

Highway Pavement Licences – Guidance Note

Introduction

Hertfordshire County Council as Highway Authority does allow businesses to place tables and chairs on the highway in accordance with the process set out on our website:

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/street-cafe-licence.aspx>

The granting of these café licences is under section 115E of the Highways Act 1980.

On 25th June 2020, the government proposed new temporary legislation under the Business and Planning Bill as introduced in the House of Commons on 25 June 2020 (Bill 148).

The new Bill received Royal Assent on 22nd July 2020 and the Business and Planning Act 2020 is now law.

<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>

The aim of the Bill is to provide a new streamlined procedure enabling businesses serving food and drink to apply for a temporary pavement licence. This is a bespoke procedure, outside the Highways Act.

The Bill provides the power to the District and Borough Councils to grant temporary pavement licences. However, there is a requirement within the Bill the '*the local authority must consult the highways authority where the local authority is not itself the highways authority for the land*'.

The consultation period is set at 7 days.

To help speed up the process the aim of this note is to provide a set of highway related criteria/guidance for Districts and Borough Councils to use when considering a pavement licence, rather than have to consult on each individual application.

Where consultation is necessary it should be via the relevant Network Management Team as set out in the table below:

Authority Area	NM Team to be consulted
Broxbourne	NM.East@Hertfordshire.Gov.Uk
Dacorum	NM.SouthWest@Hertfordshire.Go.Uk
East Herts	NM.East@Hertfordshire.Gov.Uk
Hertsmere	NM.Mid@Hertfordshire.Gov.Uk
North Herts	NM.North@Hertfordshire.Gov.Uk
St. Albans	NM.Mid@Hertfordshire.Gov.Uk
Stevenage	NM.North@Hertfordshire.Gov.Uk
Three Rivers	NM.SouthWest@Hertfordshire.Go.Uk
Watford	NM.SouthWest@Hertfordshire.Go.Uk
Welwyn Hatfield	NM.Mid@Hertfordshire.Gov.Uk

The Network team will consult other teams within the highway service as necessary and respond within the consultation time frame.

It may also be beneficial to check with the network team, before issuing the licence, to ensure there are no other licences (skip, scaffold, hoarding etc) or planned roadworks that could have an impact on the pavement licence.

Approach

As Highway Authority, HCC has several responsibilities including:

1. A duty to protect the rights of highway users to use the highway (to pass and repass);
2. Allowing third parties access to maintain and implement new apparatus;

In considering pavement licences, especially with the easing of covid-19 restrictions, our approach is to work proactively with businesses and District and Borough Councils to enable the pavements to be used to support local shops and businesses, where it is safe to do so and doesn't adversely impact on the overall operation of the highway.

The overarching principle will be to ensure where tables, chairs or stalls are allowed on the highway there remains enough space left on the pavement (footway) for pedestrians including those with mobility impairments to remain safe and observe social distancing requirements.

There will be two basic categories to consider for pavement licences:

1. Where the existing pavement (footway) is wide enough to place tables/chairs and still maintain social distancing;
2. Where the existing pavement (footway) is not wide enough to place tables/chairs on the highway and some form of temporary traffic management is needed to provide appropriate space. This category can be divided further in to:
 - a. Sites where temporary traffic management is already in place to support social distancing;
 - b. Sites where no traffic management is currently in place;

Each location will need considering on a case by case basis using the guidance below:

1. Licensed areas will normally be situated directly outside the main premises leaving an unobstructed clear gap between the road and the designated licenced area for people to pass and re-pass whilst adhering to social distancing guidance;
2. Businesses should have an appropriate level of public liability insurance;
3. There will need to be enough uninterrupted clear space left between the edge of the area created for tables/chairs and edge of the pedestrian area to enable social distancing to be adhered to. This should be a minimum of the current government social distancing measurement plus 1 metre before the edge of the road;
4. Consideration to the size and layout must be given to allow customers with disabilities to access and move around within the licensed area;
5. Considering should be given to the likelihood of queuing to the businesses and adjacent businesses;
6. All items contained within the licensed enclosure must be portable enough to be brought in at the end of the licensed period of each working day. They must be able to be moved quickly in an emergency;
7. Access must not be restricted to any local authority and utility company plant or apparatus in case of emergency;
8. Licences should not result in the blocking of any emergency accesses or restrict access to fire hydrants and the like;
9. The area used must take into account other needs and uses in the vicinity, for example, pedestrian crossings, loading bays, disabled bays and street furniture;

10. A risk assessment should be carried out to consider the anti-terrorism challenges especially in relation to the use of Hostile Vehicles;
11. Where the area being licenced is subject to a temporary order restricting traffic, the duration of the licence should be linked to the duration of the temporary order;

How Applications will be considered

1. Where an application falls within scenario 1 it would be acceptable to the highway authority for the application to be granted provided the above guidance had been followed;
2. Where an application falls within scenario 2 these will need to be discussed with the highway authority as below:
 - a. For applications which fall under category 2a. (existing traffic order/notice already in place), consultation will need to be undertaken with the relevant network management team who will respond within the consultation timeframe;
 - b. For applications which fall under category 2b. consultation will need to be undertaken with the relevant network management team.
 - i. The applications will be received and an initial technical assessment carried out by officers, which will include an assessment of the traffic management measures required and how this could be accommodated;
 - ii. Local members and stakeholders should be consulted and asked to form a view on the proposal including the traffic management required. Stakeholders should include;
 1. Town and Parish Councils;
 2. BIDS;
 - iii. Where there are additional costs associated with providing traffic management for a licence, the county council does not have a budget for this and therefore any funding for this will need to be secured from elsewhere;
 - iv. It is our interpretation that the Business and Planning Bill would not cover the granting of a licence where a traffic restriction was needed. In these cases, subject to agreement from relevant parties, the highway authority would need to process a temporary traffic order before a licence could be granted. This could take approximately 6 weeks to complete and so the customer should be advised.

Approved Applications

Where a licence is granted, a copy of the licence and plan should be sent to the appropriate network management team for information purposes.

Enforcement

The desired approach to enforcement is to support businesses by working with them and the District and Borough Councils to ensure they comply with the various licencing requirements.

Where businesses are currently occupying the highway without an agreed licence, the approach should be to engage with the business discussing the requirements for a licence and whether their arrangement would meet the criteria and encouraging them to apply. Provided they complied and submitted an application, HCC would not take further action at that time.

If they refuse to comply HCC may resort to enforcement under the Highways Act.

Where applicants are not abiding by the terms and conditions of a licence, a lite touch approach of working with the business would be considered appropriate. However, if the business continued to ignore the licence requirements it would be done to the issuing authority to take any further action.

Note

This guidance will be reviewed and where appropriate updated in line with further government guidance.

If a customer still requests a licence under HCC existing approach, the application fee will be £100.

Guidance Dated 5th August 2020

Links to reference documents

<https://services.parliament.uk/bills/2019-21/businessandplanning.html>

<https://www.legislation.gov.uk/ukpga/2020/16/contents/enacted>

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill/alcohol-licensing-guidance-on-new-temporary-off-sales-permissions>