



**Pavement Permits in Colchester
Policy, Procedure and Process
2018–2021**

DRAFT

Colchester Borough Council

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Forward

Colchester is Britain's oldest recorded town with a unique history and heritage attracting in excess of 6 million visitors' trips a year. It is also a vibrant, thriving, prosperous and welcoming town and the existence of a large University and Garrison contribute to its overall diversity. The Borough is home to more than 180,000 residents living in communities based not only in and around the town centre but in the coastal, rural and riverside areas of the Borough. The population is expected to rise to 233,400 by 2035 with the regeneration of key areas of the borough and the creation of new communities.

The day time, early evening and night time economy in the Borough, attracts 6.3 million visitors a year to Colchester and is worth £79.7 million, is predominantly centred in the town of Colchester. The unique geography of the town centre means that the vast majority of licensed venues are located within the area circled by the old roman wall; within this area and close by are a number of residential communities. The challenge for the Council as the Licensing Authority is to balance the sometimes opposing demands of this sector with those of residents.

A recent survey of the day, evening and night-time economy commission by the Council and carried out in May/June 2015 identified that those surveyed wanted to see a greater variety of things to do; anti-social behaviour addressed; and action taken to reduce excessive drinking. This supports the Council's view that to attract businesses, visitors and residents the town needs to offer a variety of venue choices and to move away from a night-time economy centred on high volume drinking establishments. The survey results showed that whilst 31.3% indicated they visited the town for the purposes of clubbing, a broadly similar number, 30.5%, visited in order to eat out and that couples and families accounted for 40.5% of the users of this economy; as such introducing a Café style scheme for bars and restaurants across the borough will encourage those who come in to eat may wish to stay later and encourage more families to stay and enjoy what the night time has to offer.

The Strategic Plan

The Council's strategic plan is the overarching strategy for the Borough setting out the direction and potential for the Borough and integrating social, economic and environmental strategies to create a Borough that is -

Growth – Ensuring all residents benefit from the growth of the borough

Responsibility – Encouraging everyone to do their bit in making our Borough even better

Opportunity – Promoting and Improving Colchester and its environment

Wellbeing – Making Colchester an even better place to live and supporting those who need the most help

This Policy aims to contribute to this vision through promoting a wider range of high-quality attractions that encourage an increased range of customers in order to lead to longer term economic viability. Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the Borough. Additionally, effective regulation plays an essential role in enabling businesses to thrive and contribute to the Borough's economy.

Links to Other Strategies, Policies and Initiatives

In preparing this Policy, the Council has had regard to and consulted those involved in its local strategies on crime prevention, planning, transport, culture, tourism and economic development. The Policy therefore integrates, as far as is reasonably practicable, with other key Council policies to ensure the promotion of the Council's strategic plan and with key initiatives to improve the night time economy

Local Development Framework

The Council's adopted Local Plan emphasizes the importance of the Town Centre and regeneration. Planning policies direct development towards the most accessible and sustainable locations and plans for the provision of transport, employment and community facilities to support the growth areas of the Borough. This Policy supports these development aims; it recognises the need to ensure that licensed premises are suitable for the area in which they are situated and encourages a diverse range of entertainment facilities to meet the needs of growing communities.

Introduction

Colchester Borough Council supports the provision of street café furniture in the town Centre's and surrounding Borough Street cafes can make a positive contribution to the street scene and add vitality to town and village Centre's bringing life, colour and interest onto the street.

This policy is intended to help businesses understand where street cafes might be encouraged; and whilst the provision of street cafes is encouraged, it is important that they are properly administered and managed to ensure that they meet the legal requirements and the high standards expected by the Colchester Borough Council and Essex County Council

Should you wish to make use of the paved area in front of your bar, restaurant and café for siting of an enclosed area for chairs and tables. Then please read the guidance that accompanies the application and criteria (listed below) before making an application.

Although each application will be considered on its own merits this policy contains key points that must be considered in every case.

General information regarding Design or furniture and Visual impact.

The following information should be considered; Seating, tables and, if required, umbrellas and heaters (together with a secure base) as well as any proposed barriers to the enclosed seating area must comply with the British Standards. The Heaters must be to BS EN 60529:1992 (Electric Heaters) and BS EN 14543:2005 (Gas Heaters). **Where barriers are used any adverts that businesses wish to put on to them must first apply for Advertisement consent under the Advertisement Regulations.**

The positioning of tables, chairs and barriers outside your premises should relate to the existing street-scene and movement of pedestrians. Ideally it should be designed as an

integral part of the main café, restaurant, public house or other catering establishments rather than an unrelated after-thought. Whilst regard should be given to the function of street furniture – in other words: will your customers be comfortable? Will you be able to deliver a sufficiently high standard? – The visual impact will be crucially important especially in historic Centre's.

The choice of tables and chairs for use outside your premises should reflect the quality of the furniture inside and the character of the street environment outside. In the latter case your choice of furniture should enhance the street environment.

Colchester Borough has invested in and is committed towards maintaining a high-quality environment. Choosing the 'right' furniture is in your choice of furniture, you should have regard to the surface on which your furniture will stand. An uneven surface, for example cobbles, may require a sturdier style of furniture than would be necessary on a more even or paved surface. Furniture should not be too heavy to be thrown or lifted by the wind.

You may be required to provide a movable means of enclosure for any furniture sited outside your premises, Colchester Borough Council considers wind break-like canvas structures, substantial planters or a combination of both, in tubular steel with a stretched canvas banner to be functional and attractive means of enclosure. Structures should have a minimum overall height of 800mm and a gap of no more than 100mm – 150mm between the base (or tapping rail) and the ground.

General Criteria

The area for which a pavement permit is sought must be highway as defined by S115A Highways Act 1980, namely:

- a highway in relation to which a pedestrian planning order is in force;
- a restricted byway;
- a bridleway;
- a footpath (including a walkway as defined in section 35(2) of the Highways Act 1980);
- a footway;
- a subway constructed under section 69 of the Highways Act 1980;
- a footbridge constructed under section 70 of the Highways Act 1980;
- a highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- to a local Act walkway.

Applicants for pavement permits are required to confirm with Essex County Council (Highway Records) the highways status of the application site before making their application see guidance notes.

Before considering a pavement permit Colchester Borough Council must carry out consultations and publish a Notice in accordance with the Highway Act 1980. The Council must take into consideration all representations made to them when considering an application for a pavement permit The Council is also required by the Highways Act 1980

to obtain the consent of the Highway Authority, frontages with an interest and if appropriate obtained walkway consent.

The Council will not permit any objects to be placed on the highway, which will cause a hazard or an obstruction to the free flow of pedestrians, prevent the normal access to premises adjoining the highway, access by emergency or service vehicles or to prevent statutory undertakers and operators of electronic communications code network having access to any apparatus in, on or over the highway.

Pavement Permits will only be issued to cafes, restaurants, public houses or other catering establishments that serve food and drink within the premises and employ sufficient staff to provide table service to the outside area and have sufficient provision of sanitary conveniences for use by the public.

In considering such applications the Council will give particular consideration to Section 17 of the Crime and Disorder Act 1998 therefore prior to granting any consent for tables and chairs within the highway, the Council will pay particular regard to any potential for crime or disorder arising either directly or indirectly from the consent and will give significant weight to the views of the local police

The Council will ensure before issuing a pavement permit that Health & Safety, Food Hygiene and other Environmental legislation are not compromised.

To protect the attractiveness of the streets, the council will require:-

- The appearance of the tables and chairs must ideally enhance, or at least not be detrimental to the street scene.
- The tables and chairs and their associated activity must not cause environmental problems or detract from the amenities of adjacent retailers/occupiers. For example, there must be no litter problem, smells from food sales, or noise, so as to cause nuisance or annoyance.

The Council will ensure that the layout of the furniture will provide adequate access and circulation space for all customers including wheelchair users and those with push chairs, buggies, and members of the public with mobility problems etc.

The Council will generally apply hours of operation between 07.00 to 18.00 from Monday to Sunday for all consents. Applications for pavement permits will be accepted beyond 18:00 hours and up to 23:00 hours. The Licensing Team in approving such applications will have regard to an applicant's previous track record of compliance with the conditions attached to any previous consent or compliance with other associated conditions controlling their trade.

The Council will require that all glasses, crockery and other ancillary items used in the permitted area, are made of a toughened material. All glass-bottled drinks, including alcoholic drinks must be served in toughened drinking glasses. Glass bottles are not allowed in the permitted area.

The Council will not permit music to be broadcast on to the permitted area.

The Council will not accept an application unless the following have been provided:

- A completed application form
- Correct fee
- Plans
- Confirmation from the Highway Records of the status of the application site
- Evidence of public liability insurance
- Other associated permissions i.e. Planning & any appropriate licences under the Licensing Act 2003.

Colchester Borough Council and Essex County Council standard conditions will be applied to all "Pavement Permits". In addition to the standard conditions the Council's may also impose special conditions on individual pavement permits where necessary.

Enforcement

Tables and chairs placed on the highway without permission are an obstruction of the Highway. Any person who has placed tables and chairs on the highway without a valid pavement permit issued by Colchester Borough Council will be referred to the Licensing Team for enforcement action.

NON-COMPLIANCE with any Condition of the permission resulting in any complaint to the Council or to the Police will render the holder(s) liable to a written Notice under Section 115K of the Highways Act 1980 and failure to comply with such Notice immediately AND ANY SUBSEQUENT breach or non-compliance as aforesaid shall render the holder(s) liable to a written Notice under Condition 20 hereof REVOKING this permission forthwith

Conditions to be attached to the Permit

The following standard conditions shall apply to all licenses. Further additional conditions may be applied to licenses. Site Specific conditions will also be found on the permit. That relate to layout, Barriers, dimensions and storage.

1. This permission is not transferrable.
2. The tables, chairs and umbrellas shall only be placed outside the premises between the hours of 7.00 am and 6.00 pm. unless otherwise indicated.
Permitted days Monday – Sunday
3. Duration of permission:- Permits are valid for 1 year from the date of issue and only for the area of the highway applied for.
4. Permitted furniture or equipment – Tables, chairs and umbrellas and barriers to form enclosure
5. the holder(s) shall not assign underlet or part with any interest or possession given by this Permission or any part thereof but the holder(s) may surrender it at any time.
6. The holder(s) shall not cause any unnecessary obstruction of the highways or danger to persons using it and shall not permit persons to gather so as to cause a nuisance or annoyance or danger to any persons lawfully using the highway
7. The area so permitted to be used solely for the purpose of consuming food and drink purchased on the premises. It is strictly forbidden to prepare any food and drink in the area so permitted by this permit.
8. The holder(s) shall ensure that customers who purchase food or drink for consumption on the premises shall not consume such items outside of the permitted area. The holder(s) shall ensure that all drinking glasses in which drinks are served shall be of strengthened glass or plastic and that no drink shall be served in a glass bottle from which it is intended or likely that a customer will drink
9. The table's chairs and umbrellas shall be of such a design as may be approved by the Council in writing and be kept in good repair and condition at the Permit Holder's expense.
10. The holder(s) shall not use the highway for any other purpose whatsoever nor at any time other than during permitted hours, other than during permitted hours, other than lawfully passing or repassing thereover as (a) member(s) of the public.
11. Nothing contained in this permit gives the holder permission to make fixtures to or excavations of any kind in the surface of the highway which shall be left entirely undisturbed.
12. The Permit Holder shall make no claim or charge against the Council in the

event of the chairs or tables or other objects being lost, stolen or damaged in any way from whatever cause

13. The Permit Holder shall indemnify the Council against all actions, proceedings, claims demands and liability which may at any time be taken, made or incurred in consequence of the use of the chairs & tables & other objects and for this purpose must take out at the Permit Holder's expense a policy of insurance approved by the Council in the sum of at least £5,000,0000 (FIVE MILLION POUNDS) in respect of any one event and must produce to the Council on request the current receipts for premium payments and confirmation of the annual renewals of the policy.
14. No charge shall be made by the Permit Holder for the use of the chairs and tables and other objects
15. **Waste from the Permit Holder's operations must not be disposed of in the permanent litterbins provided by the Council.**
16. **All businesses shall provide receptacles for the disposal rubbish and where necessary smoking material. To fit inside the boundary of the planned site**
17. **Refuse and litter deposited on the highway in the vicinity of the chairs and tables and other objects must be removed each day by the Permit Holder at the their expense or at more frequent intervals as may be required by or under the Environmental Protection Act 1990**
18. The Permit Holder shall remove the tables, chairs and windbreaks from the highway outside the hours permitted by Clause 2 hereof and immediately if required to do so as to permit works in or the use of the highway by:
 - 1) The Council, County Council, the police, fire & ambulance services, any utility operator, or
 - 2) Builders' vehicles, hearses and furniture removal vans
19. The Permit Holder shall be responsible for any rates, taxes and other outgoings which may be charged
20. **The permission shall run from the date of the Permit for a term of one year.**
21. The Council reserves the right to revoke this Permit forthwith if the Permit Holder breaches any of the conditions contained herein.
22. **No form of fencing or obstruction or structure to protect the Planters other than that agreed to by the County Council will be permitted within the public highway and the County Council, as highway authority, is empowered to take action under Section 143 to remove any structure which is deemed to be a nuisance.**
23. **If umbrellas are used all parts of the umbrella must be above an absolute**

minimum of 2.2 metres from the hard surface of the footway

24. **If the area to be licensed is contained within a Public Space Protection Order Zone then the area shall be clearly delineated by the use of barriers of a suitable nature to be agreed with the Licensing Authority.**
25. The holder(s) shall produce this Permission on demand when so required by a Police Officer or a duly authorised Officer of the Council.
26. The holder(s) of this Permission shall not exercise privileges granted by this Permission otherwise than strictly in accordance with this Permission
27. The holder(s) shall ensure that a copy of these conditions and licence is at all times on prominent display within the permitted location
28. The holder(s) shall remove all furniture or equipment, litter bins or other articles placed on the highway in accordance with this Permission at the end of each daily period of use and at the expiry, surrender or revocation of this Permission
29. The licence is non transferable
30. Colchester Borough Council reserves the right to change or amend these Terms and Conditions without prior notice. **This includes the right to increase the level of fees or charges referred to herein in order to reimburse the Council its reasonable expenses in connection with granting this Permission.** Any changes will be notified and will apply with immediate effect. If you do not wish to accept the updated Terms and Conditions you should not continue to use this licence.
31. Without prejudice to the ability of the County Council to remove the tables & chairs by reason of Statute, common law, and/or for breach of any of the terms and conditions of this consent, this consent shall remain in force until such time as the applicant seeks to amend its proposal, including, but not limited to, the location and/or number of the tables & chairs to be placed in the highway and/or such time as the Borough refuse to issue the related permission
32. Exemption for permit area to be used for smoking area after 23.00 must be approved by Colchester Borough Council. Within this exemption barriers can remain but no tables, chairs or heaters can remain on site. The area must be monitored by licensed security and the barriers are to be removed at the close of the business.

Notes:

1. Section 115K of the Highways Act, 1980 provides as follows:-
 - (1) If it appears to a Council that a person to whom they have granted a Permission under Section 115E of this Act has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.

- (2) If a person whom a notice is served under sub-section (1) of this Act fails to comply with the notice, the Council may take the steps themselves.
 - (3) Where a Council have incurred expenses in the exercise of the power conferred on them by sub-section (2) of this Act, those expenses, together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses, may be recovered by the Council from the person on whom the notice under sub-section 91) of this Act was served.
2. Failure to comply with any Condition of the Permission and/or the issuing of any Notice under Conditions 5 or 22 hereof will require the Council to consider whether any subsequent Permissions should be granted to the holder(s) of this Permission.
3. Any Notice hereunder shall be deemed to be sufficiently served if handed to holder personally or left addressed to him at the address given on page 1 of the attached permission.



GUIDANCE NOTES FOR MAKING AN APPLICATION FOR A PAVEMENT PERMIT

(E.g. Tables, chairs, Barriers and heaters)

Under the Highways Act 1980 – Part VIIA (Provision of Amenities on Certain Highways)

Please also be advised that these guidance notes are only intended to assist with the making of an application for a permit under the Highways Act 1980 and to bring certain information/obligations to the applicant's attention.

It is not intended to be legal advice to the Applicant.

Applicant is advised to take independent legal advice from their own Solicitor

WARNING: If you currently have tables and chairs on the highway without a permit issued by the Council, you may be committing an offence and are liable to prosecution and should be removed immediately.

The submission of an application for a permit does not entitle you to place or retain tables & chairs on the highway whilst your application is being considered

Introduction

Under the Highways Act 1980 (Part VIIA), Colchester Borough Council may grant a permit for the use of tables, chairs and associated furniture on the public highway for the purpose of providing refreshments.

Any person wishing to make an application for a permit is advised to read these guidance notes before completing and submitting an application.

Before considering making an application to Colchester Borough Council, you should make enquires of Essex County Council's Highway Records to confirm the highway status of the land, for which you are seeking a Permit for as permits granted under the Highways Act 1980 do not apply to private land or land which is **not** the following highway:

- to a highway in relation to which a pedestrian planning order is in force;
 - to a footpath (including a walkway as defined in section 35(2));
 - to a footway;
 - to a highway whose use by vehicular traffic is prohibited by a traffic order; and
 - to a local Act walkway.
- **Note: where you apply for a permit CBC will consult with Essex County Council**

Enquires should be made in writing to Traffic Management at Essex Highways at the

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following address enclosing an Ordnance Survey base plan showing the land in question:

Essex Highways
Essex County Council County Hall
Duke Street
Chelmsford CM1
1QH

E-mail: HighwayRecords@essexhighways.org

Please be advised that should you fail to include evidence of the status of the Highway the Council will return your application for you, the applicant to confirm the status of the Highway.

IMPORTANT NOTE:

It is essential in all cases that minimum width of unobstructed highway is kept free for safe and convenient pedestrian movement. This will depend on the location and existing width of the footway and what you apply for.

In all cases dropped kerbs must be kept clear to allow unhindered access at all times.

Where an application cannot provide the minimum width of unobstructed highway in compliance with the above will be refused.

Permits

The starting times for the placing of tables and chairs will vary according to the individual circumstances. The earliest time that the Council will consider is 7am, with a finishing time of 6pm Monday to Sunday.

Applications for hours beyond 6pm but no later than 11pm will be accepted. However the Licensing Team in approving such an application will have regard to an Applicant's previous record and what type of business they are. The council will not grant permits for hours beyond 11pm.

Permits are valid for 1 year from the date of issue and only for the area of the highway as applied for. Once granted and until the permit is revoked or surrendered the business will be invoiced on an annual basis

Permits will be granted with standard conditions, and any further conditions Essex County Council or Colchester Council considers necessary. All conditions need to be complied with in order to retain the permit.

Application Process

The forms to make an application for a Pavement Permit can be found on Colchester Councils website.

Guidance Notes

Any person wishing to make application for a permit must submit a completed application together with the correct fee, plans, other permissions and evidence of insurance to the Council's Licensing Department.

Payment must be made before considering an application, The Council is required by the Highway Act 1980 to:

Seek to the consent of:

The Highway Authority – Essex County Council;
Frontages with an Interest – if a highway; Network Rail (is maintained by them).
If Highway is a walkway – the Council must also seek walkway consent.

Consult with:

Planning Authority;
Building Control;
Environmental Health - Health & Safety Team;
Environmental Health - Pollution Team;
Ward Member;
Essex Police;
Essex Fire & Rescue Service;
Those materially affected by the application

There is a 28 day period for seeking consent and consultation.

CONSENT MUST BE OBTAINED BEFORE CONSIDERING THE APPLICATION FURTHER

Consent may be given with reasonable conditions. Any question of whether consent is unreasonable, withheld or given with unreasonable conditions, the Council must refer the matter to Arbitration for determination. Arbitration is the magistrates court.

To publish a Public Notice by:-

Affixing it in a conspicuous position at or near the place to which the application relates; and

Serving a copy of the Notice on the owner and occupier of any premises appearing to the Council to be likely to be materially affected and frontage with an interest.

The Public Notice must contain details of the application and give 28 days to allow representations to be made to the Council.

If representations are made within the specified period and subject to the appropriate consents being given, the application will be referred to the Licensing, Food and Safety Manager or Council's Licensing Committee for determination. The Council is obligated by the Highway Act 1980 to take into consideration all representation when determining an application.

Permit Area and Furniture

You must include a plan with the application clearly showing the boundary of the area for which you are seeking the permit. The plan accompanying the application must be Ordnance Survey based – scale 1:1250. The plan should show the location of the furniture within the application site.

Details should be provided of all the furniture intended to be used within the permitted area. Furniture cannot be stored on the highway and Applicants must ensure that there is sufficient storage for the furniture off the highway.

Planning Permission

Planning permission is a separate legal matter and applicants are advised to contact the Council's Planning Department to be advised if planning consent is required.

The granting of a permit under the Highway Act 1980 is not proof that planning permission has been granted. If you wish to put information on your barriers consent will be required from the planning department. Generally only the name of the business are acceptable.

Licensed Premises – Licensing Act 2003

Applicants are advised that granting of the permit to use the highway does not alter your premises license. If any licensable activity i.e. the sale of alcohol is to take place within the permit area the Applicant should contact the Council's Licensing Department to make appropriate application to vary the existing Premises License to include the permit area.

If there is no premises licence, the Applicant is advised that they must apply for a Premises License in accordance with the Licensing Act 2003.

Public Space Protection Orders (PSPO's)

Public Space Protection Orders (PSPO's) are a tool that can be used by local Authorities to deal with the problems of anti-social behaviour including but not limited to alcohol drinking in public places.

Once a PSPO is in place the police and local authority can use their confiscation powers to enforce the restriction. It is not an offence to consume alcohol within a designated area, but failure to comply with officer's requests to stop drinking and surrender alcohol without reasonable excuse is an offence.

PSPO's are available in areas that have experienced alcohol-related anti-social behaviour problems. They have been used across the country in areas ranging from a single street or park, to town centre or city-wide areas. Currently there is a PSPO operating in Colchester Borough. Specifically Castle Ward Area which included the town centre area.

If a premises licence issued under the Licensing Act 2003 covers the area outside the premises or a pavement licence has been granted then a PSPO does not apply to that section of the highway which is clearly delineated for the consumption of alcohol.

Environmental Health

Applicants are advised to contact the Council's Environmental Services Department to receive guidance/information for the compliance of Environmental Health legislation and considerations they must have when providing facilities for customers for the consumption of food and drink. e.g. provision of a toilet and hand washing facilities.

The granting of a permit under the Highway Act 1980 is not proof that Environmental Health legislation/considerations have been satisfied.

Crime and Disorder

In considering such applications the Council will give particular consideration to Section 17 of the Crime & Disorder Act, 1998. Therefore, prior to granting any consent for tables and chairs within the highway, the Council will pay particular

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regard to any potential for crime or disorder arising either directly or indirectly from the consent and will give significant weight to the views of the local police.

Insurance

It is a requirement that Applicants for Pavement permits hold Public Liability Insurance which would indemnify both the Council and Essex County Council as Highway Authority against all actions, proceedings, demands and liability, which may at any time be taken, made or incurred arising out of the grant of the permit. The policy must be for a sum of at least £5million. A copy must be supplied to the Council at the time of application.

A condition of the permit will require a copy of the Public Liability Insurance. Completed application should be sent to:
Colchester Borough Council

Should you have any further queries please email the Licensing Department at licensing.team@Colchester.gov.uk