

## **Pavement Licence Policy – Covid-19**

This policy sets out Watford Borough Council's approach to considering applications for pavement licences under the Business & Planning Act 2020. These measures have been adopted as part of the council's response to the Covid-19 pandemic and the passing of the Business & Planning Act.

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

The policy shall be in force from [start date] until 30 September 2021, or such a later date as substituted by the Secretary of State under regulations. The power for the Secretary of State to extend the provisions of the Business & Planning Act 2020 is contained within section 10, part 1, of the Act.

Officers in the Environmental Health (Business) Team have delegated authority to determine applications for licences under this policy. Appeals against any decisions by officers will be determined by either the Group Head of Community and Environmental Services or the Head of Community Protection.

### **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 part 3 of Inclusive Mobility, can be maintained.

Where it is necessary for the council to depart from this Policy, clear and compelling reasons for doing so must be given. The Group Head of Community and Environmental Services or the Head of Community Protection may authorise a departure from the Policy in accordance with this section if they consider it appropriate in the specific circumstances.

### **Application Process**

It is only possible under the legislation to grant pavement licences to public houses, wine bars and other similar drinking establishments, or for any other premises which involves the sale of food or drink for consumption on or off the premises to place removable furniture on a public highway adjacent to their premises. Applications for non-food premises will not be granted a pavement licence.

The legislation defines 'furniture' as being:

- (a) counters or stalls for selling or serving food or drink,
- (b) tables, counters or shelves on which food or drink can be placed,
- (c) chairs, benches or other forms of seating, and

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

All applications shall be made in writing. We have designed an application form for applicants to complete and submit. Applications are encouraged to be submitted electronically, and we have a dedicated online application form for this purpose.

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

- proof that the applicant holds public liability insurance to a minimum cover value of £5 million
- a scale drawing, drawn to a scale identified on the drawing, showing the area that the applicant wishes to licence. If the area is not immediately outside of the applicant's premises, a site plan indicating the relevant premises and the proposed area will need to be included as well.
- details of all furniture to be permitted under the licence
- the correct fee

The application fee is £100. If an application is refused the applicant is not entitled to a refund.

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

Applicants are required to display a notice on their premises advertising their application. The notice must be put on display on the day that an application is submitted to the council. We have designed a specimen public notice for applicants to use, and this is available from our website at [www.watford.gov.uk/pavement](http://www.watford.gov.uk/pavement).

The notice must be kept on display for at 7 consecutive calendar days, beginning the day after the application was submitted to the licensing authority.

Such a notice must be readily visible to, and easily read 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 up to 7 days.

The council encourages pavement licences for each individual premises to make use of the maximum permitted space to allow for uniform distribution of pavement licences and pavement licence areas along highways. A uniform pavement licence boundary line would be of assistance to pedestrians using the highway, particularly those who are blind, visually impaired and other disabled people.

## **Consultation**

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

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

- Hertfordshire County Council (as highways authority)
- Hertfordshire Constabulary
- Watford Borough Council Environmental Health
- Any neighbouring properties immediately adjoining the applicant's premises, where such properties are accessed from the highway which is subject to the application

Any person wishing to submit representations against an application must do so in writing.

## Determining applications

The council must determine the application with 7 calendar days of the consultation period ending.

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

The council's options are to:

- grant the pavement licence in full, as per the application
- grant the pavement licence in part and/or subject to such conditions as the council consider reasonable, or
- refuse the pavement licence

Unless otherwise specified in the application, licences will be granted to be in force until 30 September 2021.

Any licence granted under deemed consent shall be in force for a period of no longer than 12 months from the date on which the application was deemed to have been granted or the date that the provisions in place under the Business and Planning Act 2020 expire if earlier than 12 months from the date of grant.

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

- unnecessary obstruction of the highway
- unnecessary obstruction of the premises or neighbouring premises
- 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 2.5 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](#)', 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 any concerns raised in representations against the application, in order to address or mitigate those concerns. Such conditions may include, but are not limited to, granting the licence for a reduced area, for a 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.

## **Appeals**

Any applicant or objector who wishes to appeal a decision may do so by submitting their comments and grounds for appeal in writing to the council. Any appeal must be in writing either addressed to the Town Hall or submitted by email to [licensing@watford.gov.uk](mailto:licensing@watford.gov.uk).

Any comments must be submitted within 21 days of being notified of the decision.

The request will be considered by the Group Head of Community and Environmental Services or the Head of Community Protection.

## **Renewal & Variation**

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

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

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

## **Enforcement**

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

- serve notice on the licence holder requiring the matter to be addressed in such a time period as stated on the notice, or
- revoke the licence

Where a notice is served, if the licence holder fails to comply with the notice, the council may take steps itself to remedy the issue and may seek to recover the costs of doing so from the licence holder. Alternatively, the council may take steps to revoke the licence.

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

- some or all of the part of the highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted
- the operation of the licence poses a risk to public health and safety
- the operation of the licence is causing, or is creating an unacceptable risk of causing, anti-social behaviour and/or public nuisance
- the operation of the licence is causing an unacceptable obstruction to the highway
- anything material stated by the licence in their application has been proven to be false or misleading, or
- the licence holder did not comply with their duty to display notice of the application for 7 consecutive calendar days

When considering if the operation of the licence is a risk to public health or 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 notices, shall be taken in accordance with the council's Compliance Policy.

Any licence that is being considered for revocation shall be referred to either the Group Head of Community & Environmental Services or the Head of Community Protection.

## **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 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 can only remain in the licensable area during the licensed hours of use plus 30 minutes before and after the licensed times to allow for set up and close down. Furniture must be capable of being removed from the highway once the terminal hour of the licence has been reached. The legislation does not allow permission to be granted for any furniture that is fixed to the highway.

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

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

## **Pavement Licence Standard Conditions**

1. A summary of this licence, as provided by the licensing authority, must be displayed on the premises where it can be seen from outside of the premises at all times that the premises are open to the public. Should the licence summary be lost or damaged, a replacement licence summary must be requested from the council as soon as possible.
2. This permission shall run until 30 September 2021.
3. This licence permits the holder to use the licensed area, as defined on the licence plan delineated in red attached to the licence summary, only for the activities and furniture permitted by this licence during the licensed days and times.
4. 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.
5. No furniture shall remain on the highway outside of the permitted hours under this licence or when the premises are closed to the public. The only exception to this is for thirty minutes prior to or after the permitted hours when set up or clearing of the area is occurring. The Public must not have access to the area during this time.
6. 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.
7. The licence holder shall not cause any unnecessary obstruction of the highway or danger to persons using it.
8. The licence holder shall not permit persons to cause a public nuisance or anti-social behaviour. Where the licence holder employs any person to ensure the safety and security of the premises and its customers, such persons must be licensed by the Security Industry Authority.
9. The licence holder shall not permit persons to gather so as to breach The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (or similar Health Protection Regulations) or fail to comply with the Government's Guidance "Staying alert and safe (social distancing)" or any subsequent Government's social distancing Guidance.
10. The licence holder shall not use or permit any public playing music reproduction or sound amplification apparatus or any musical instruments radio or television receiving sets whilst exercising privileges granted by this licence.
11. The Licence holder shall not make any excavations or indentations of any description whatsoever in the surface of the highway or place or fix equipment of any description in the surface of the highway.
12. The Licence holder shall maintain the licensed area in a clean and tidy condition during the permitted hours and shall provide litterbins or similar receptacles for the disposal of rubbish within the licensed area.

13. Nothing herein contained shall be construed as the grant or purported grant by the council or 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.
14. 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.
15. 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.
16. The council may remove and store or dispose of:
  - (i) Any structures placed by the Licence holder in the highway but not authorised by this Licence, and
  - (ii) Any structures authorised by this Licence but placed by the Licence holder in the highway outside the permitted hours or outside the permitted area and the Council shall not be responsible to the Licensee for the safe-keeping thereof.
17. 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.
18. The licence holder shall provide suitable barriers around the licensed area. The barriers must have been approved by the Council prior to use.
19. The licence holder shall comply with the “no-obstruction condition” set out in section 5(5) of the Business and Planning Act 2020 and all conditions made under section 5(6) of the Business and Planning Act 2020.

The following “no-obstruction condition” applies to this licence:

To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and 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, the licence is granted subject to those requirements.

To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.

20. The licensee 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 licensee's use of the land and for this purpose must take out at the licensee's expense a policy of insurance approved by the council in the sum of at least £5 million in respect of any one event.