

East Herts Council Pavement Licence Policy

Version: 8th July 2024

Contents

1. Scope of the Pavement Licence Policy	2
2. Who is eligible for a pavement licence	3
3. What furniture is allowed to be placed on the highway under a pavement licence? .	4
4. What furniture is not allowed?	5
5. Application process	6
6. Consultation	8
7. Determining applications	9
8. Enforcement and revocation.....	12
9. When can furniture be removed?	14
10. Departure from the Policy	15
11. Renewal and variation.....	16
12. Right of appeal.....	17
13. Transfer or surrender of a pavement licence	18
Schedule 1: Pavement Licence Standard Conditions.....	19

1. Scope of the Pavement Licence Policy

- 1.1 This Pavement Licence Policy (herein 'the Policy) sets out East Herts Council's approach to considering applications for pavement licences. This follows enactment of the part of the Levelling Up and Regeneration Act 2023 which allows the temporary measures put in place during the pandemic under the Business and Planning Act 2020 to be made permanent from 31st March 2024, that is, that district councils rather than county councils in two tier areas are the licensing authority for pavement licences.
- 1.2 This policy aims to provide a clear and streamline route for eligible businesses such as cafés, restaurants, coffee shops and the like to apply for licences to place furniture on the highway.
- 1.3 Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited.
- 1.4 A pavement licence permits the holder 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 holder's premises. See section 2 for details of who is eligible for a pavement licence.
- 1.5 It should be noted a pavement licences does not grant the right to permanently close a road. To do so, a pedestrian planning order made under section 249(2) or 249(2A) of the Town and Country Planning Act 1990, extinguishing the right to use vehicles on the highway, is required.
- 1.6 All references to pavement licences or licences hereafter shall refer to licences granted under this Policy. Any part of the highway on which furniture is permitted to be placed by a pavement licence is hereafter referred to as a pavement.
- 1.7 The Policy shall be in force from 8th July 2024.

2. Who is eligible for a pavement licence

- 2.1 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 including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.
- 2.2 Businesses that do not use their premises for the sale of food or drink, for example salons, are ineligible. Though they can apply for permission to place furniture on the pavement under the Highways Act 1980.
- 2.3 Applications for non-food premises will not be granted a pavement licence.

3. What furniture is allowed to be placed on the highway under a pavement licence?

- 3.1 A licence permits the holder 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.
- 3.2 The furniture which may be placed on the pavement include:
- counters or stalls for selling or serving food or drink
 - tables, counters or shelves on which food or drink can be placed
 - chairs, benches or other forms of seating
 - umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.
- 3.3 This furniture is required to be removable and related to the serving, sale and consumption of food or drink. The council will be pragmatic when determining what is 'removable' but in principle this means it is not a permanent fixed structure and is able to be moved easily and stored away at night.

4. What furniture is not allowed?

- 4.1 Furniture that does not meet the criteria in paragraph 3.2, subject to paragraph 3.3, is not permitted by a pavement licence.
- 4.2 For avoidance of doubt, advertising boards are not included in the definition of furniture within the pavement licensing regime. As well as needing consent under the Highways Act 1980, advertising boards also require express advertising consent under the Town and Country Planning Regulations 2007.
- 4.3 Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

5. Application process

5.1 The council's online application form must be used to apply for a pavement licence; applications cannot be made in person or over the telephone.

5.2 The application form asks applicants to:

- specify the premises and the part of the relevant highway to which the application relates
- provide a location plan (showing both the area to be licensed and the premises relating to the application outlined in RED)
- provide a scale plan of the area, showing the location of all items to be placed in the licensed area
- specify the purpose (or purposes) for which the furniture will be used which must be for use by the licence holder to sell or serve food or drink and/or for use by other people for the consumption of food or drink supplied from, or in connection with, relevant use of the premises
- specify the days of the week on which and the hours between which it is proposed to have furniture on the highway
- describe the type of furniture to which the application relates, for example, tables, chairs and/or stalls
- specify the date on which the application is made
- contain or be accompanied by such evidence of public liability insurance, of at least £5 million, in respect of anything to be done pursuant to the licence
- a copy of your completed public notice – see paragraph 5.5 – and
- the fee

5.3 The fee applicable, the rates for which can be found on the council's website, must be paid at the time of the application. If an application is refused, the applicant is not entitled to a refund as the fee covers the work taken to determine the application.

- 5.4 Applicants should take into account the outside area for which a licence is being sought complies with the maximum capacity permitted under the premises' fire risk assessment and/or under any other risk assessments pertaining to the business, for example concerning infection control. The council to seek evidence of such compliance as part of the application and determination process.
- 5.5 There must be a separate application relating to each individual premises for which a pavement licence is sought.
- 5.6 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 14 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 14 consecutive days starting on the 2nd and ending on the 15th. The notice can then be removed on the 16th.
- 5.7 The 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 fourteen consecutive days.
- 5.8 A specimen public notice for applicants to use is available from the council's website: [Pavement Licence webpage](#)
- 5.9 In addition to the notice at the premises, the council is required to place a similar notice on East Herts Council's website. The council will include the plans supplied with the application to allow interested parties to fully understand what the application is seeking to permit. Current notices for pavement licence applications subject to consultation can be found on the council's website on the Pavement Licence page.

6. Consultation

6.1 The 14 day consultation is a public consultation and any person may submit representations during the consultation period.

6.2 The council shall directly consult the following parties on applications made under the Policy:

- Hertfordshire County Council acting as the highways authority
- 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
- any groups specifically convened to consider the economic recovery of town centres in East Herts if and when there is such a group covering the location of the premises to which the application relates.

6.3 Any person wishing to submit representations against an application must do so in writing during the statutory consultation period. Representations must be sent to Licensing Team, East Herts Council, Wallfields, Pegs Lane, Hertford SG13 8EQ or e-mailed to:

community.protection@eastherts.gov.uk

7. Determining applications

- 7.1 The council must determine any pavement licence application received within 14 calendar days of the consultation period ending.
- 7.2 If the council does not determine an application within this timeframe, the application is deemed to have been automatically granted for 24 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 assume that their application has been granted.
- 7.3 East Herts Council's Head of Housing and Health has been delegated the authority by Council to determine applications for pavement licences in line with the Policy. The Head of Housing and Health has authority under the council's Constitution to further delegate this authority. If such a delegation is made, this shall be formally recorded on the council's website.
- 7.4 All applications shall be determined under the terms of the Policy, including any appendices or attachments to the Policy.
- 7.5 The matters that will be considered when determining an application include:
- health and safety of the public and anyone working within the area for which a licence is requested
 - public amenity, that is, the impact of what has been applied for on comfort, convenience or enjoyment of the public
 - accessibility to the area for which the a licence is sort and the accessibility to any other areas that would be consequently impacted should the licence by granted
 - whether there is already permanent street furniture or structures that impact access to, from or around the area for which a licence is being sought
 - any other temporary measures that are in place that may be relevant
 - the maintenance of minimum footway widths.

- 7.6 When considering minimum footway widths, the council will seek to ensure 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, such as electrical cabinets, trees, cycle racks, bus stops and the like. The Policy has adopted this minimum width requirement so as to ensure free movement and access by pedestrians and prevent obstruction. The council reserves the right to vary this minimum width given, for example, the specific characteristics of certain locations or representations made during consultation. In making any decisions, the council will take into consideration the recommended highway widths as detailed in the government's 'Inclusive Mobility'¹ guidance, particularly section 3.
- 7.7 Safety of pavement users is paramount, thus applications that would result in (a) pedestrians being forced or encouraged to cross a footway in a dangerous manner and/or (b) a risk to disabled people on the highway are unlikely to be granted.
- 7.8 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 any nearby 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.
- 7.9 The legislation allows the council to attach such bespoke conditions to licences as it considers reasonable to address or mitigate any concerns raised in representations against the application. The council therefore may impose such conditions that may include, but are not limited to, granting the licence for a reduced area, for reduced hours, for a reduced number of tables, chairs and/or other furniture or for a limited duration.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/3695/inclusive-mobility.pdf

- 7.10 Furniture must be capable of being removed from the highway once the terminal hour of the licence has been reached, therefore, the legislation does not give the council the power to grant permission for any furniture that is fixed to the highway.
- 7.11 It shall be implicit in any licence granted that the holder accepts that any damage to the highway by the licence holder in pursuance of the licence must be repaired by the licence holder at their own expense.
- 7.12 All licences will be granted subject to the statutory 'no obstruction' condition referred to in sections 5(4) and 3(6) of the Business and Planning Act 2020 Act and 'smoke-free' seating condition and any conditions specified by the Secretary of State in Regulations (although to date there has not been a need to do so).
- 7.13 All licences that are granted, whether or not be specific conditions, will be subject to the council's standard pavement licence conditions which are attached at Schedule 1 of this Policy.
- 7.14 Should a condition published by the Secretary of State conflict with a condition attached by the council, regardless of whether it is a standard condition or bespoke condition, the more restrictive condition shall take precedence.
- 7.15 In summary, the council's options when determining an application are:
- grant the licence as requested in the application
 - grant some but not all elements of the application, making clear which elements are not granted and the reasons for this
 - grant a licence with all or some of the element requested while at the same time imposing conditions, making clear what those conditions are and the reasons for them or
 - refuse the application.

8. Enforcement and revocation

8.1 The council takes the safe implementation of any pavement licences it issues very seriously. If a condition imposed on a licence (either by the council or nationally) is breached, the council will be able to issue a notice requiring the breach to be remedied. If the licence holder fails to do so, the council has discretion to:

- amend the licence, with the consent of the licence holder
- revoke the licence or
- itself take steps itself to remedy the breach which can include taking action to recover any costs of so doing.

8.2 The council has the power to revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

- if the council considers that the highway is no longer suitable for the use as granted by or deemed to be granted by the licence. For example, the licenced area (or road adjacent) is no longer to be pedestrianised or
- if there is evidence that:
 - there are risks to public health or safety, for example where it comes to light that there are significant security risks which have not been sufficiently considered, or addressed in a proportionate fashion, this should be reassessed as necessary, particularly in the event of changes to the terrorism threat level
 - this use of the highway is causing an unacceptable obstruction, breaching the no-obstruction condition, for example, the arrangement of street furniture prevents disabled people, older people or wheelchair users to pass along the highway or have normal access to the premises alongside the highway or
 - the use of the licence is causing, or risks causing, anti-social behaviour or public nuisance, for example, the use is increasing the amount of noise generated late at night and litter that is not being cleaned up.

- 8.3 The council has the power to revoke a licence in the following circumstances:
- for a breach of condition, whether a remediation notice has been issued or not, or
 - it comes to light that the applicant provided false or misleading statements in their application, for example the applicant is operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed, or
 - the applicant did not comply with the requirement to affix the notice to notify the public of the application or secure that the notice remains in place until the end of the public consultation period.
- 8.4 East Herts Council's Head of Housing and Health has been delegated the authority by Council to revoke pavement licences in line with the Policy. The Head of Housing and Health has authority under the council's Constitution to further delegate this authority. If such a delegation is made, this shall be formally recorded on the council's website.
- 8.5 If the council revokes a licence, it will give its reasons, making clear where its powers have been used.
- 8.6 If a licence is revoked, the holder shall have no right a refund of the original application fee paid.
- 8.6 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 three (3) months has elapsed from the date of revocation.

9. When can furniture be removed?

- 9.1 In cases where furniture which would normally be permitted by a pavement licence has been placed on a relevant highway without the required licence, the council has the power to give notice requiring the business to remove the furniture before a date specified and to refrain from putting furniture on the highway unless they gain a licence.
- 9.2 If furniture continues to be placed on the highway, in violation of the notice, the council has the power to remove and store the furniture, recover the costs from the business for the removal and storage of the furniture and refuse to return the furniture until those costs have been paid. If within three (3) months of the notice, the costs are not paid, the council has the power to dispose of the furniture by sale or other means and retain the proceeds.

10. Departure from the Policy

- 10.1 Any policy is the starting point for decisions, and while the council shall have regard to this Policy at all times when determining pavement licence application and/or the case for revocation of a licence, the council's position is that all decisions are taken on the merit of the individual case. Where, for example, 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. That said, applicants should be aware that departures from this Policy will usually be restricted to exceptional circumstances and cases where, even so, 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 Mobility'² guidance, can be maintained.
- 10.2 Where the council makes a decision that departs from this Policy, clear and compelling reasons for doing so will be given. The Head of Housing and Health as the officer authority with the delegated authority to determine applications and revocation, or another officer so delegated to do so, may authorise a departure from the Policy in accordance with this section if they consider it appropriate in the specific circumstances.

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/3695/inclusive-mobility.pdf

11. Renewal and variation

- 11.1 There are no processes for renewing or varying a pavement licence set out in legislation or guidance, therefore, should a licence holder wish to renew a licence when it expires or vary the terms of the licence while it is in force, the application process outlined in this Policy shall apply in full, including submitting an application form, the required accompanying documents and payment of the application fee
- 11.2 To enable continuous use of the pavement following the expiration of a licence, any application to renew a licence must be submitted within sufficient time of it expiring, with the applicant paying due regard to the timetable of applications laid out in sections 5, 6 and 7 of this Policy. For avoidance of doubt, 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.
- 11.3 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 shall apply.

12. Right of appeal

- 12.1 There is no statutory right of appeal.
- 12.2 If a pavement licence application is refused, including at renewal or in response to an application to vary an existing licence, the council will advise the applicant of the grounds for this refusal giving the application the opportunity to address them and submit a revised application for which, ordinarily, a new fee shall be required unless the council applies its absolute discretion in waiving this. To minimise the risk of refusal, the council shall advise applicants to engage with any consultees and neighbours, whether these are residents or other businesses, at the earliest stage possible of the application process.
- 12.3 If a pavement licence is revoked, as detailed in section 8 of this Policy, the council will make its reasons for the revocation clear and the business shall then be able to apply for a new licence if ownership or management has changed or a period of three (3) months has elapsed from the date of revocation. To minimise the risk of refusal, the council shall advise (re)applicants to pay due attention to addressing the reasons for revocation and engage with any consultees and neighbours, whether these are residents or other businesses, at the earliest stage possible of the (re)application process.

13. Transfer or surrender of a pavement licence

- 13.1 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.
- 13.2 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. If a licence holder surrenders a licence for whatever reason they shall not be entitled to any refund of the original application fee.

Schedule 1: 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 [2 years or a shorter period specified by the council] from date of grant .
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 benefitting from the licence 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 in any way that is in contravention of any legislation or regulations in force temporarily or permanently with the purpose of minimising the spread of disease and/or safety related to terrorism or crime.

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 within 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 council the licence holder shall remove the furniture permitted under this licence from the highway or refrain from putting 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, store, dispose of and charge to the licence holder any associated charges for:

- (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 it has previously been determined by the council that they are not needed.
 21. The licence holder shall comply with the 'no-obstruction' condition and 'smoke-free seating' condition set out in the Business and Planning Act 2020 and all conditions specified by the Secretary of State under the Business and Planning Act 2020.
 22. The licence holder shall comply with the
 23. 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.
 24. No disposable sachets or disposable containers shall be provided within the licensed area.
 25. All menus shall be enclosed in weighted folders/holders.
 26. If paper serviettes are to be provided they must be enclosed within a dispenser and be specifically identifiable to the premises.
 27. No leaflets or other forms of advertisement or other printed material shall be left or distributed within the licensed area.