);
- highways in relation to which a pedestrian planning order is in force; and
- highways whose use by vehicles is prohibited by a traffic order (which include temporary orders made for purposes connected to coronavirus (s. 9(3))).

'Adjacent'

We expect the licensed area to be licensed to be sufficiently close to the premises to enable effective supervision, management and connection to the relevant premises.

Areas that cannot be licensed

Areas that are not highway e.g. car parks, beer gardens, parks, cannot be licensed and so applications will not be accepted in respect of these areas. Similarly, Crown Land or land maintained by Network Rail cannot be licensed.

Road closures

Businesses and pedestrians need additional space in which to operate with social distancing rules in place. With this in mind, the Council has introduced temporary pavement widening road closures in some places at certain times to facilitate the safe re-opening of hospitality venues. Adjacent businesses will be required to obtain a pavement licence to operate in these spaces.

In these areas, premises will be limited to only using a space pre-allocated to them by the Highways Service and authorisation will not be given for spaces outside of these pre-approved arrangements. The design plans will be kept under review and

may be subject to change. Written notification will be given in advance to any businesses that would be affected by and prospective changes.

The use of these road closure areas is subject to a relevant highways closure order being in effect.

Toilets

Under the business' COVID-19 secure risk assessment (specific to each business), use and access (including queuing) of the WCs should also be reviewed. WCs should be made accessible to customers in line with the risk assessment. Please see the Government's website for further advice.

it is important that during any outdoor-only dining period (currently scheduled no earlier than 12 April-16 May) that customers using the pavement licence area are able to access toilets inside the premises.

Supervision of the area (including use of SIA door supervisors)

Businesses licensed under the Licensing Act 2003 should review their premises licence conditions as there may be conditions affect how they can operate any outside space.

You should consider appropriate crime prevention measures and ensure staff are briefed to avoid risks of theft or bag-dipping.

As part of your risk assessment, you should review whether it is appropriate to provide SIA-licensed door supervisors to monitor the use of your licensed area and control entry to it, including queuing in line with social distancing requirements. If conditions of your premises licence require this, you will need to ensure it is done.

Queues

Any queues that form will need to be managed in line with social distancing requirements (currently 2m, or 1m with mitigation where 2m is not viable).

Businesses should also consider the impact on other users of the highway when considering the appropriateness of any queuing arrangements. Staff should be

familiar with any procedures and, where possible, clear signage should be displayed to ensure customers are made aware of any arrangements.

Noise and litter

It is important the licensed premises are good neighbours but customer noise can cause a disturbance – especially later into the evening. We appreciate and anticipate that there is likely to be additional noise generated across the city from businesses operating outside spaces and with queuing.

We have introduced a ‘good neighbour policy’ that we expect businesses to adhere to in the first instance where problems arise with neighbours.

Businesses will be required to take proactive steps to minimise the noise disruption from their operation and you should make sure that no noise coming from the premises could cause a nuisance.

Please ensure that any customers drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff to ensure that there is no public nuisance. Please also ensure your customers leave in an orderly manner.

Businesses may also wish to consider making their manager’s telephone number easily available if neighbours have reason to complain to encourage a good line of communication.

We recommend that signage is put up around premises reminding patrons to be considerate to the local residents

Council officers will be monitoring complaints and where these complaints are linked with businesses, the council will actively engage with them to advise on the need to reduce the noise nuisance. If businesses continue to generate a public nuisance then the council may take more formal enforcement action depending on the severity of that nuisance. If neighbours do suffer with problems, they can report noise and anti-social behaviour via our [‘Report a noise problem’ webform](#). Reports can be made 24/7 and will enable our officers to attend and witness the noise levels.

4. What items can be placed on the highway?

Furniture

A pavement licence may only license the following 'furniture' items:

- a) counters or stalls for selling or serving food or drink;
- b) tables, counters or shelves on which food or drink can be placed;
- c) chairs, benches or other forms of seating, and
- d) umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink;

You will be required to specify which items you intend to use when submitting your application. If you are granted a licence and subsequently wish to add furniture, this will require a new application given there is no ability to 'vary' an existing licence.

All furniture should be considered with regard to the needs of customers with disabilities. Tables should be available that allow wheelchair use and layouts should allow enough space for wheelchair users to manoeuvre easily and provide a clear path to the accessible toilets.

Storage

Furniture is expected to be removable i.e. not a fixed structure, and able to be moved easily, and stored away at the end of the day.

Where furniture cannot be immediately stored in the business premises at the end of trading (e.g. because the premises is still operating), furniture is expected to be safely and securely stacked and rendered unusable until it can be stored as soon as reasonably practicable.

In exceptional circumstances, and subject to written authorisation by the Licensing Authority, furniture may remain in situ for longer periods of time. To request authorisation, email premises.licensing@manchester.gov.uk.

The responsibility for removing tables and chairs and other obstructions from the highway rests with the owner/operator of the premises.

Music equipment and entertainment/performances

It should be noted that other items such as musical equipment / speakers do not fall under the definition of furniture and so are not permitted. However, some form of entertainment may be permitted in line provided it is done in line with Stage 3 of the Government's performing arts roadmap. Note this is different to the national re-opening roadmap at but you should ensure that any entertainment is COVID-19 risk assessed and noise levels are kept to a minimum. Businesses will be required to take proactive steps to minimise the noise disruption from their operation and make sure that no noise coming from the premises could cause a nuisance.

Furniture should be strong and sufficiently durable. Given that it must be stored away at night, we would recommend that it be able to be easily folded and/or stacked.

Glassware

Applications for pavement licences on the footway may specify whether they wish to use glassware as part of the application process. The default position will be that glassware is not permitted.

The use of glassware will not be permitted on any road-closure sites to avoid the risk of smashed glass on the carriageway for vehicles.

Where objections are received, each application will be considered on its own merits.

Gazebos, canopies and other coverings (including umbrellas)

Any structure used on a pavement licence area must not be enclosed or substantially enclosed (see Section 2) at any time that coronavirus regulations prohibit 'indoor' service (i.e. at any time before Step 3). See Section 1 of these guidelines (Limitations on use in line with the government's roadmap out of lockdown) for further information on those regulations.

Gazebos, canopies, or other coverings including umbrellas must:

- be sufficiently sturdy and windproof;
- be weighted, anchored, or secured to the ground, but cannot be anchored with any method that requires screwing, cutting, or drilling into the public highway. Use of tents and other temporary structures may be deemed unsafe and prohibited during severe weather events (strong wind, etc.).
- have adequate ventilation to allow air flow (where enclosed)
- **not** interfere with traffic sightlines or obscure road signage.
- **not** overhang the boundary of the licensed area
- be of an appropriate quality. A standard design of seating and tables will not be insisted upon but a reasonable quality will be expected. Low quality designs or any of a scale or character unsuited to the surrounding area may be rejected or an alternative required when deciding whether to grant the application.

All structural materials should have a fire-resistant certification or flame certification showing that the material is fire-rated or non-combustible.

Images of any proposed structures, gazebos, canopies or other coverings must be provided with the application and approved for use.

Heaters

The council is committed to improving air quality and supporting businesses to reduce their overall environmental impact. However where absolutely necessary, the council insists that businesses use electric heaters as these are more efficient and produce 85% less CO₂ than LPG heaters. These heaters can also include a passive infrared or time lag switch to operate the heaters when they are needed rather than have them on all the time. LPG heaters produce significant amounts of nitrogen dioxide (NO₂) and particulate matters (PM₁₀) which are particularly harmful to air quality.

The council recommends that the use of heaters be avoided as much as possible.

However, where businesses wish to use heaters, they may generally do so provided that their use is in line with the below provisions:

- The type of space heater that is the most appropriate for the location and the local environment. However, if any are to be used, the council is strongly recommending the use of electric heaters.
- Completing a risk assessment for their use and implement appropriate controls for their use.
- The heater will be located in an area that does not pose a safety concern to people passing or an obstruction of the highway.
- Limiting the number and location of the heaters to reduce overcrowding around them, and enable social distancing measures at all times.
- The type of space heater that is the most appropriate for the location and the local environment,
- To safely remove the heaters from the street and store them securely when the business closes.

A guide to the council's expectations on the management and use of space heaters is set out in Appendix 1.

The council may impose conditions on Pavement Licences to ensure the safe use of space heaters within the outside licensed areas.

Applicants wishing to use space heaters will need to submit a risk assessment with their applications, as required by the Management of Health and Safety at Work Regulations 1992 since liquefied petroleum gas is a potentially dangerous substance. A qualified person who has the necessary knowledge of the law, British Standards and the Health and Safety Executive Codes of Practice and Guidance, should prepare this on your behalf.

5. Other licences and permissions (including planning permission)

An applicant does not need to hold a premises licence under the Licensing Act 2003 to apply and it is anticipated that pavement licences will be an appropriate option for many unlicensed businesses.

However, where the pavement licence area is to be used for the consumption of alcohol, the business premises must be authorised for the sale of alcohol for consumption off the premises. This may be authorised by the licence or by way of a section 172 Statement under the Business and Planning Act 2020, which deregulates off sales of alcohol at premises previously limited to on sales.

Where alcohol is to be dispensed from within the pavement licence area, it will need to be separately authorised under the Licensing Act 2003 (premises licence or temporary event notice).

Planning permission and street trading consent are not required for anything done in accordance with the pavement licence.

Premises with a Tables and Chairs licence under the Highways Act 1980

The pavement licence is a temporary regime that will sit alongside the existing Tables and Chairs licensing system, which operates under Part 7A of the Highways Act 1980, which many food and beverage businesses already benefit from.

These businesses may still apply for a pavement licence, to supplement their existing highways licence e.g. so as to temporarily operate additional or alternative space to their existing space.

Otherwise, businesses may continue to operate under their existing 'tables and chairs' licence under the Highways Act 1980 without the need to obtain a pavement licence.

If you have applied for a tables and chairs licence under Part 7A of the Highways Act 1980 and, before it is determined, apply for a pavement licence, the first application will be treated as withdrawn with no refund of the application fee.

6. Making your application

Applications will be rejected where made in respect of carriageway not subject to an existing or pending traffic order restricting or prohibiting its use by vehicular traffic.

Where a person applies for a pavement licence, they may not make another application for a pavement licence in respect of the same premises before the end of the determination period (see below).

When making your application, you will need to provide the following information

- a scale plan of your proposed licensed area (in line with the guidelines below) supported (if possible) by a photograph of the proposed area
- images of any temporary structures or coverings you propose to use.

Plans

You will be required to submit a scale plan of your proposed licensed area, which shows:

1. The intended setup of the area including any proposed furniture, so the location of any heaters must be shown
2. The distance from the boundary of the licensed area to the building boundary
3. The width of the route left available on the highway for passage by pedestrians.
4. Any street furniture e.g. lampposts / bike racks, that are between the boundary of the licensed area and rather the kerb.

In all cases, a minimum width of 1.8m clear passageway must be left between the licensing area and the nearest street furniture for pedestrians. Applications providing less than 1.8m will be rejected.

Fees

Currently, the Council is not requesting a fee to apply for a pavement licence in support of the recovery of the hospitality industry.

Publicising the application

On making your application, you will be required to display a notice at the business premises providing details of your application for 7 days. We will require you to submit a photograph to evidence that your notice was correctly displayed. Where this is not received, your application will be rejected. A notice template is available on the council website. By law (s.2(6)), it must:

- i. state that the application has been made and the date on which it was made;
- ii. 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
- iii. contain such other information or material as that local authority may require.

Relevant to point iii. above, we require you to include the council email address to which representations (objections) are to be submitted.

You are responsible for ensuring the notice is displayed for the full 7-day period. If you discover it has been removed, you should replace it as soon as possible. Where a notice is found not to have been displayed, the application may be rejected.

Applying to operate in front of other premises

If you propose on placing furniture on the footway in front of any adjacent property other than your own, we will require you to provide the written consent from the owner or occupier (frontagers) of that premises when making your application unless the premises is unoccupied. If the premises becomes occupied, you will need their consent to continue using that space. Consent of frontagers will not be required for on-road areas where the council has arranged for a temporary traffic order (closure) to be in place.

Consultation

Your application is subject to a 7-day consultation period starting with the day after you submit your application.

In addition to you displaying your notice, we will publish details of the application on the council's website in the 'current licence applications' section by ward.

We will also consult with the Council's Highways and Licensing and Out of Hours teams, Greater Manchester Police, and notify our ward mailing groups of individuals (including ward councillors) of persons who have requested to be notified of applications in the respective ward that the application is made in.

7. Determining Applications

General principles

All applications will be determined in the public interest based on what is to be regarded as reasonably acceptable in the particular location, having regard to the temporary nature of the licence and the Act's objectives.

Each application will be determined on its own merits having regard to the legislation, government guidance and these guidelines. However, where its discretion is engaged, the licensing authority will have regard to any relevant matters raised in any representation.

Where the licensing authority considers that relevant concerns cannot be adequately addressed through the imposition of appropriate conditions, the application will be rejected.

The Act does not provide a statutory appeal process against a decision to grant or refuse a pavement licence.

Consideration of objections

In determining an application, we must consider any representation made within the 7-day public consultation period. Representations made outside of this time may be considered if the application has not already been determined.

Conditions

In all cases, whether representations have been made or not, the licensing authority may attach conditions when considered by the licensing authority to be appropriate and proportionate to do so.

Any such conditions will be tailored to the individual style and characteristics of the premises and events concerned and imposed to address relevant concerns identified by the licensing authority or in the representations.

Any licence deemed to be granted will be subject to the council's standard conditions for pavement licences and the no-obstruction condition in accordance with s5(4) of the Business and Planning Act 2020.

Timescales

An application may be granted (either wholly or in part) or rejected. A decision must be reached within a 7-day 'determination period' starting from the day after the public consultation period.

If a decision is not made before the end of the determination period, your application will then be deemed granted (i.e. treated as though it has been granted) and licensed for a 12-month period or until 21 September 2021 (or where an alternative date is specified by central government), whichever is the shortest.

Hours

A licence will generally only be granted for the hours of **7am to midnight Monday to Sunday** maximum.

The Council has had consideration as to the potential impact of the use of outside space on the movement of pedestrians, the safety of the public and the noise and

nuisance that could be generated. Therefore, these hours have been in an attempt to minimise the disruption and impact on residents, other businesses and the wider public. Applicants must propose the days and hours they wish to be licensed for as part of their application and applications for hours beyond these times may be granted in exceptional circumstances.

Where licensed areas are subject to a traffic order, licences will only be granted in line with the times of the relevant order where it is more restrictive than the general hours identified above.

Each application will be determined on its own merits and applications outside these hours will be assessed in terms of the criteria detailed in this policy. The council may issue a licence to such lesser hours as may be appropriate having regard to any relevant representations and the potential impact of the licence if granted.

Licence Duration

Licences will normally be granted for a period of no less than **6 months** depending on where the licensed area is located.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period, such as plans for future changes in use of road space. The council will consider each application on its own merits and applications for the use of the highway could be granted for a shorter period to account for future changes as areas adapt to the impact of Coronavirus, particularly in respect on footfall, pedestrian flow and social distancing.

Temporary road closures and expansions of the pedestrian footpaths are under constant review by the council and it should be noted that the council may seek revocations of licences if there is a need to make changes to any highway arrangements.

Where the whole or part of the licensable area will be on any part of the public highway which has not be closed or widened on a temporary basis, and, there is sufficient space on the highway that it is unlikely there will be a need to reduce

increase pedestrian flow within the duration of the licence we will generally grant for a period between 6 months or up to the 30th September 2021.

However, each application will be considered on its own merits and if the applicant can justify exceptional reasons for granting a licence for a longer period, the Council will consider the period which should be granted in the particular location taking into account this policy and the representations received.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year. A licence granted or deemed to be granted will not be valid beyond 30 September 2021 or for longer than the period specified on the licence, whichever is the shorter period.

Relevant Considerations

The Government's Guidance for pavement licences provides that when determining applications and setting conditions, issues that authorities will want to consider will include:

- a. public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- b. public amenity – whether the proposed use might create nuisance to neighbouring occupiers by generating anti-social behaviour and litter;
- c. 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:
 - i. considerations under the no-obstruction condition, in particular considering the needs of disabled people;
 - ii. 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;

- iii. any other social distancing measures in place, for example any queuing systems that limit the space available on the pavement;
- iv. whether there are other permanent street furniture or structures in place on the footway that already reduce access;
- v. other users of the space, for example if there are high levels of pedestrian or cycle movements.

As stated above, we will give particular consideration to representations submitted by any frontage with a relevant interest (as defined under s115A(7) of the Highways Act 1980) insofar as considering the effect of placing any furniture in front of their premises.

Public Liability Insurance

It is a condition of the Pavement licence that you have public liability insurance for the use of the licensed area. You will not be required to provide evidence of this with your application but you must ensure it is in place before you operate, if licensed.

Enclosure guidelines for furniture on the highway

- Licensed areas should use a temporary form of enclosure with adequate openings to permit access. The function of this enclosure will be to demarcate and contain the area and give a clear warning, particularly to people with visual impairments.
- The enclosure should not be so light that it is moved by the wind. It should be of contrasting colour, so as to be visible to the partially sighted, but should not be too visually dominant.
- No furniture or other equipment must be affixed to the highway.
- Barriers may not display any advertising except for the name of the licensed business.

Environmental guidelines

- The provision of toilet facilities is required for all pavement licences seating in excess of 6 people. Where there is already internal seating associated with the building, additional toilet facilities may be required if overall occupancy figures are increased.
- The licensed area must be kept clean and litter free and it should also be ensured that litter does not stray onto the neighbouring area.
- External public address systems or amplified music will not be allowed within the licensed area.
- Seating space contained in the licensed area must be included in total occupancy figures for the premises.

8. Location guidelines for tables and chairs on the highway

Streets with Footway and Carriageway

- A minimum, unobstructed pavement width of 1.8 metres measured from the face of the kerb, is required for pedestrian movement.
- Where there is any street furniture (such as lamp posts, bollards, parking meters, benches, flower beds etc), a 1.8 metre unobstructed pavement width is required from the line of the street furniture.
- Where there is heavy pedestrian flow, additional footway space may be required.
- Tables and chairs may occupy no more than half the total width of the footway.

Fully-Pedestrianised Streets

A fully-pedestrianised street is one where vehicles have no right of entry, however, the emergency services may need access at any time. In these types of street, it

may be preferable for the tables and chairs to be placed away from the building frontage towards the centre of the street.

- A minimum of 1.8 metres should be retained as a pedestrian access way between the front of the building and the line of the licensed area. This distance may be increased at the discretion of Manchester City Council, particularly in areas of high footfall.
- The furniture may be able to occupy a space up to the centre line of the street, but we would not expect applications that encroach fronting of adjoining and opposite properties that are of a relevant use (under s1(1) of the Planning and Business Act 2020) to be made without the consent of those occupiers. This configuration will allow adjoining properties and properties opposite each other to site furniture on the highway and retain pedestrian access along the line of the shop fronts.

Pedestrianised Street with vehicle access at specific times

- Vehicles and furniture will only be allowed at the same time in such streets if:
 - adequate pedestrian space remains, is clearly defined, and adequately protected; or
 - where traffic is sufficiently light for vehicles and pedestrians to share the same area.
- Otherwise, furniture will only be permitted outside the hours of vehicular access. The hours of permission will normally commence at least 30 minutes after the end of the hours of vehicular access.

Special Areas

- There may be areas in the city where, as part of an overall environmental scheme, alternative arrangements for furniture on the public highway might be considered. There may be instances where, for reasons of particularly high pedestrian and/or traffic flow, the positioning of furniture will need especially

careful consideration. The City Council will treat all cases on their merits, but may wish to impose additional measures of control in such locations.

9. Other considerations

As with any other public function, in determining an application, we must have regard to our wider duties, including:

- the prohibitions on unlawful discrimination etc. in s.29 of the Equality Act 2010;
- the Public Sector Equality Duty contained in s.149 of the Equality Act 2020;
- the prohibition on acting in a way which is incompatible with right under ECHR by virtue of s.6 of the Human Rights Act 1998;
- the need pursuant to s.17 of the Crime and Disorder Act 1998 to have due regard to the likely effect of the exercise of its functions on, and the need to do all that we reasonably can to prevent (a) crime and disorder in our authority's area (including anti-social and other behaviour adversely affecting the local environment); (b) the misuse of drugs, alcohol and other substances in its area and (c) re-offending in its area;
- our duty under s.89 of the Environmental Protection Act 1990 to keep relevant highways clear of litter and refuse.

The Council has had due regard to these duties when producing these guidelines and determining the fees and standard conditions for pavement licences.

When determining applications, the licensing authority will give due regard to the public and highway safety of other highway users in line with all the criteria it will take into account in determining whether or not an application should or should not be granted. The statutory conditions also take account of the needs of persons with mobility and visual impairments.

10. Breaches of the licence and enforcement

Our aim is to support responsible businesses. Where problems do occur, our enforcement approach will be in line with the Council's corporate enforcement policy (), and we aim to support businesses getting back on their feet. We will use an escalating enforcement model, where we are accurately capturing the details of the premises causing complaints and the actions taken. Businesses will initially be given advice and guidance on how they should operate to comply, and they will be given the opportunity to implement the advice or make necessary changes.

The lead enforcement officers will be the Council's Licensing and Out of Hours team and officers will be proactively monitoring locations that are expected to be busy or receiving complaints.

If premises persistently fail to comply or are generating large numbers of complaints or concerns, we will look at enforcement action. This may involve the service of a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified. If the licence-holder fails to comply with a notice, we may revoke the notice or take the steps itself and recover the costs of doing so from the licence holder.

There is no 'review' process for pavement licences as there is under the Licensing Act 2003 and no ability to attach further conditions to any licence, once granted. Any licence, including any deemed granted, may be revoked if any of the grounds for revocation are made out.

It should be noted that problems arising in connection with the operation of the pavement licence area and the carrying on of licensable activities under a venue's premises licence could also result in enforcement action taken under the Licensing Act 2003. Businesses are reminded of their duty to ensure that the four licensing objectives are promoted:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance

- Protection of children from harm.

Under the Business and Planning Act 2020, we may revoke a pavement licence if we consider that—

- a) some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted,
- b) as a result of the licence—
 - i. there is a risk to public health or safety, or
 - ii. anti-social behaviour or public nuisance is being caused or risks being caused,
 - iii. the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),
- c) anything material stated by the licence-holder in their application was false or misleading, or
- d) the licence-holder did not comply with the duty to fix the notice to the premises and secure that it remained in place during the public consultation period.

The highway authority has a power under s.149 of the Highways Act 1980 to remove things deposited on highways so as to be a nuisance. This power is exercisable forthwith in cases where the deposit causes a danger.

11. Changes to the licence

There is no provision to transfer a pavement licence or to vary its terms. In such situations, a new application should be submitted.

A pavement licence may be surrendered at any time by the giving notice to the Licensing Unit.

12. Terms of the licence

1. The licence does not confer on the licence holder any right of ownership of the adopted highway within the designated licensed area.
2. The licensee will need to obtain all necessary consents that may be required relative to the use of the highway for the permitted purpose and comply with all bye-laws and statutory requirements relating thereto.
3. Manchester City Council reserves the right to revoke the licence in the event that any of the terms or conditions of this licence are not complied with by the licensee. Under such circumstances, no monies will be refunded for the suspended or cancelled periods of the licence.

13. Licence 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.

No obstruction condition

“This licence shall have effect insofar as nothing done by the licence-holder pursuant to the licence would:

- a) prevent 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) prevent any use of vehicles which is permitted by a pedestrian planning order or which is not prohibited by a traffic order,

- c) prevent statutory undertakers having access to any apparatus of theirs under, in, on or over the highway, or
- d) prevent 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.”

Smoke-free seating condition

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.

However, section 4.3 of the government guidance to the Act states “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.”

Reducing smoking rates in the city is one of our most important Population Health objectives. At the present time, Manchester has the worst rates in England for lung cancer registrations, cardiovascular disease, male under 75 mortality rates from lung cancer and male under 75 mortality from heart disease. There are just under 6000 smoking related hospital admissions per year, costing approximately £5.4 million each to the NHS in Manchester. The impact of these awful statistics also goes far beyond the person who is ill; affecting families, the healthcare system and wider society.

Whilst smoking prevalence has fallen in recent years in Manchester, the decline does not go far enough. The most recent data shows that the rate of smoking in adults aged 18 and over has fallen from 22% in 2017 to 18% in 2019 (Public Health Tobacco Control Profiles 2019). However, this compares to an England national average of 13.9% for adults, indicating that smoking is still a significant health and social problem for the city. Furthermore, we know that smoking prevalence rates are much higher in some parts of the community, often mirroring deprivation, stress and mental health problems. Based on the Office of National Statistics (ONS) Annual

Population Survey (APS), it is estimated that there are somewhere between 62,000 and 83,600 adult smokers in Manchester

The Tobacco Control Plan for the city, Smoke-Free Manchester 2018-2021, and the Greater Manchester Make Smoking History strategy, therefore seek to create an environment where smoking is not the cultural norm, to prevent young people from getting addicted to tobacco and to help smokers to stop. Smoke free spaces support all of these objectives.

Therefore, we are including the following smoke-free condition on pavement licences in place of the National Condition:

“Smoking of tobacco is not permitted within the licensed area and at least one 'no smoking' sign shall be visibly displayed within it.”

14. Local Conditions

1. The Licence shall be effective between [specify days and times].
2. The Licensee indemnifies the Council of the City of Manchester against any expense, liability, loss, claim or proceedings for accident, injury, loss or damage, which may occur due to the siting of any furniture on the highway under this licence unless the damage or loss is solely attributable to the misconduct or negligence on the part of the Council, its servants or agents. The Licensee shall have an appropriate level of public liability insurance (minimum cover of £5 million) for the use of the licensed space.
3. The licence holder must:
 - a. complete the government’s COVID-19 risk assessment;
 - b. comply with the government’s guidance on managing the risk of COVID-19;
 - c. have cleaning, handwashing and hygiene procedures in line with guidance.

4. The furniture must:
 - a. be arranged in accordance to comply with current social distancing requirements.
 - b. have contact points thoroughly cleansed and sanitised before each customer use;
 - c. be kept in a safe and well-maintained condition;
 - d. not obstruct any designated fire escape route;
 - e. not extend beyond the designated area or cause a danger to pedestrian safety.
 - f. not be permanently affixed to the highway
5. Items such as A boards and menu boards must be kept within the licensed area.
6. The use of glassware is not permitted at any time unless expressly permitted in writing by Manchester City Council. If glassware is expressly permitted, the licensee must comply with any request by an authorised officer to use plastic glasses for a temporary period where required for public safety. Any breakages must be cleared as soon as reasonably possible and no broken glass must be left on the highway.
7. All customers using the area must be seated except for the purposes of access and egress.
8. The licensed area must be kept tidy and free from litter at all times, and the highway effectively cleansed at the end of permitted trading.
9. Each day at the end of permitted trading under this licence, all furniture must be cleared away and removed from the highway as soon as is reasonably practicable.
10. Where furniture is unable to be removed from the highway upon the end of permitted trading because there is no available storage space whilst the

premises continues trading; it must be secured, rendered unusable and stored in a manner to minimise the obstruction of the highway.

11. Where use of the carriageway is authorised subject to a road closure, all furniture must only be placed on, and must be removed from, the carriageway in time for the road closure to take effect/cease.
12. The furniture must be removed by the licensee from the highway at any time when the licensee is requested by an officer of Manchester City Council or Greater Manchester Police during events, road works, to facilitate street cleansing, or for any issue as seen fit which affects public safety, including any increased risk of disorder.
13. The Licensee shall risk assess appropriate levels of staff cover, including the use of door supervisors, to ensure the effective supervision of the licensed area and to ensure the conditions of the licence are enforced.
14. Where the licensed area is adjacent to any waterway, the licensee must:
 - a. Display prominent signage in the licensed area raising awareness of dangers of water and alcohol.
 - b. Record all incidents of customers accessing the water and any near misses, and share with the Manchester Water Safety Partnership forthwith.
 - c. Include water safety in any risk assessment or accompanying method statement for the use of the licensed area.
 - d. The licence shall be prominently displayed at all times that any furniture is placed on the public highway under this licence.
15. The premises must operate a 'good neighbour policy', in which the licensee must:
 - a. take an open approach to engagement with their neighbours;

- b. be mindful and respectful of neighbouring residents and operating businesses, particularly in respect of noise and in the use of any shared areas;
- c. put in place arrangements for residents to directly raise concerns with the premises;
- d. take practical steps to avoid causing a public nuisance and mitigate and resolve issues as far as is reasonably practicable.

Appendix 1: Outdoor heating guidance for licensed premises

General

If you wish to provide heating in a temporary structure or outdoor area of your premises, then you must fully consider all health and safety implications.

The first thing you must do is carry out a suitable and sufficient risk assessment. The HSE (Health and Safety Executive) has extensive guidance and advice to help you with this and other considerations for providing a safe workplace, which is available here. You should also speak to your insurance company for any specifics they may require you to assess.

Heating appliances must conform to the relevant national standards and consideration needs to be given to ensure that the type of appliance chosen is suited to the venue.

Location

Where possible you must provide permanently fixed radiant heaters positioned so that they cannot be tampered with or pose a danger to those within the area.

Heating appliances should:	Heating appliances should <u>not</u> :
be sited and used in accordance with the manufacturer's instructions	be placed directly underneath or near awnings, canopies, or any combustible material, including trees and bushes
be shielded from strong draughts or gusts of wind and sources of water	be sited on escape routes, confined spaces, passageways, or thoroughfares

Free-standing heating appliances should be sited on level ground for stability and be able to stand upright without support. It may also be necessary to fix the appliances into position, to prevent them from being knocked over.

Liquid or LPG fuelled appliances should only be used in well ventilated areas to avoid a depletion of oxygen levels and prevent the accumulation of harmful fumes such as Carbon Monoxide. Liquid or LPG fuelled appliances should not be used in or

under structures made of flammable or non-fire-resistant materials and accommodating table furnishings.

In certain circumstances (such as marquees), heating appliances may be sited externally, and warm air piped into the structure via flame retardant hosing. However, it must be ensured that exhaust fumes are safely dispersed and prevented from entering the structure.

Fire exits should always be signed as such and kept free of obstruction.

Electrical heating appliances

Prior to each use, the heating appliance and electrical socket outlet should be visually inspected for signs of damage or overheating. If damage is found, a competent NICEIC Accredited electrician should be consulted.

Heating appliances must be inspected periodically by a competent person and suitable records should be kept. The periods between inspections should be determined on a risk assessed basis and in accordance with the manufacturer's instructions.

Wherever possible, an electric heating appliance incorporating a thermostat should be used.

Care should be taken to ensure that appliances are switched off and remain safe at the end of each period of work.

Heating appliances should be plugged directly into an electrical socket where possible; the use of extension leads and block adaptors should be avoided, and cables should not be subject to tension. Trailing leads are to be avoided or minimised, to reduce the likelihood of trips and falls. Where it is necessary for electrical cables to run across the floor, they should be routed away from walkways and thoroughfares and appropriately covered / protected.

LPG/Gas heating appliances

The use of any LPG/Gas heaters must be in accordance with the Liquid Gas UK guidance. In line with the above Guidance:

- Patio heaters are for outdoor use only. The combustion products leaving the heater are extremely hot. On no account should they be used in an enclosed space, or inside a tent or marquee or close to umbrellas.
- They may only be used under awnings or canopies if the manufacturer's instructions permit it. Awnings or canopies should not impede the escape of combustion products. Care is needed when positioning a heater near terraces or balconies to ensure the products of combustion do not adversely affect people or property at burner level.
- Heaters should not be moved when alight.
- Heaters should be positioned in areas shielded from the wind.
- If a free-standing heater appears unstable in a high wind, the gas should be turned off at the cylinder valve, the cylinder should be disconnected and removed, and the heater moved to a position out of the wind.
- Assembly of heaters shall be carried out by a competent person in accordance with the manufacturer's instructions and the assembly shall then be tested before use to ensure it is gas-tight and operates correctly.
- The LPG cylinder to be used should be of the correct type for the heater, i.e. either propane or butane and of a size as specified in the manufacturer's instructions.

Gas appliances can be easily tampered with and pose an additional fire hazard. Therefore, the use of such appliances and their distance for adjacent outdoor providers should be carefully considered and assessed fully in your fire risk assessment and each time it is used.

It is a legal requirement to have any gas appliance, installation pipework or flue inspected at regular intervals not exceeding 12 months. This must be carried out by a GasSafe registered commercial engineer .

Portable gas appliances should also be serviced and maintained regularly in accordance with the manufacturer's instructions. In addition, they should be visually

examined by a competent person periodically, including at each time that the gas cylinder is changed.

Due to the potential hazard that they present, only an authorised, competent person should carry out fuelling, lighting, and extinguishing an LPG heating appliance in accordance with the manufacturer's instructions.

The fuel used should be in accordance with the manufacturer's instructions. Any gas supply to heating appliances should be switched off when not in use.

If a gas leak is suspected, the supply should be switched off, all ignition sources in the vicinity eliminated and the appliance not used until assessed by a competent person. Stocks of LPG and nominally empty cylinders should be kept to a minimum. Spare gas cylinders should be stored securely, safely, and well away from the building if possible. These should not be stored in the immediate vicinity of electric meters or other sources of ignition. Further information on the storage of gas cylinders.

To mitigate the risk to relevant persons, you may need to fit additional smoke detectors in the area being used to store LPG bottles to give early warning of a fire.

Other heating appliances

Liquid fuelled appliances not referenced above, such as paraffin heaters, must not be used.

Further considerations

All furnishings, drapes, and furniture need to meet the fire standards and be flame retardant or treated. Keep in mind that dark objects absorb more heat than light objects and the raised temperature of the object can pose a health and safety hazard.

Care must be taken during windy weather conditions, as there is a risk of the appliance being blown over. Furthermore, if the appliance has a flame, this will need to be monitored and the appliance switched off if there is any abnormal burning, or the flame extinguishes.

Portable heating appliances should be allowed to cool fully before returning to storage.

Where heaters are an integral fitting, e.g. beneath large parasols, they should be turned off and allowed to cool before the parasol is closed.

Care must be taken at Christmas and times of other festivals to ensure that a space of at least twice the height of a heating appliance is kept free between the appliance itself and any combustible decorations, especially Christmas trees.

Contact Us

Should you need further information or advice:

Manchester City Council's **Premises Licensing** team (for general queries and on making your licence application): premises.licensing@manchester.gov.uk

Manchester City Council's **Environmental Health** Team (for Health and safety matters): fsaregistration@manchester.gov.uk

Manchester City Council's **Licensing and Out of Hours** team (for compliance and COVID risk assessment matters): outofhourscompliance@manchester.gov.uk

Greater Manchester Fire and Rescue Service:
firesafetymanchester@manchesterfire.gov.uk

Greater Manchester Police Licensing team: centrallicensing@gmp.police.uk

Guidance and further information

[Government's Guidance for pavement licences](#)

[Government's Guidance for re-opening businesses and venues](#)

[Working Safely during coronavirus guidance \(Restaurants, pubs, bars and takeaway services\)](#)

[Welcome Back Manchester website](#)