

GUIDANCE NOTES FOR MAKING AN APPLICATION FOR A PAVEMENT PERMIT

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), Brentwood 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 Brentwood 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.

Enquires should be made in writing to Traffic Management at Essex Highways at the 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: trafficmanagement@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 an absolute **minimum width of 1.8 metres** of unobstructed highway is kept free for safe and convenient pedestrian movement.

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

Any application that cannot provide the minimum width of unobstructed highway will be automatically 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 9am, with a finishing time of 6pm Monday to Sunday.

Applications for hours beyond 6pm but no later than 10pm will be accepted. However the Licensing Committee in approving such application will have regard to an Applicant's previous record. The council will not grant permits for hours beyond 10pm.

Permits are valid for 1 year from the date of issue and only for the area of the highway as applied for.

Permits may be granted with standard conditions, and any further conditions the Council considers necessary.

Application Process

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

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.

Cheques should be made payable to "Brentwood Borough Council". Please do not send cash.

Before considering an application, the Council is required by the Highway Act 1980 to:

1. **Seek to the consent of:** The Highway Authority – Essex County Council;
Frontagers with an Interest – if a highway;
Network Rail (is maintained by them).
If Highway is a walkway – the Council must also seek walkway consent.

2. **Consult with:** Planning Authority;
Development 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 an independent body to the Council.

3. 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 frontager 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 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.

No Permanent items or patio heaters are permitted within the application site.

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.

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.

Designated Public Places Orders (DPPO's)

Designated public places orders (DPPO's) are a tool that can be used by local

authorities to deal with the problems of anti-social alcohol drinking in public places.

Once a DPPO is in place the police 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.

DPPO'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.

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 DPPO 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 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:

Brentwood Borough Council,
Licensing Department
Town Hall
Ingrave Road
Brentwood
Essex
CM15 8AY

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