

Cheltenham Borough Council

Director of Environment

Business and Planning Act 2020

Application for Pavement Licence

**Suffolk Arms 40 Suffolk Road Cheltenham Gloucestershire
GL50 2AQ
21/01353/TCAC**

Report of Ms Freya Gill

1. Summary and Recommendation

1.1 An application has been received from Mr Mark Gray 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 - 23:00	Friday:	10:00 - 23:00
Tuesday:	10:00 - 23:00	Saturday:	10:00 - 23:00
Wednesday:	10:00 - 23:00	Sunday:	10:00 - 23:00
Thursday:	10:00 - 23:00		

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 subject to the locally set conditions and the additional proposed conditions at 5.6.1 and 5.6.2.

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.

4. Consultee Comments

- 4.1 2 representations were received in relation to this application. These are listed in **Appendix B**. The concerns raised relate to obstruction of the highway outside the premises.

5. Officer Comments

5.1 The objections primarily relates to:

5.1.1 patron's use of the outside area causing noise and nuisance;

5.1.2 obstruction caused by patrons; and

5.1.3 alleged Suffolk Arms patrons urinating into railings across the road.

5.2 The determination criteria for the grant of a pavement licences is governed by section 5 of the Business and Planning Act 2020. Under section 5, subject to compliance to national and local conditions and the restrictions in section 6 relating to obstruction, the authority may grant the licence.

5.3 The determination criteria therefore is principally concerned with obstruction caused by the objects. However, the national guidance does recognise the need to address, for example, public amenity, in locally set condition to address "nuisance to neighbouring occupiers".

5.4 The national guidance also recognises the need for pavement licensing to "interact with other regulatory process, such as alcohol licensing" and requirements under this legislation.

5.6 On the individual merits of this application, taking in account above (5.2 to 5.4) and the consultation feedback, the officer recommendation is to grant the consent but subject to a number of additional conditions:

5.6.1 *The premises' Designated Premises Supervisor will put measures in place to ensure the wooden picnic benches are inaccessible to customers from 23:00.*

5.6.2 *The premises' Designated Premises Supervisor will ensure measure are in place to adequately manage and supervise customers using the wooden picnic benches to so to ensure they do not consume alcohol outside of the designated seating area.*

5.7 Other issues raised that are not relevant to this application are:

5.7.1 **General Noise & Nuisance** – The determination criteria does not include the relevance of comments relating to noise nuisance. These are more appropriately considered under the Licensing Act 2003.

5.7.2 **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.



6. Officer recommendation

6.1 The officer recommendation is that this application be granted subject to the locally set conditions and the additional proposed conditions at 5.6.1 and 5.6.2.

Reason(s):

1. For the reasons outlined in section 5.

Background Papers

Service Records

Case Officer

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