



PAVEMENT LICENCING POLICY FOR FOOD AND DRINK PREMISES

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Version Number	Purpose / Change	Author	Date
1.0	New Policy	Steven Greener	25/06/2025

For policies from 27th March 2025 (after adoption of Corporate Plan 2025-28)

Council ambition	Linked?
Working for a prosperous future <i>We want to ensure the best possible local economy, with opportunities for our residents to succeed and achieve</i>	Yes
Healthier, safer communities <i>Residents should feel safe in our Borough and supported to be more active in order to improve their health and wellbeing</i>	Yes
A greener and cleaner environment <i>It's important to everyone that we look after our environment</i>	No
Restoring the Council to good health <i>We will place our Council on a sound financial footing and ensure resilience – delivering the service our residents deserve and expect</i>	No
We ♥ Castle Point <i>We will help create and maintain the best possible place to live in, work in and visit</i>	Yes

Links to other strategies and policies:

- [LIST OTHER STRATEGIES AND POLICIES HERE]

Lead Officer responsible for owning the policy and internal approval body (meeting / board where the policy is approved for adoption or approved for referral to PFH or Committee for adoption)

Name: LICENSING COMMITTEE

Approved by: [INSERT NAME OF INTERNAL APPROVAL BODY]

Lead Member and Committee responsible for approving policy

- CLLR RUSS SAVAGE
- LICENSING COMMITTEE

Equality Impact Assessment undertaken? Yes

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1. Introduction

- 1.1. A pavement licence is a licence granted by the local authority (Castle Point Borough Council), 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.
- 1.2. 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 licences quickly for tables and chairs outside their premises.

Benefits of obtaining a Pavement Licence

- 1.3. In the Castle Point Borough Council area, having a pavement licence offers several economic advantages to a benefits. These include:
 - Increased revenue through additional seating – increased capacity
 - Increasing the businesses visibility
 - Adaption to customer requirements with many customers preferring an open-air setting
 - Competitive advantages over other businesses without outdoor seating areas.

Role of Castle Point Borough Council

- 1.4. Licences that are deemed to have been granted, should remain in place for such period as the Castle Point Borough Council may specify in the licence, with a maximum limit of two years.
- 1.5. 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 as outlined within the National Conditions highlighted within the policy.

Previous Policy

- 1.6. This policy supersedes the previous policy published on 16th June 2021 compiled in accordance with the legislation published within the Business and Planning Act 2020. The Act was originally introduced as part of the Governments response to the Covid pandemic.

Changes to previous Policy

- 1.7. The Levelling Up and Regeneration Act 2023 makes permanent the pavement licensing regime under the Business and Planning Act 2020, with a number of changes.

1.8. 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.

Monitoring and review of Policy

1.9. This policy will be reviewed every 2 years or when legislation changes and the policy requires amendment.

2. Scope

In Scope

Definition of ‘Pavement Licence’

2.1. A pavement licence is a licence granted by the local authority (Castle Point Borough Council), 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, and for certain purposes.

Definition of ‘Highways’

2.2. Under the Highways Act 1980, the term “highway” generally refers to any route or path that the public has a legal right to use, whether on foot, horseback, or in vehicles. It can include:

- Carriageways: roads for vehicles
- Bridleways: paths for walking and horse riding
- Footpaths: pedestrian-only routes

A highway can be created either:

- Statutorily: through legislation or formal designation
- By common law: if the public has used a route uninterrupted for 20 years, it may be presumed to be dedicated as a highway.

What businesses are eligible?

2.3. A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

- 2.4. A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises.

What furniture can be permitted by a licence?

- 2.5. 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.
- 2.6. This furniture is required to be removable and related to the serving, sale and consumption of food or drink.
- 2.7. In determining what is 'removable' in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away at night.

Out of Scope

- 2.8. The following are considered out of scope of the Levelling Up and Regeneration Act:
- Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible.
 - 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 may require express advertising consent under the Town and Country Planning Regulations 2007 through the Castle Point Borough Council Planning department and/or Essex County Council.
 - Permanent fixed structures that are NOT able to be moved easily, NOR stored away at night.
 - Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).
- 2.9. The above may be able to apply for permission to place furniture on the pavement under the Highways Act 1980. An application form can be obtained from Castle Point Borough Council Licensing Team by visiting www.castlepoint.gov.uk/licensing.

3. Application process of Pavement Licences

Information required as part of the application

- 3.1. An application to Castle Point Borough Council 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 Castle Point Borough Council may require, for example how national and local conditions have been satisfied.

3.2. Castle Point Borough Council require all applications to be made online via a standard application form and payment of the appropriate fee.

Supporting documentation required as part of the application

3.3. The following documentation is also required to support the application:

- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified;
- 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;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied for;
- evidence that the applicant has met the requirement to advertise the notice of the application (for example photograph);
- (if applicable) reference of existing pavement licence currently under consideration by Castle Point Borough Council;
- 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' national condition.

Fee associated with the application

- 3.4. The Fee is set locally and is published on our website www.castlepoint.gov.uk/licensing.
- 3.5. The fees are capped by Government at a maximum of £500 for first time applications and £350 for renewals. These may change during the period that this policy is in effect. Please refer to the council's fees and charges for the latest charges.

Timescales

- 3.6. If the Council determines an application before the end of the determination period (which is 14 calendar days, beginning with the first day after the end of the public consultation period, excluding public holidays), the Council can specify the duration of the licence.
- 3.7. To help support local businesses and give them more certainty, the expectation is that local authorities are pragmatic and will grant licences the maximum 2 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.
- 3.8. If a licence is 'deemed' granted because the Council does not make a decision on an application before the end of the determination period, then the licence will be valid for two years starting with the first day after the determination period.
- 3.9. 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.

4. Consultation

Do I need to advertise the application?

- 4.1. 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 Castle Point Borough Council. 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.
- 4.2. When counting 'days' public holidays are not included. Applicants are encouraged to keep evidence of this.
- 4.3. 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.

What must be included on the Public notice

4.4. The notice must:

- be in the format approved by Castle Point Borough Council;
- state the statutory provisions under which the application is made;
- include a description of the proposed use of the furniture;
- include the address of the premises and name of the business;
- state that the application has been made and the date on which it was made;
- give details of the website for the Council where the application and any accompanying material can be viewed during the consultation period;
- include the address (which might be an email address) to which representations should be sent during the consultation period.

4.5. The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to Castle Point Borough Council, and so take any issues around noise, and nuisance into consideration as part of the proposal.

Who does Castle Point Borough Council consult?

Statutory consultees:

4.6. The Council is required by law to consult with the Highways Authority.

Other consultees:

4.7. In addition, to ensure that there are no detrimental effects to the application the Council will consult with:

- Castle Point Borough Council Environmental Health team
- Castle Point Borough Council Planning
- Castle Point Borough Council Street Scene team
- Essex Fire & Rescue Service
- Essex Police
- The appropriate Local Ward Councillor(s)
- The appropriate Parish or Town Council

4.8. Members of the public and others listed above may contact the Council to make representations. The Council must take into account representations received during the public consultation period and consider them in determining the application.

4.9. The Council is required to publish the application and any information on the Castle Point Borough Council Licensing Application webpage. This publication will include how representations may be made during the public consultation period and when the period concludes.

5. Determination process of Pavement Licences

Timescales

5.1. Once the application and supporting documents are submitted to the authority.

- The authority has a total of 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
- 14 calendar days to consider and determine the application after the consultation.

- 5.2. If Castle Point Borough Council 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 Castle Point Borough Council before the application was submitted.

What does Castle Point Borough Council consider when deciding whether to grant a pavement licence.

- 5.3. 'When determining applications, Castle Point Borough Council will consider the following three headings:
- **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 into account the following:
 - **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.'

Possible outcomes following an application

- 5.4. If Castle Point Borough Council determines the application before the end of the determination period, Castle Point Borough Council 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.

Appeal process

- 5.5. There is no statutory appeal process for these decisions, however, appeals can be made in writing to Castle Point Borough Council Licensing Sub - Committee.
- 5.6. A hearing will take place to consider the appeal and the determination of the Licensing Sub Committee will be final.

Planning Permission

- 5.7. 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.
- 5.8. This means it is not a permanent fixed structure, and is able to be moved easily, and stored away at night.

6. National and Local conditions

National Conditions

- 6.1. The Business and Planning Act 2020 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.
- 6.2. 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.

No-obstruction condition

- 6.3. Section 3.2 of Inclusive Mobility - gives advice on the needs of particular pavement users and sets out a range of recommended widths which would be required, depending on the needs of particular pavement users.
- 6.4. 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. This allows enough space for two wheelchair users to pass even if they are using larger electric mobility scooters.

- 6.5. Any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, must be of a colour contrast and have a tap rail for long cane users
- 6.6. 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.

Smoke-free Seating Condition

- 6.7. 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.
- 6.8. 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.

Local Conditions

- 6.9. The following local conditions will be applied to all licences:
- The licensee shall use the highway area permitted within the licence solely for the purpose of the facility described and for no other purpose.
 - The boundary of the licensed area must be adhered to and ideally marked with a stable barrier system, or as agreed in writing with Castle Point Borough Council.
 - There must be a minimum clear width of 2.0 metres between the edge of the seating area and the inside edge of the kerb to allow free pedestrian passage.
 - Furniture and temporary barriers shall be placed only within the licensed area, maintained in a clean and tidy condition, and positioned so as not to obstruct pedestrian flow or cause danger.
 - No structure, furniture, or item placed within the licensed area shall give rise to any fire or safety concerns.
 - The licensee shall ensure that groups of patrons do not pull tables together to create larger group tables.
 - The licensee shall supervise the licensed area at all times to avoid nuisance or obstruction to the public.
 - Permission to operate a pavement licence does not imply exclusive rights to the area; the Council may suspend or remove permission at any time for highway works, events, or other reasonable causes without refund.
 - The licensee shall indemnify the Council against any claims, costs, actions, or damages arising from the placing or use of furniture on the highway.

- The licensee shall hold and maintain public liability insurance appropriate to the activity, with a minimum cover of £5,000,000 for any one claim, or as required by Castle Point Borough Council.
- The licence is not transferable.
- Glasses, crockery, napkins, cutlery, ashtrays, and any other items placed upon tables and chairs must be removed when not in use, and smoking paraphernalia or debris (including cigarette ends) must not be left within the licensed area.
- Music or other sound must not be broadcast onto the street from the licensed area unless the music is covered under a premises licence.
- The licensee shall keep the licensed area free of litter, rubbish, and stains from food or drink spillages.
- The licensee shall regularly check and remove litter and rubbish caused by patrons on pedestrian walkways for up to 10 metres beyond the licensed area boundary.
- The licensed area shall be thoroughly washed down at the end of each day, using appropriate methods and materials to remove food debris, grease, and spillages.
- Customers consuming food or drink outside the premises shall not do so beyond the demarcated licensed area.
- The licence does not authorise the licensee to allow smoking or the serving or consumption of alcoholic drinks where prohibited by law or other licensing conditions.
- Where the consumption of alcohol is permitted, only plastic or toughened glasses and bottles shall be used within the licensed area.
- Portable heaters, if used, must comply with design requirements, be located within the designated area (not on boundaries), and shall not form part of any enclosure.
- When in use, the licensed area must be enclosed and clearly distinguishable, with enclosures designed to consider the needs of people with impaired vision.
- All items associated with the licensed use must be removed from the highway when not in use or at the end of the consent period, ensuring portability and emergency removal capability.
- The licensee shall not make any excavations or indentations in the highway surface.
- The licensed area and any reasonable surrounding area affected must be kept free of litter, debris, food, and drink spillages at all times.
- The facility shall be used for seated customers only.

- The licensee shall remove the facility promptly upon the end of the licence period, suspension, or revocation.
- Waste from the licensee's operation shall not be disposed of in permanent public litterbins provided by the Council.
- The licensee shall not make any claims or charges against the Council for loss, theft, or damage to street furniture.
- The licensee shall make good to the Council's satisfaction any damage caused to the highway and indemnify the Council against related claims.
- The licensed area remains part of the public highway, and users retain the right of passage over it.
- The licensee must prominently display a copy of the licence and an agreed layout plan at the premises for inspection by authorised officers.
- The licensee shall ensure compliance with any relevant Council policy regarding additional street furniture such as A-boards, ensuring positioning relates only to the original business premises and does not extend beyond the licensed area. A-Boards are not permitted under any Public Spaces Protection Orders (PSPO) policy.
- The Council may vary the licence or its conditions at any time.
- If the licensee breaches any condition, the Council may serve a compliance notice requiring remedy within a stated time and may remove or require removal of furniture temporarily or permanently.
- The Council may suspend permission without refund or fee reduction during works, emergency access, or special events.
- All ashtrays provided within the licensed area must be made of a material that is non-breakable, heat-resistant, and appropriate for extinguishing cigarettes safely. Glass ashtrays or any brittle materials that may shatter and cause injury are not permitted.

Counter Terrorism Model Security Considerations:

- 6.10. When considering public health and safety, Castle Point Borough Council 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 pavement license holder will need to ensure that the management team of the business to which the pavement license is attached; register and successfully complete the nationally recognised counter terrorism training product referred to as ACT E Learning within 10 days of the notification of the grant of the Pavement License OR can demonstrate that the ACT E Learning

product has successfully been completed within the preceding 12 months and that all staff employed by OR at the premises complete the ACT E Learning within a reasonable period not exceeding 3 months from the notification of the grant of the Pavement License.(Act E Learning certificates are provided on successful on-line completion).

- The Pavement License holder will need to ensure that existing CCTV systems are correctly working, are compliant with the Data Protection Act 1998, Information Commissioners requirements and any other local CCTV Code of Conduct produced by the Police or Local Authority. Imagery must be retained for at least 28 days and images produced to a Police Officer or Local Authority Enforcement Officer upon reasonable request. Faults which render the CCTV system or parts of it inoperable should normally be rectified within 24 hours.

Imposing additional conditions

- 6.11. When they grant a licence, local authorities may impose reasonable conditions whether or not they are published upfront.
- 6.12. 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.
- 6.13. 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.
- 6.14. Conditions imposed by Castle Point Borough Council should be proportionate and tailored to the applicant's premises.

7. Enforcement

- 7.1. If a condition imposed on a licence (either by Castle Point Borough Council or nationally) is breached, Castle Point Borough Council will be able to issue a notice requiring the breach to be remedied.
- 7.2. If the licence-holder fails to do so, Castle Point Borough Council may:
 - amend the licence, with the consent of the licence-holder,
 - revoke the licence or
 - take steps to remedy the breach and can take action to recover any costs of so doing.

7.3. Castle Point Borough Council may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

- 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 licenced area (or road adjacent) is no longer to be pedestrianised.

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.

7.4. Castle Point Borough Council may revoke a licence in the following circumstances:

- For a breach of condition, (whether a remediation notice has been issued or not); or
- It comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
- The applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.

7.5. Castle Point Borough Council will give the reasoning where these powers are used.

Removal of furniture

7.6. In cases where furniture has been placed on a relevant highway without the required licence, the Council 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.

7.7. If furniture continues to be placed on the highway, in violation of the notice, the Council 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.

7.8. 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.