

Pavement Licence Policy July 2024

1. General

This policy sets out Welwyn Hatfield Council's approach to considering applications for pavement licences under The Levelling Up and Regeneration Act 2023 which makes permanent the provisions set out in the Business & Planning Act 2020.

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

The Licensing Team Leader has delegated authority to determine applications for pavement licences and revocations in line with this policy.

2. Departure from Policy

All policies are 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. However, applicants should be aware that departures from policy will usually be restricted to exceptional circumstances, and where the council assess 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 section 3 (2) of the 'inclusive mobility guidance'.¹

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 Service may authorise a departure from the Policy in accordance with this section if they consider it appropriate in the specific circumstances.

3. Application Process

It is only possible under the legislation to grant pavement licences to a business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises). 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.

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.

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.

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;

This furniture is required to be removable and related to the serving, sale and consumption of food or drink. When determining what is 'removable' we would expect the structure not to be permanently fixed, and able to be moved easily, and stored away at night.

4. Furniture not permitted

Furniture that is not removable and used in connection with the outdoor selling or consumption of food or drink are not permitted by a pavement licence.

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.

Applicants that wish to place non-removable furniture onto the highway must apply for permission under the Highways Act 1980.

5. Exclusions

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980. Generally, these are footways restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

A pavement licence 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.

6. What information does an applicant need to provide

All applications must be made in writing. We have designed an application form for applicants to complete and submit. Applications can be submitted electronically, and a register of all applications will be available on our website www.welhat.gov.uk. The local authority will need to consider a number of factors, when determining whether to approve the application. These include whether additional conditions might be needed to make it possible to approve an application which would otherwise be unacceptable.

An application must:

specify the premises and, the part of the relevant highway to which the application relates;

- 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. In both cases the food or drink must be 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 in respect of anything to be done pursuant to the licence to the sum of at least £5 million; and
- contain other information on how national and local conditions have been satisfied.
- a scale plan showing the location of the premises shown by a red line, so the application site can be clearly identified on an OS Base Map;
- a scale plan clearly showing the proposed area to be covered by the pavement licence in relation to the highway, with measurements clearly showing the location of all items to be placed in the licensed area;
- the proposed duration of the licence (normally 2 years unless there are good reasons for granting a licence for a shorter period.);
- evidence of the right to occupy the premises e.g. the lease;
- contact details of the applicant;
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- evidence that the applicant has met the requirement to give notice of the application (for example a photograph of your completed public notice);
- (if applicable) reference of existing pavement licence currently under consideration by the local authority
- any other evidence that shows how the furniture to be introduced is in accordance with national guidance regarding accessibility (such as use of good colour contrast, suitable physical barriers around chairs and tables and or other appropriate measures); and
- any other evidence needed to demonstrate how any local and national conditions will be satisfied, including the 'no-obstruction' national condition.

If an application is refused the applicant is not entitled to a refund.

Applicants may only submit one application at a time for processing for each premises.

Applicants are required to display a notice on their premises which is easily visible and legible advertising their application. The notice should be put on display on the day that an application is submitted and must be kept on display for 14 consecutive calendar days. When counting 'days' public holidays are not included.. We have designed a specimen public notice for applicants to use and this is available from our website: [pavement-licence-site-notice-template \(welhat.gov.uk\)](http://pavement-licence-site-notice-template(welhat.gov.uk))

Such a notice must be read easily by, members of the public from outside of the premises. The notice must be visible at all times e.g. not obstructed or hidden by shutters at the premises, not 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 14 consecutive days.

In addition to the notice at the premises we are required to place a similar notice on Welwyn Hatfield BC website, we will include the plans supplied with the application to allow interested parties to fully understand what the application is seeking to permit. Information on pavement licence applications in consultation can be found here: Pavement Licence Register.xlsx | Powered by Box

7. Consultation

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

Applicants are encouraged to engage with any services operated in the vicinity for vulnerable customers, for example, care home or disability organisations nearby where individuals may be at particular risk.

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

- Hertfordshire County Council (as highways authority) [statutory]
- Hertfordshire Constabulary (for security purposes)
- Welwyn Hatfield Council Environmental Health
- Welwyn Hatfield Council planning
- Welwyn Hatfield Council environmental services
- Welwyn Hatfield Council estates/ market team
- Welwyn Hatfield Council emergency planning
- Ward Members
- Fire
- Groups that represent businesses such as the BID

Any person wishing to submit representations against an application must do so in writing (or email) during the statutory consultation period. The representation must be signed.

8. Determining applications

Once the information is submitted to the local authority, the authority has 28 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application after the consultation.

The council must determine the application with 14 calendar days of the consultation period ending.

If the local authority does not determine the application within the 14-day determination period, the application will be deemed to have been granted subject to any local conditions published by the local authority before the application was submitted.

If the local authority determines the application before the end of the determination period, the local authority can:

- 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, and impose conditions, or
- refuse the application.

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

- public health and safety including security – for example, any reasonable crowd management measures needed as a result of a licence being granted;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour, and litter;
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings, and its users, taking account of:
- considerations under the no-obstruction condition including the cumulative impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people
- any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;

- whether there is permanent street furniture or fixed structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.
- 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 detailed in the B&PA 2020 section 3(8)

- unnecessary obstruction of the highway
- unnecessary obstruction of the premises or neighbouring premises
- preventing statutory undertakers or communicate 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 2 metres of the highway, measured from the boundary line of the proposed pavement licence area to the nearest kerb or item of street furniture (e.g. electrical cabinets, trees, cycle racks, bus stops, etc.), 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'¹, 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.

1

9. Right of appeal

There is no statutory route 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 consultees and neighbours, whether these are residents or other businesses, at an early stage. These conversations should help you to avoid objections.

10. Renewal & Variation

To obtain a licence for any period after 31 March 2024, a new application will need to be made even if the premises already had a licence until 31 March 2024.

An application will need to have been made after the commencement date for it to be treated as a renewal. Applicants can re-use application material from their original application, updating where relevant to ensure they still comply with local and national conditions.

Businesses who have had a licence under the previous regime and are seeking a new licence should be treated as a renewal application if it is made by the licence-holder, it is in respect of the same premises and it is on the same terms as the expired licence.

Otherwise, the normal application process shall apply in full, including submitting an application form, the required accompanying documents and payment of the application fee.

Any application to renew a licence must be submitted before the current licence expires and one month in advance to give the 28 day consultation and determining period.. 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.

11. Enforcement

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

- (1) on the first breach of a licence condition/term issue a warning notice clearly explaining the steps that must be taken to remedy the breach and the time scale for compliance. Failure to comply with the warning notice will lead to the licence being revoked;
- (2) on the second breach of a licence condition/term within eight weeks of a previous warning notice issue a second warning notice clearly explaining the

steps that must be taken to remedy the breach and the time scale for compliance. Failure to comply with the second warning notice will lead to the licence being revoked. This will be the final warning notice that will be issued in relation to that licence;

- (3) on a third breach of condition during the life of the licence the licence will be revoked.

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. The council can also amend the licence with the consent of 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 or amend it with the consent of the licence holder in the following circumstances.

1. If it 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.

2. 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 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 is not being cleaned up.

The local authority may revoke a licence in the following circumstances:

1. For a breach of condition, (whether a remediation notice has been issued or not) or

2. It comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or

3. 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.

Licence holders will be informed of the reasons for any revocation.

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 action taken under this section, including the service of warning notices shall be taken in accordance with the council's Enforcement Policy.

Any licence that is being considered for revocation shall be referred to Licensing Team Leader for determination.

12. 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.