

Cheltenham Borough Council

Director of Environment

Business and Planning Act 2020

Application for Pavement Licence

**Suffolk Arms 40 Suffolk Road Cheltenham Gloucestershire
GL50 2AQ
20/01076/TCAC**

Report of Mr Phillip Bowen

1. Summary and Recommendation

1.1 An application has been received from Ei Group Ltd in respect of Suffolk Arms, 40 Suffolk Road Cheltenham Gloucestershire GL50 2AQ . The applicant wishes to place 4 wooden picnic benches with seats on the highway outside 40 Suffolk Road. The benches measure 1.2m by 1.2m.

1.2 It is intended that the tables and chairs be put out:

Monday:	10:00 - 22:00	Friday:	10:00 - 22:00
Tuesday:	10:00 - 22:00	Saturday:	10:00 - 22:00
Wednesday:	10:00 - 22:00	Sunday:	10:00 - 22:00
Thursday:	10:00 - 22:00		

1.3 A number of objections have been received in relation to this application.

1.4 A location plan of the proposed application is attached at **Appendix A**

1.5 The Director of Environment, in consultation with the vice-chair of the Licensing Committee is recommended to:

1.5.1 Grant the pavement licence.

1.6 Summary of implications

Legal

An applicant's right of appeal is to the Miscellaneous Licensing Sub-committee.

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2. Background & National Guidance

- 2.1 The Business and Planning Act 2020 allows additional outdoor space to be lawfully licensed and used by premises through a system of Pavement Licences.
- 2.2 The Act introduces a ‘streamlined’ application process which will enable the operators of pubs, cafes and restaurants to apply for a Pavement Licence. 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.
- 2.3 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.
- 2.4 In addition to locally adopted conditions, pavement licences are subject to two national conditions; a no-obstruction condition and a no smoking condition.
- 2.5 The no-obstruction condition is a condition that the licence must not have the effects set out in section 3(6) of the 2020 Act. When determining whether furniture constitutes an unacceptable obstruction in light of the no-obstruction condition, the provisions require that local authorities consider the needs of disabled people. In order to do this, authorities should consider the following matters when setting conditions, determining applications (in the absence of local conditions), and when considering whether enforcement action is required:
- a) Section 3.1 of Inclusive Mobility sets out a range of recommended widths which would be required, depending on the needs of particular pavement users, but is clear that in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway,
 - b) any need for a barrier to separate furniture from the rest of the footway so that the visually impaired can navigate around the furniture, such as colour contrast and a tap rail for long cane users. In some cases, it may be appropriate to use one or more rigid, removable objects to demarcate the area to which the licence applies, for example wooden tubs of flowers. However, this will need to be balanced to ensure any barriers do not inhibit other street users, such as the mobility impaired, as such barriers may create a further obstacle in the highway;
 - c) any conflict of street furniture with the principal lines of pedestrian movement particularly for disabled people, older people and those with mobility needs. The positioning of furniture should not discourage pedestrians from using the footway. The available route must be entirely clear and not pass through an area with tables and chairs;
 - d) so that where possible furniture is non-reflective and of reasonable substance such that it cannot easily be pushed or blown over by the wind, and thereby cause obstruction – for example, the local authority could refuse the use of plastic patio furniture, unless measures have been taken to ensure it is kept in place.

3. Determination

- 3.1 Council resolved to delegate authority to the Director of Environment, in consultation with the vice-chair of the Licensing Committee, to determine contentious applications under the Business & Planning Act 2020.

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4. Consultee Comments

4.1 8 representations were received in relation to this application. These are listed in **Appendix B**. The majority of the concerns raised relate to excessive obstruction of the highway outside the premises.

4.2 All items need to be portable enough to be brought in at the end of the permitted period of each working day or in the event of an emergency.

5. Officer Comments

5.1 **Social distancing** – The application complies with the official guidance that states: “...in most circumstances 1500mm clear space should be regarded as the minimum acceptable distance between the obstacle and the edge of the footway.”

Noise – The determination criteria does not include the relevance of comments relating to noise nuisance. Notwithstanding, the Act required the authority to “take into account any representations made to it during the public consultation period.” With regards to the concerns raised concerning noise nuisance, records show that the last noise nuisance complaint received was in 2018. Officers are therefore of the view that a refusal on this grounds will be disproportionate. Any noise nuisance issues that might arise, should the licence be granted, could be dealt with as a licence review under delegated authority.

Smoking – The licence will be issued subject to the national conditions stipulating that:

- Clear ‘smoking’ and ‘non-smoking’ areas, with ‘no smoking’ signage displayed in designated ‘smoke-free’ zones in accordance with Smoke-free (signs) regulations 2012 which can be viewed here.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where smoke-free seating is identified.
- Licence holders should provide a minimum 2M distance between non-smoking and smoking areas, wherever possible.

Parking – Road markings outside the pub indicate no parking. It is not the responsibility of the licence holder to enforce this and he cannot be penalised for the fact that vehicles do park there. There is still more than 1500mm of space between the benches and the edge of the road which complies with the official guidance.



Management of the tables and chairs after 22:00 – The applicant has confirmed that the benches will be removed and stored at the end of trading each night.

6. Officer recommendation

6.1 The officer recommendation is that this application be granted subject to the locally set conditions.

Reason(s):

1. For the reasons outlined in paragraph 5.1.

Background Papers

Service Records

Case Officer

Contact officer: Mr Phillip Bowen

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