

Pavement Licence Policy – Covid-19

This Pavement Licence Policy – Covid 19 (herein ‘the Policy’) sets out East Herts Council’s approach to considering applications for pavement licences under the Business & Planning Act 2020. These measures have been adopted as part of the council’s response to the Covid-19 pandemic and the passing of the Business & Planning Act 2020 (herein ‘the Act’).

All references to pavement licences or licences hereafter shall refer to licences granted under this Policy.

The Policy shall be in force from 23rd July 2020 to 30th September 2021, or such a later date as substituted by the Secretary of State under regulations, whichever is sooner. The power for the Secretary of State to extend the provisions of the Business & Planning Act 2020 is contained within section 10, part 1, of the Act.

The Head of Housing & Health has delegated authority to determine applications for pavement licences and revocations in line with this policy and can further delegate this authority.

Departure from Policy

Any policy is the starting point for decisions, however, all decisions are taken on the merit of the individual case and where an applicant wishes to apply for a licence outside of the requirements contained within this Policy, full and unfettered consideration will be given to that application. Applicants should be aware that departures from this Policy will usually be restricted to exceptional circumstances, and where the council assesses that to grant a licence outside of the Policy will not result in an unnecessary obstruction of the highway and that the recommended pavement widths, as set out in part 3 of Inclusive Mobility¹, can be maintained.

Where it is necessary for the council to depart from this Policy, clear and compelling reasons for doing so must be given. The Head of Housing & Health, or another officer delegated to determine applications, may authorise a departure from the Policy in accordance with this section if they consider it appropriate in the specific circumstances.

Application Process

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It is only possible under the legislation to grant pavement licences to:

- public houses, wine bars and other similar drinking establishments; or
- any other premises which involves the sale of food or drink for consumption on or off the premises.

Such a licence grants the applicant permission to place removable furniture on a public highway adjacent to their premises. Applications for non-food premises will not be granted a pavement licence.

The legislation defines 'furniture' as being:

- (a) counters or stalls for selling or serving food or drink,
- (b) tables, counters or shelves on which food or drink can be placed,
- (c) chairs, benches or other forms of seating, and
- (d) umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

All applications must be made in writing via an application process; applications cannot be made in person or over the telephone. We have designed an application form for applicants to complete and submit. Applications are encouraged to be submitted electronically and we have a dedicated online application form for this purpose.

Applications must be submitted with the following documentation in order to be valid:

- valid Public Liability Insurance Certificate to the sum of at least £5 million
- a scale plan of the area (showing the location of all items to be placed in the licensed area)
- a location plan (showing both the area to be licensed and the premises relating to the application outlined in RED)
- a copy of your completed public notice
- the fee of £100.

If an application is refused the applicant is not entitled to a refund as the fee covers the work taken to determine the application.

Applicants may only submit one application at a time.

Applicants are required to display a notice on their premises advertising their application. The notice should be put on display on the day that an application is submitted. The notice must remain on display for seven consecutive days and this period starts the day after the application was submitted to the council. For

example, if an application is made on the 1st of the month then the notice must be put up on that day. It must then be displayed for seven consecutive days starting on the 2nd and ending on 8th. The notice can then be removed on the 9th.

We have designed a specimen public notice for applicants to use and this is available from our website: www.eastherts.gov.uk, search for “pavement licences”.

Such a notice must be readily visible to, and must be capable of being easily read by, members of the public from outside of the premises. The notice must be visible at all times, for example, it must not be obstructed or hidden by shutters at the premises nor obstructed by advertisements or other external displays at the premises. If the notice is damaged, or misplaced, then the notice (or a fresh copy) must be put back on display at the earliest convenience. If officers determine that the application has not been advertised in a satisfactory manner, they may require the notice to be put on display for a further period of seven consecutive days.

In addition to the notice at the premises we are required to place a similar notice on East Herts Council’s website; we will include the plans supplied with the application to allow interested parties to fully understand what the application is seeking to permit. Notices for pavement licence applications subject to consultation can be found on our website on the pavement licence page.

Consultation

The consultation is a public consultation and any person may submit representations during the consultation period.

The council shall directly consult the following parties on applications made under this policy:

- Hertfordshire County Council (as highways authority) [statutory]
- Hertfordshire Constabulary
- East Herts Council Environmental Health
- the Town Council or Parish Council covering the location of the premises to which the application relates
- the East Herts Council Ward Member(s) covering the location of the premises to which the application relates
- all other East Herts Council Members
- groups specifically convened to consider the economic recovery of town centres in East Herts (where there is such a group covering the the location of the premises to which the application relates).

Any person wishing to submit representations against an application must do so in writing during the statutory consultation period. Representations should be sent to ADDRESS or e-mailed to community.protection@eastherts.gov.uk.

Determining applications

The council must determine the application within seven calendar days of the consultation period ending.

If the council does not determine an application within this timeframe, the application is deemed to have been automatically granted for 12 months. Tacit consent does therefore apply and any applicant who has not heard from the council within 15 calendar days of submitting a valid application can safely assume that their application has been granted.

The council's options when determining an application are:

- 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;
- grant the licence while at the same time imposing conditions; or
- refuse the application.

The matters that will be considered when determining an application include:

- public health and safety
- public amenity
- accessibility
- any other temporary measures that are in place that may be relevant
- whether there is already permanent street furniture or structures that reduce the access
- recommended minimum footway widths.

The council shall grant a licence only where it considers that to do so would not pose or exacerbate one or more of the following risks:

- unnecessary obstruction of the highway
- unnecessary obstruction of the premises or neighbouring premises
- prevention of statutory undertakers or communication network operators (or their contractors) from having access to appropriate plant or equipment either in, on, or over the highway.

A minimum unobstructed width of two metres of the highway, measured from the boundary line of the proposed pavement licence area to the nearest kerb or item of street furniture (electrical cabinets, trees, cycle racks, bus stops, and so on), must be available before a pavement licence can be granted. This is to ensure the free movement and access by pedestrians and prevent obstruction. Additional widths may be required in certain locations or as a result of responses from consultees. In making any decisions, the council will take into consideration the recommended highway widths as detailed in 'Inclusive Mobility'², particularly section 3.

Applications will not be granted if pedestrians are forced or encouraged to cross a footway in a dangerous manner or if the proposed facility poses a risk to disabled people on the highway through the use of the proposed pavement licence. The council would consider that if the effect of any pavement licence results in highway users being put in unsafe situations then the use of the highway results in an unacceptable and unnecessary obstruction of the highway.

All licences will be granted subject to the council's standard pavement licence conditions, which are attached to this policy.

The legislation allows the council to attach such bespoke conditions to licences as they consider reasonable to address or mitigate any concerns raised in representations against the application. Such conditions may include, but are not limited to, granting the licence for a reduced area, for reduced hours, for a reduced number of tables and chairs, or for a limited duration.

All licences will be granted subject to any conditions authorised and published by the Secretary of State under Part 1, Section 5, para 6, of the Act. It is acknowledged that where any such conditions published by the Secretary of State conflict with one or more conditions attached by the council, regardless of whether these are standard conditions or bespoke conditions, the local conditions applied by the council shall take precedence.

Right of appeal

There is no statutory right of appeal. If your application is refused you will be advised of the grounds for this refusal giving you the opportunity to address them and submit a revised application. We advise applicants to engage with the

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consultees and neighbours, whether these are residents or other businesses, at an early stage. These conversations should help you to avoid objections.

Renewal and Variation

There are no set processes for renewing or varying a pavement licence. Therefore, the normal application process shall apply in full, including submitting an application form, the required accompanying documents and payment of the application fee.

To enable continuous use of the pavement following the expiration of a licence, any application to renew a licence must be submitted before the current licence expires. We would suggest that applications are submitted one month in advance. If a licence expires, the premises will be required to apply for, and obtain, a new licence before being able to resume placing tables and chairs outside of the premises.

Any premises wishing to vary the terms of their existing pavement licence will be required to apply for a new licence and the full application process will apply.

Enforcement

If the council considers that a licence holder has breached any condition or term of the licence:

- (1) on a **first breach** of a licence condition/term, the council will issue a warning notice clearly explaining the steps that must be taken to remedy the breach and the time scale for compliance.
 - Compliance with the warning notice will result in no further action but the breach will be recorded as a first breach.
 - Failure to comply with the warning notice will lead to the licence being revoked;

- (2) on a **second breach** of a licence condition/term (whether or not the same condition/term as the first breach), the council will issue a further warning notice clearly explaining the steps that must be taken to remedy the breach and the time scale for compliance.
 - Compliance with the warning notice will result in no further action but the breach will be recorded as a second breach. This will be the final warning notice that will be issued in relation to that licence.
 - Failure to comply with the second warning notice will lead to the licence being revoked;

(3) on the **third breach** of a licence condition/term, the council will revoke the licence. There will be no right of appeal.

Where a notice is served, if the licence holder fails to comply with the notice, the council may take steps itself to remedy the issue and may seek to recover the costs of doing so from the licence holder. Alternatively, the council may simply follow the process above resulting in revocation.

Once a licence has been revoked, any re-application will only be considered if the premises has changed ownership or management, or a period of 3 months has elapsed from the date of revocation.

The council may revoke a licence if it considers that one or more of the following applies:

- some or all of the highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted
- a risk to public health and safety
- antisocial behaviour is being caused or there is a risk of it being caused;
- public nuisance is being caused or there is a risk of it being caused;
- the highway is being obstructed;
- anything stated in the application was false or misleading;
- the notice was not correctly displayed;
- a warning notice for breach of licence has been issued and not complied with;
- three breaches of the licence occur during the life of the licence.

When considering if the operation of the licence is a risk to public health, public safety or if the operation is obstructing the highway, the council will take into account the matters listed under the 'Determining applications' section above.

Any licence that is being considered for revocation shall be referred to the Head of Housing and Health for determination.

Miscellaneous

There is no provision to transfer a pavement licence granted under this policy. Should the premises be taken over by a new operator, that operator must apply for, and obtain, a new pavement licence.

No tables and chairs or other such furniture may be placed outside of the relevant premises until a pavement licence has been granted or deemed to have been granted.

A pavement licence may be surrendered by the licence holder at any time. Notice of surrender must be provided to the council in writing. Email confirmation of surrender is acceptable.

The fee paid upon submitting an application is an application fee. If the licence is refused, or the application is withdrawn before a decision is made, the applicant is not entitled to a refund of the fee. If a licence holder stops trading or surrenders a licence they are not entitled to any refund.

Furniture must be capable of being removed from the highway once the terminal hour of the licence has been reached. The legislation does not allow permission to be granted for any furniture that is fixed to the highway.

Any damage to the highway by licence holders must be repaired by the licence holder at their own expense.

Licence holders are reminded that any outside areas must be taken into account when setting their maximum permitted capacity under their fire risk assessment, or under any risk assessments concerning infection control.

Pavement Licence Standard Conditions

1. A summary of this licence, as provided by the licensing authority, must be displayed on the premises where it can be seen from outside of the premises at all times that the premises are open to the public. Should the licence summary be lost or damaged, a replacement licence summary must be requested from the council as soon as possible.
2. This permission shall run for seven months from grant or until 30 September 2021 (or a later date as substituted by the Secretary of State under regulations), whichever is sooner.
3. The licence holder shall not place on the highway any furniture or equipment or advertisement other than as specified in this licence and shall maintain the same in a neat tidy and safe condition and shall not place them so as to obstruct the access to or exit from any premises.
4. All furniture shall be removed from the highway within 30 minutes of the end of the licensed hours, and shall not be placed on the highway until a maximum of 30 minutes before permitted hours start.
5. All furniture shall be removed from the licensed area whenever the premises are not open to the public.
6. All furniture must be stored on private property and cannot be kept on the highway when not in use.
7. The licence holder shall leave the highway in a neat and tidy condition after removing all furniture from the highway at the end of permitted hours.
8. The licence holder shall not cause any unnecessary obstruction of the highway or danger to persons using it.
9. The licence holder shall not permit persons to cause a public nuisance or anti-social behaviour. Where the licence holder employs any person to ensure the safety and security of the premises and its customers, such persons must be licensed by the Security Industry Authority.
10. The licence holder shall not permit persons to gather so as to breach The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (or similar Health Protection Regulations) or fail to comply with the

Government's Guidance "Staying alert and safe (social distancing)" or any subsequent Government social distancing guidance.

11. The licence holder shall not use or permit any public playing of music, reproduction or sound amplification apparatus or any musical instruments radio or television receiving sets in the area covered by this licence and must not provide such for persons within the licensed area from outside the licensed area.
12. The licence holder shall not make any excavations or indentations of any description whatsoever in the surface of the highway or place or fix equipment of any description in the surface of the highway.
13. The licence holder shall maintain the permitted area and the immediately adjacent area in a clean and tidy condition during the permitted hours. Litterbins or similar flame-retardant receptacles for litter and ash shall be provided within the licensed area and removed at the end of permitted hours.
14. Nothing herein contained shall be construed as the grant or purported grant by the council of any tenancy protected by the Landlord and Tenant Act 1954 or any statutory modification or re-enactment thereof for the time being in force save as for those set out in the Business and Planning Act 2020 or other relevant legislation.
15. If so requested in an emergency by an authorised officer of the council, Police officer, Fire Brigade officer, paramedic, statutory undertaker, or communications network operator, the licence holder shall remove the furniture permitted under this licence from the highway.
16. If so requested by the highway authority where use of the area is required for maintenance or other purpose the licence holder shall remove the furniture permitted under this licence from the highway.
17. If so requested by the issuing authority the licence holder shall remove the furniture permitted under this licence from the highway or refrain from putting it the furniture on the highway on any particular given dates. Such notice shall be given to the licence holder in writing a minimum of 7 calendar days in advance.
18. The council may remove and store or dispose of:

- (i) any structures placed by the licence holder on the highway but not authorised by this licence, and
 - (ii) any structures authorised by this licence but placed by the licence holder on the highway outside the permitted hours or outside the permitted area and the council shall not be responsible to the licence holder for the safe-keeping thereof.
19. The licence holder shall observe and comply with any reasonable directions in relation to the use of the highway given from time to time by or on behalf of the council.
 20. The licence holder shall provide suitable barriers around the licensed area but only such as shall have been firstly approved by the council unless previously determined by the council that they are not needed.
 21. The licence holder shall comply with the “no-obstruction condition” set out in section 5(5) of the Business and Planning Act 2020 and all conditions made under section 5(6) of the Business and Planning Act 2020.
 22. The licence holder shall indemnify and keep indemnified the council against all actions proceeding claims demand and liability in respect of personal injury, damage to goods or property, or any loss arising out of the grant of this licence and the licence holder’s use of the land and for this purpose must take out at the licence holder’s expense a policy of insurance approved by the council in the sum of at least £5 million in respect of any one event.
 23. No disposable sachets or disposable containers shall be provided within the licensed area.
 24. All menus shall be enclosed in weighted folders/holders.
 25. If paper serviettes are to be provided they must be enclosed within a dispenser and be specifically identifiable to the premises.
 26. No leaflets or other forms of advertisement or other printed material shall be left or distributed within the licensed area.