

Harlow District Council

Pavement Licence Procedure

Document Control		
Licensing Committee	Version	Amendments
05/09/2024	2	Levelling-up and Regeneration Act 2023 – adopt pavement licensing regime and to set fees and licence length.
22/07/2020	1	Temporary provisions for pavement licences from 22/07/2020 to 30/09/2024

CONTENTS PAGE, PAGE NUMBERS TO BE SET AS APPROPRIATE

Contents

Section	Title	Page
1	Introduction	3
2	Scope	3
3	Application and Determination of Pavement Licences	4
4	Conditions	9
5	Enforcement	9
6	Review Procedures	10
Appendix 1	Site Notice Template	11
Appendix 2	Standard Pavement Licence Conditions	12
Appendix 3	National Conditions	16
<u>Appendix 4</u>	<u>Delegation of Functions</u>	<u>n</u>

1. Introduction

The Covid-19 pandemic affected businesses across the economy causing many to cease trading for several months in 2020. In response to the pandemic the Government introduced a number of support packages to help businesses as restrictions were lifted. The introduction of a temporary “fast track” pavement licence was one such measure under the Business and Planning Act 2020. These temporary measures expired on 30 September 2024.

The Levelling-up and Regeneration Act 2023 made permanent the provisions set out in the Business and Planning Act 2020. To streamline the process to acquire a licence to place furniture on the street.

Pavement licences make a valuable contribution to the local culture and economy of an area. This Policy promotes a flexible approach, within the legal framework, in relation to applicants seeking to operate a pavement licence whilst ensuring that the activities do not cause nuisance or annoyance to other users of the highway. The scheme aims to ensure local businesses, local communities and visitors are not adversely affected by pavement licences. Uncontrolled and inconsiderately sited tables and chairs, barriers or other street furniture can be an obstruction or cause a nuisance to other users, including people with impaired vision or mobility difficulties.

Any licence applications for activities in England licensable under pavement licensing must be granted under the Business and Planning Act 2020 (as amended by section 229 of and schedule 22 to the Levelling Up and Regeneration Act). They should not be granted under the Highways Act 1980.

Applicants will still need to apply for permission to carry out activities not licensable under the Pavement Licensing regime, under the Highways Act 1980. Example of such activities include the placement of furniture that is not removeable, such as bolted to the ground or cannot be reasonably removed, or placement of furniture other than tables, chairs or stools on the highway.

The Council’s decisions will have regard to the views of our consultees, the history of the business shall also be considered, particularly in relation to noise or licensing related issues (including any relevant conditions already in place in relation to a premises licence), and the potential impact on local residents, other businesses and users of the local vicinity arising from any applications. Government guidance and any updates will also be considered.

~~There are now two ways in which a business operator may legally obtain permission to place tables and chairs on the highway:~~

~~1. Under the Highways Act 1980 any business wishing to utilise part of the pavement can apply to the Council to request a Pavement Permit. A pavement permit will only be issued to a business for use of the pavement adjacent to their premises for the following purpose:~~

- ~~• Use of furniture for the consumption of food and beverages, e.g. from cafes, public houses, licensed premises.~~

~~2. Under the Business and Planning Act 2020 any business can now apply to the Council for a Pavement Licence to put removable furniture (stall, counters, tables, chairs, umbrellas, barriers, heaters) on the highway adjacent to their premises for the following purposes:~~

- ~~• Use of the furniture for the licence holder to sell or serve food or drink supplied from, or in connection with relevant use of, the premises; and~~
- ~~• Use of the furniture by other persons for the purpose of consuming food or drink supplied from, or in connection with relevant use of, the premises.~~

~~This guidance applies to any business wishing to apply for a Pavement Licence. A Pavement Permit can still be applied for/renewed and the associated guidance and applications forms for a Pavement Permit can be found on the Councils website at <https://www.harlow.gov.uk/business/licensing/other-licences/tables-and-chairs-licence>~~

~~In July 2020, the Business and Planning Act 2020 was enacted by the government as a direct response to the Covid-19 pandemic and enables the Council to issue a Pavement Licence, which follows a more streamlined process aimed at assisting business, especially during this summer period.~~

~~Since 19 July 2021, social distancing guidance no longer applies. This means that local authorities and businesses do not need to implement social distancing and the public do not need to keep apart from people they don't live with. However local authorities and businesses may wish to consider that some people may make a personal choice and limit their close contact with others. Businesses still have a legal duty to manage risks to those affected by their business. The way to do this is to carry out a health and safety risk assessment and to take reasonable steps to mitigate the risks you identify.~~

~~Due to the approaching expiry date of any Pavement Licences issued. The Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2023 have provided businesses with the option to apply or renew their licence until 30 September 2024.~~

2. Scope

2.1 Definition of pavement licence

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes. Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.

2.2 Eligible Businesses

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 pavement 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.

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.

Appendix A

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 Eligible Locations

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. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

2.3 Type of furniture permitted

The furniture which may be used is:

- 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; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

2.4 Types of 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.

2.4 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

3. Application and Determination of Pavement Licences

3.1 Submission of the Application

An application for a Pavement Licence must be made to the Council using the online form. If it is not feasible for the applicant to complete this, then they should contact licensing@harlow.gov.uk or 01279 446655 to discuss options that may be appropriate.

Appendix A

~~An application for a Pavement Licence, whether a new application or to renew a current licence, must be made to the Council, and t~~

The following will be required to be submitted with the application:

- a completed Application Form
- the required fee ~~of £100~~, paid by credit or debit card (call Contact Harlow 01279 446655)
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the boundary of the premises and the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- ~~the proposed duration of the licence (for e.g. 3 months, 6 months, or a year);~~
- evidence of the right to occupy the premises (e.g. the lease);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.

Any business that applies for a pavement licence will also need to have regard to their own duties under the Equality Act 2010, such as their duty under section 29 of the Act not to discriminate in providing their service, and the duty to make reasonable adjustments.
~~The Council is encouraged to take a proportionate approach to application requirements for businesses seeking a new pavement licence where a licence has previously existed, documentation that is not subject to expiry and does not need updating may be accepted from a previous application.~~

Whilst officers making the determination on behalf of the Council will refer to this Procedure, they may deviate from the Procedure where there are justified reasons to do so and will state those reasons in the determination.

3.2 Fees

Appendix A

The fee for applying for a licence under the new process are set locally ~~but are capped at £100. The Council has determined that the fee for applications will be £100. The Council has determined that the fee for new applications will be £500, and £350 for a renewal.~~

3.3 Consultation

~~Once the application is submitted to Harlow Council's Licensing Team, the authority has 28 days from the day after the application is made (excluding public holidays) to consult and determine the application. This consists of 14 calendar days for public consultation, and then 14 calendar days to consider and determine the application.~~

~~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.~~

~~The 7-day consultation period begins the day after a full and complete application is made, and this includes the fee and all supplementary documentation, including evidence of the Site Notice of Pavement Licence displayed correctly. If there are any errors or omissions in your application, a licensing officer will contact you for further information.~~

The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:

- Harlow District Council Environmental Health Service (including Environmental Control and Food and Safety Teams)
- Harlow District Council Estate Management
- Harlow District Council Planning
- Harlow District Council Town Centre Management
- Essex Fire & Rescue Service
- Essex Police (Licensing)
- Community Safety Team

Members of the public and others listed above can contact the Council to make representations. Members of the public are made aware of the application by way of the site notice.

The Council must take into account representations received during the public consultation period and consider these when determining the application.

3.4 Site Notice

On the day an application is made, the applicant is required to fix a notice to the premises, so it is easily visible, and can be read easily by, members of the public. They must ensure the notice remains in place for the duration of the public consultation period which is the period of 14 days beginning with the day after the day the application is submitted to the authority. When counting 'days' public holidays are not included.

Evidence of the site notice requirement must be supplied to the Council.

The Site Notice must:

- state that the application has been made and the date on which it was made
- state the statutory provisions under which the application is made
- state the name and address of the business
- describe the proposed use of furniture
- indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end; and
- State the Council's website where the application and any accompanying material can be viewed during the consultation period.

A template site notice is available for use on the Council's Pavement Licence webpage and shown in Appendix 1 to this Procedure.

~~On successful submission of your online application, you will receive an acknowledgement email with a Site Notice of Pavement Licence. You are required to print out and fix this Notice to the premises, in a prominent position so that it is readily visible to and can be read by members of the public who are not on the premises.~~

~~This will be pre-filled based on the information in your application. You are required, on the same day, to send, via email to Licensing@harlow.gov.uk, photographic confirmation clearly indicating the details of the notice and its fixed position on the premises.~~

~~This Notice must stay in place for the full 7-day public consultation period. An example of the Site Notice template (without premises details) is attached at Appendix 1. The consultation process will begin once we have received the email with the photograph of the displayed notice. The consultation process will be carried out by electronic and digital means only and the details will be published on the website at www.harlow.gov.uk/tables-chairs-licence~~

3.5 Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – for example, ~~ensuring that uses conform with latest guidance on social distancing and~~ any reasonable crowd management measures needed as a result of a licence being granted ~~and businesses reopening~~;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating crime, anti-social behaviour and/or litter; and
- 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:
 - 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;
 - considerations under the no-obstruction condition including the impact of multiple pavement licences in close proximity, in particular considering the needs of disabled people.
 - whether there are other permanent street furniture or structures in place on the footway that already reduce access;

Appendix A

- the impact on any neighbouring premises;
- the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility publication www.gov.uk/government/publications/inclusive-mobility and
- other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority and so take any issues around noise, and nuisance into consideration as part of the proposal.

Businesses have a legal duty to manage risks to those affected by their business. A business should incorporate the pavement licence area in their health and safety risk assessment and take reasonable steps to mitigate risks identified.

3.6 Determination

Once the application is submitted and the Site Notice is confirmed as attached to the premises, the Council has 1428 days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 714 calendar days for public consultation, and then 714 calendar days to consider and determine the application after the consultation.

~~Where no objections are received, the Harlow Council Senior Licensing Officer or Principal Licensing Officer will determine the application.~~

~~Where one or more objections are received, determination will be made by the Assistant Director Environment, in consultation the Chair or Vice Chair of the Licensing Committee.~~

If the Council determines the application before the end of the determination period, it 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.

If the local authority does not determine the application within the 2814-day period, the application will be deemed to have been granted and subject to the standard pavement licence conditions, as published on the Council's website will apply. Tacit consent therefore applies.

3.7 Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

Applications will be granted unless we determine that there are sufficient reasons to refuse the licence. Reasons for refusal will be explained to you in writing.

In considering whether a pavement licence should be issued, the Council must take into account the needs of disabled people and the recommended distances required for access by disabled people as set out in guidance issued by the Secretary of State.

Appendix A

Outdoor smoking on the pavement is not prohibited but businesses must make reasonable provision for smoke-free seating in accordance with the national smoke free seating condition. This may include:

- Clear 'no smoking' signage displayed in designated areas.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where a smoke-free seating is identified.
- Licence holders should aim for a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

On approving the application, the Council will issue a Pavement Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

Copies of the Council's standard conditions, which will be attached to all Pavement Licences, are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement licence operating between 09:00 and 21:00.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate circumstances.

When considering toilet provision, generally, existing facilities provided as part of the hospitality business will be acceptable, for use by customers eating and drinking both inside and outside the premises. Where a pavement licence is being used to sell and consume food or drink on the premises for the first time, and no existing toilet facilities are provided, arrangements may be put in place to use alternative facilities or, in certain circumstances, where the pavement area is limited, a notice informing customers that no toilet facilities are provided will be allowed.

Pavement licences will be granted for a 2-year period. However, the Council will exercise its discretion to grant a licence for a shorter period, where for example there are proposals to change the pavement layout.

Alcohol

The grant of a pavement licence only permits the placing of furniture on the highway. A pavement licence does not negate the need to obtain approvals under other regulatory frameworks, such as the need for a licence to sell alcohol, and the need to comply with registration requirements for food businesses.

Until 31 March 2025, temporary amendments to the Licensing Act 2003, under the Business and Planning Act 2020, allow the sale of alcohol by eligible holders of an on-sale licence for consumption off the premises without needing to apply for a variation of their licence. These temporary amendments apply if the premises had a licence that permitted sales of alcohol only for consumption on the premises on 22 July 2020, and the premises still retain that licence. It will remain legally independent and separate from the pavement licences process.

~~Premises that wish to expand outdoors, with customers consuming alcohol on the highway will need both a premises licence to sell alcohol and a pavement licence. Alcohol licences are specifically for the sale of alcohol at the premises for consumption either on or off the~~

~~premises. Temporary modifications to the Licensing Act 2003, provide an automatic extension to the terms of most premises which only permit the sale of alcohol for consumption off the premises. Because the new permission is automatic, an application for an off-sales alcohol licence does not need to be made, if the premises already has an on-sales alcohol licence and has not had a disqualifying event in the last three years.~~

The pavement licence does not override any previous decision under the Licensing Act 2003, that imposed a licensing condition prohibiting the sale of alcohol for consumption on the pavement area.

3.8 Licence Duration

This authority shall grant a Pavement Licence for the maximum permitted time of two years. Where an application has good reasons to grant for a shorter period it shall do so, such as plans for future changes in use of road space, all licences are the same fee.

A licence is deemed granted if the authority does not make a decision before the end of the determination period, in these circumstances the licence shall be valid for 2 years and subject to standard local conditions and national conditions.

~~3.8 — Licence Duration~~

~~If the Council determines an application before the end of the determination period (which is 7 days, beginning with the first day after the public consultation period), it may specify the duration of the licence, subject to a minimum 3 months.~~

~~The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications until 30 September 2024.~~

~~If a licence is ‘deemed’ granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year.~~

~~A licence granted or deemed to be granted will not be valid beyond 30 September 2024.~~

3.9 Refusal of Applications

If the site is deemed unsuitable for a ~~Table and Chairs Licence~~ (Pavement licence), or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

Whilst ~~T~~there is no statutory appeal process against a decision to refuse an application, in the interest of fairness and transparency Harlow Council will have an internal review process. Where an applicant does not agree with the Licensing Authority’s decision they can appeal in writing within 14-days of receiving the notice. An appeal will be heard and determined by the Regulatory Sub-Committee.

4. Conditions

The Council’s standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis. As well as the Council’s conditions there may be site specific conditions that are set by Essex County Council Highways department. ~~These are non-negotiable.~~

Appendix A

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

Appendix 3 lists the national conditions for 'no obstruction' and 'smoke free seating.'

~~However, this is not the case for the statutory 'no-obstruction' condition and the 'smoke-free seating' condition. These apply only to licences granted under the Business and Planning Act 2020. The National 'no-obstruction' conditions and smoke-free seating condition are explained in more detail in Appendix 3.~~

5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a Consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, and applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied, ~~and the authority can take action to cover any costs. If the licence holder fails to do so, the Council may amend the licence, with the consent of the licence holder, revoke the licence or take steps to remedy the breach and can take action to recover any costs of doing so.~~

The authority may revoke a licence, or amend it with the consent of the licence holder, in the following circumstances:

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

~~1. Where:~~

~~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.

In cases where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence, local authorities can 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.

If furniture continues to be placed on the highway, in violation of the notice, the authority may 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 3 months of the notice, the costs are not paid, the authority can dispose of the furniture by sale or other means and retain the proceeds.

The Council will give reasons where these powers are used.

- ~~• **There are risks to public health or safety** – for example by placing tables and chairs too close together or to cause inadequate accessibility for other users of the public domain;~~
- ~~• **the highway is being obstructed** (other than by anything permitted by the licence);~~
- ~~• **there is 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;~~
- ~~• **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~~
- ~~• **the applicant did not comply with the requirement to affix the notice** to notify the public for the relevant period.~~

~~2. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.~~

~~6. Review Procedures~~

~~This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2024.~~

Appendix A

~~This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Table and Chairs Licence (Pavement Licence) generally, relevant social distancing measures or as a result of local considerations within the Harlow District.~~

NOTICE OF APPLICATION FOR A PAVEMENT LICENCE Business and Planning Act 2020

I/We *(name of applicant)*,

do hereby give notice that on *(date of application)* [I/we] ~~have~~ applied to Harlow District Council for a 'Pavement Licence' at:

(postal address of premises)

known as

(name premises known by)

The application is for:

(brief description of application (e.g outdoor seating to the front of the premises for serving of food and drink))

Any person wishing to make representations regarding this application may do so by writing, preferably by email, to:

licensing@harlow.gov.uk

Harlow District Council
Licensing Team
Civic Centre
The Water Gardens
Harlow Essex
CM20 1WG

by: *(last date for representations being the date **147** days after the date the application is submitted to the local authority (excluding public holidays))*

The application and information submitted with it can be viewed on the Council's website at: www.harlow.gov.uk/your-council/have-your-say/public-notice

Signed

Dated *(date the notice was ~~placed~~ **first displayed** which must be the same date as the date of application)*

Standard Pavement Licence Conditions

The Council reserve the right to revoke the licence failure to comply with the conditions set out below.

~~1. The licence holder must conform with latest Government guidance on social distancing and hygiene measures to ensure the licensed area is covid safe for staff and customers, as far as reasonably practical.~~

2. The licence holder(s) shall at all times comply with all statutes, statutory instruments, regulations and by-laws. Particular attention should be paid to the requirements of the Health and Safety at Work Act 1974, the Food Safety Act 1990, The Food Hygiene (England) Regulations 2013 and associated European Regulations, particularly, but not exclusively EC Reg 852/2004, The Smoke-free (Premises and Enforcement) Regulations 2006, and the Business and Planning Act 2020.

3. Permission to operate a pavement licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Harlow District Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.

4. Harlow District Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Café. This must indemnify Harlow District Council and Essex County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.

n. The Licensee shall make good, to the County Council and Harlow Council's satisfaction, any damage to the highway caused by the exercise of this consent and indemnify and keep indemnified both Council's from and against any claims, demands or proceedings in any way arising in regard thereto.

5. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.

6. Harlow District Council and/or Essex County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.

Appendix A

7. The licence holder is not to make or cause to be made any claim Harlow District Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
8. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions. The licensee shall not place furniture on the highway outside the permitted area of use.
n. Despite this consent, the authorised area shall always remain part of the public highway and users of the highway are still entitled to exercise their right of passage over them.
9. Unless separately agreed by the Licensing Department the method of marking the boundary of the licensed area shall be;
 - A fixed barrier system, that is suitably stable not to be easily blown or knocked over.
 - A colour that is suitable contrasting with the surrounding environment to ensure it can be easily seen.
n. —To ensure a safe footpath with a minimum width of 2 metres for pedestrians, or 2.5 metres in busier locations, which must be maintained at all times.
~~—Whatever method is agreed a 2 metre clear walkway must be maintained for —the use of pedestrians.~~
10. Emergency routes to the premises and adjacent buildings must not be obstructed by the Pavement Licence, which should not, in normal circumstances, extend beyond the width of the premises frontage. Neither the barriers, or tables and chairs must obstruct entrances into or out of the establishment.
11. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council. Patio heaters must not be used.
12. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
13. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised. The authorised area shall be supervised by competent staff or the Licensee at all times during the exercise of this consent who shall take all reasonable steps to ensure compliance with these conditions.

Appendix A

n. The permitted area shall be used solely for the purpose of consuming refreshments by persons seated at tables within the permitted area.

n. No charge shall be made by the Licensee for the use of the furniture.

14. The licence holder(s) shall not cause any nuisance or annoyance to any other user of the highway, or any adjacent land or premises. The licence holder is responsible for the behaviour and good order of their customers. ~~keeping good order including the control of all litter and rubbish within the boundary of the permitted area.~~

15. Otherwise than stated on the specific licence, the following time restrictions apply: a) Pavement furniture will not be put out on the licensable area before 9am on any day
(b) The licensable area must be cleared of furniture and customers by no later than 23:00.21:00.

16. The tables & chairs and other furniture shall be kept in a clean, safe and well maintained condition, to the satisfaction of the Council. It must be of a design and construction that it cannot easily be pushed or blown over by the wind, so as to cause obstruction

17. Where the consumption of alcohol is to take place ~~the~~ only plastic or toughed glasses and bottles are to be permitted within the facility. The Licensee shall not permit the removal of any drinking vessels from the permitted area.

18. The operation of the area must not interfere with highway drainage arrangements.

19. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.

20. Where tables and chairs are put on the licenced area for consumption of food and drink, reasonable provision must be made for seating, in a designated area, where no smoking is permitted. This may include:

- Clear 'smoking' and 'non- smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' areas.
- No ash trays or similar receptacles to be provided or permitted to be left on furniture where a smoke-free seating is identified.
- Licence holders should provide a minimum 2 metre distance between non-smoking and smoking areas, wherever possible.

The licence holder must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006

Appendix A

21. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians.
22. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 510 metres from the boundary of the Facility.
23. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation.
24. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.

n. Commercial waste from the licence holder's operations must not be disposed of in the litterbins situated on the highway for use by members of public provided by the Council. The Licensee shall comply with all requirements of any public health legislation for the time the licence is in force.

25. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by Harlow District Council or the Highway Authority.

~~26. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within licensed area.~~

~~27. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcoholic liquor within the Facility outside the hours in force for the premises itself.~~

n. No alcohol shall be consumed on the permitted area unless a licence authorising the sale of alcohol has been issued by the Council.

n. No amplified music or other regulated entertainment shall be provided in the licenced area unless authorised.

28. The licence must be displayed on the premises with a plan of the agreed layout under the pavement licence.
29. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever. The use of

Appendix A

the pavement licence must not compromise the licence conditions imposed under any other legislation.

30. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
31. Harlow District Council reserves the right to revoke this licence at any time if any ~~of the above~~ conditions are not fulfilled and maintained.
32. This licence shall not be assigned to any other person, firm or organisation.
33. The licence holder shall make available these general conditions to every person engaged in supplying food and drink to customers on the premises subject to this licence.

~~34. Failure to comply with these conditions may lead to revocation of the licence and or prosecution of the licence holder.~~

~~Note: Permission to place tables and chairs on the highway does not exempt the applicant from complying with any other legislation applying to the premises.~~

National Conditions

The 2020 Act sets out two conditions which apply to pavement licences which are granted or deemed to be granted these are: a no-obstruction condition and a smoke free seating condition. These apply only to licences granted under the Business and Planning Act 2020, ~~not existing licences permitted under Part 7A of the Highways Act 1980, or other relevant legislation.~~

How can the local authority and applicant consider the needs of disabled people when considering whether the requirements of the no-obstruction condition are met?

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 considering 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:

~~•Section 3.2 of the Governments guidance on 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,~~

~~Section 3.2 of Inclusive Mobility - gives advice on the needs of particular pavement users sets out a range of recommended widths which would be required, depending on the needs of particular pavement users. Section 4.2 of Inclusive Mobility sets out that footways and footpaths should be as wide as practicable, but under normal circumstances a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. Local authorities should take a proportionate approach if this is not feasible due to physical constraints. A minimum width of 1500mm could be regarded as the minimum acceptable distance between two obstacles under most circumstances, as this should enable a wheelchair user and a walker to pass each other.~~

•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

Appendix A

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; Advertising boards are not included in the definition of furniture within the pavement licensing regime, therefore, should not be used as a barrier;

~~•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;~~

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 or force pedestrians into the highway. The available route must be entirely clear for pedestrians to use and not be impeded with tables and chairs;

the cumulative impact of multiple pavement licences in close proximity to each other and if there is specific evidence that this may create a build-up furniture in a particular area and potentially cause obstruction on the footway for certain pavement users, such as disabled people;

•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.

Section 149 of the Equality Act 2010 places duties on local authorities, to have due regard to: the need to eliminate unlawful discrimination, advance equality of opportunity between people who share a protected characteristic and those who do not, and foster or encourage good relations between people who share a protected characteristic and those who don't.

What is reasonable provision for seating where smoking is not permitted?

The national smoke-free seating condition seeks to ensure customers have greater choice, so that both smokers and non-smokers can sit outside.

It is important that businesses can cater to their customers' preferences. The Business and Planning Act 2020 imposes a smoke-free seating condition in relation to licences where seating used for the purpose of consuming food or drink has been, (or is to be) placed on the relevant highway. The condition requires a licence-holder to make

Appendix A

reasonable provision for seating where smoking is not permitted. This means that where businesses provide for smokers, customers will also have the option of sitting in a non-smoking area. Ways of meeting this condition could include:

- Clear 'smoking' and 'non-smoking' areas, with 'no smoking' signage displayed in designated 'smoke-free' zones in accordance with Smoke-free (signs) regulations 2012.
- 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.

Further, business must continue to have regard to smoke-free legislation under The Health Act 2006, and the subsequent Smoke-free (Premises and Enforcement) Regulations 2006. <https://www.gov.uk/government/publications/covid-19-advice-for-smokers-and-vapers/covid-19-advice-for-smokers-and-vapers>

Business and Planning Act 2020

Pavement Licensing – Delegation of Functions

<u>Matter to be dealt with</u>	<u>Delegation</u>
<u>Determination of Pavement Procedure, includes setting of local conditions (section 5) and licence length (section 4).</u>	<u>Licensing Committee</u>
<u>Determination of fees (section 2).</u>	<u>Licensing Committee</u>
<u>Grant of a Pavement Licence (with or without additional conditions) (section 3), and licence length.</u>	<u>Assistant Director Planning and Environment</u>
<u>Refusal of a Pavement Licence (section 3).</u>	<u>(1) Assistant Director Planning and Environment</u> <u>(2) Regulatory Sub-Committee - review procedure to appeal decision.</u>
<u>Service of Notice 6(1)(a) or 6(3) Revocation of a Pavement Licence.</u>	<u>Assistant Director Planning and Environment</u>
<u>Service of Remediation Notice 6(1)(b) for breach of any licence condition, to require the taking of steps to remedy the breach</u>	<u>Assistant Director Planning and Environment</u>

Appendix A

<p><u>Section 6(2) Where authority takes steps to remedy breach of conditions itself after failure by the licence-holder to comply, to recover costs of doing so from the licence-holder.</u></p>	<p><u>Assistant Director Planning and Environment</u></p>
<p><u>Section 6(4) Amend the licence, with consent of the licence holder, if;</u></p> <p><u>(a) the condition in section 6(3)(a) or (b) is met; or</u></p> <p><u>(b) a no-obstruction condition of the licence is not being complied with</u></p>	<p><u>Assistant Director Planning and Environment</u></p>
<p><u>Unauthorised use of the highway</u></p>	
<p><u>Service of Notice 7A(3) requiring person to remove furniture before a specified date and refrain from putting furniture on the highway unless authorised under a Pavement Licence, permission under Highways Act 1980 or permission under any other enactment.</u></p>	<p><u>Assistant Director Planning and Environment</u></p>
<p><u>Section 7A(4) to make arrangements for removal and storage of furniture in contravention of notice under section 7A(3), to require person to pay authority's reasonable costs to remove and store the furniture, and refuse to return the furniture until those reasonable costs are paid.</u></p>	<p><u>Assistant Director Planning and Environment</u></p>
<p><u>Section 7A(5) For unpaid reasonable costs or furniture is not recovered. To dispose of furniture by sale, or other means and retain any proceeds of sale.</u></p>	<p><u>Assistant Director Planning and Environment</u></p>

Appendix A

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