



Hull
City Council

Pavement Café Licensing Policy

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1. INTRODUCTION

Pavement cafes are areas of the highway where tables and chairs are allowed to be placed for the consumption of food and drink immediately adjacent, or in proximity, to an existing business. Well designed and managed pavement cafés can enhance the attractiveness and add vitality, life, and interest to the City Centre. Hull City Council Supports and encourages pavement cafes but recognises that uncontrolled and inconsiderately sited tables, chairs and barriers on the highway can be unsightly, cause nuisance, an obstruction and can create an obstacle and a danger to people with impaired vision or mobility difficulties. This policy has been created to help ensure that these pavement cafés make a positive contribution to the area.

The use of the public highway is regulated by the issue of a pavement café licence under Section 115E of the Highways Act 1980. This policy document outlines the Council's requirements regarding the location and design of pavement cafés, as well as highlighting a number of related issues that will help applicants and licence holders understand where pavement cafés will be permitted and how they should operate. The policy covers the aspects of the design and operation that will be given detailed consideration in every case in order to maintain consistency.

Pavement Café Licences are administered by the Council's Licensing Department and advice should be sought at an early stage in the application process in order to avoid potentially abortive design work, and unnecessary costs, both for the applicant and the Council.

The Council's byelaws, policies and standards also need to be complied with for health and safety, and environmental reasons. It is the responsibility of the licence holder to ensure that all aspects of the operation of the pavement café and any equipment used comply with all appropriate legislation and health and safety requirements.

This policy does not cover cafés on private land. However land that might be considered private may, in fact, have become public highway if the public have enjoyed access over it for at least twenty years or if the Council has formally adopted the land.

The Licensing Authority also considers applications for Street Trading Consents and does so in accordance with its separate policy.

2. CONSULTATION

In determining this policy, the Council has consulted the following people and bodies:

- Humberside Police
- Humberside Fire and Rescue Service
- Area Committees
- Hull Bid
- All current Pavement Café Licence and Street Trading Consent holders
- The general public

We have also consulted various other partners and stakeholders within the Council. These include:

- Planning
- Network Management
- Public Protection (Food Safety and Environmental Regulation)
- Hull Events
- Major Projects and Infrastructure
- Legal Services

3. DETERMINATION OF APPLICATION

A licence will only be granted if the Council's requirements outlined in this policy are met. Please note that the licence is not transferable and should not be regarded as a transferable asset if an operator holding a pavement café licence disposes of their interest in the premises.

Permissions Required

The highway cannot be brought into use as a pavement café until all of the necessary permissions and compliances have been obtained.

- **Planning Permission**
Prior to making a formal application for a pavement café licence, you must contact the Planning Department for an informal discussion and advice on their requirements. Barriers, canopies, or awnings may also require planning permission or advertising consent. Your consultation with Planning will need to be confirmed on the pavement café licence application form. The Licensing Authority will also consult with the Planning Department on all applications made.
- **Public Liability Insurance**
An applicant must hold third party insurance cover to the minimum value of £5,000,000 (five million pounds).
- **Food Safety Standards**
A pavement café licence can only be issued provided that the operation of the main premises has been registered with the Public Protection Food Safety Section. Details of registration with the Food Safety Section are required to be shown on the pavement café licence application form.
- **Licensing Act 2003 - Premises Licence**
Applicants wishing to supply by retail alcohol (at any time), or hot food/hot beverages (between the hours of 11:00pm – 05:00am) to their customers, within the area of the pavement café, it must be covered by a premises licence under the Licensing Act 2003. Where an existing premises licence is in place, the applicant must ensure that the cafe's proposed area(s) are in accordance within the scope of that licence, i.e. it must be included within the Premises Plan, issued as part of the licence, otherwise a variation to the licence will be required.

Factors to be Considered

In considering applications for the grant or renewal of a pavement café licence, the following factors will be taken into account when assessing the suitability of the location.

- **Size and Layout**

Each application will be considered on its own merits with detailed consideration given to the position and dimensions of the proposed pavement café in relation to the location, proximity to existing pavement cafes, existing pavement width, and adjacent street furniture.

The pavement café area should be positioned so that it does not detrimentally affect the use of the highway. It must not create a potential hazard to pedestrians or discourage pedestrians from using the footway. In addition, it must not impede egress from fire escapes from its own or adjacent premises.

In order to allow safe and unrestricted traffic movement the following criteria will normally apply:

Pavement cafés will not be permitted in the carriageway, service strips or access strips.

They are normally only suitable on wide pavements and areas where traffic is prohibited.

In the majority of cases a minimum pavement width of 2.0m must be provided, in exceptional cases a minimum pavement width of 1.25m will be considered, in such a case the applicant is advised to contact the Council's Accessibility Officer before making application.

In areas of high pedestrian flow, or close to a heavily used carriageway, a minimum footway of 3.0m must be provided.

Although it is not appropriate to set a standard size for a pavement café, in order to be practicable a table and two chairs are deemed to occupy a minimum of 2.0m by 1.0m and a table and four chairs are deemed to occupy 2.0m by 2.0m (this does not include space for circulation).

Applicants are therefore advised to take these criteria into account, together with space for any other equipment and circulation requirements, when determining the overall size of the pavement café and when preparing the plan to support the application.

- **Boundaries**

The boundary of the pavement café must be defined by way of a screen barrier - incorporating a solid tapping rail near to ground level - that provides both a clear boundary and an adequate warning for the visually impaired. All activities associated with the café must be contained within the agreed boundary, including all tables, chairs, parasols, space heaters, planters, barriers, etc. Planters, chains, barrels etc are not acceptable boundaries.

When the pavement café is not in use, the barriers and furniture must be stored within the premises and off the public highway.

- **Furniture**

Furniture such as tables, chairs, barriers and parasols should be of high quality, of a uniform style and designed for outdoor use. Only furniture approved by the Council may be used. Furniture must be kept within the limits of the pavement café area.

- **Portable Heaters**

Where heating is provided, this must be of a type suitable for outdoor use,

stable at all times and placed within the pavement café boundary. If the patio style liquid petroleum gas (LPG) heaters are to be used, they need to be adequately secured upright.

All heaters, of whatever type, must conform to all relevant current health and safety regulations. Electricity or other cables/pipes must not be trailed across the adjacent footway at any time.

In considering an application, the Council will have regard to the inherent safety of the equipment, its location, storage of LPG gas Cylinders and maintenance. A full risk assessment must therefore be provided with the application which must:

- Identify the hazards e.g. fire, explosion, burns, impact from falling equipment;
- Decide who may be at risk and how;
- Evaluate those risks and provide proposed adequate precautions to minimise them;
- Advise on maintenance and staff training arrangements.

- **Smoking**

Under the Health Act 2006 the Smoke-free (Premises and Enforcement) Regulations 2006, smoking is no longer permitted in enclosed and substantially enclosed Workplaces and public places.

Pavement cafes are a potential means of providing an outdoor area where customers may smoke. However, you should ensure that any proposed outdoor area conforms to the above regulations.

Further guidance on compliance may be sought from the Council's Health and Safety Section (telephone 01482 300300).

- **Litter**

If smoking is to be permitted, in the pavement café area, at least one ashtray must be provided on every table. Dependent on the size of the pavement café area a minimum of 2 waste bins must be provided.

It is strongly recommended that you erect, in prominent locations, signs that clearly advise customers to respect the local area and that it is against the law to litter in the highway. The pavement café must be regularly cleaned. This will improve the visual amenity of the area, improve the attractiveness of the pavement café to customers, and reduce the likelihood of windblown litter causing a nuisance.

- **Noise**

The use of sound reproduction equipment or loudspeakers within the area of the pavement café is not permitted. Excessive noise from music, entertainment, or customers of the pavement café may cause a public nuisance.

Determination Process

Due to the differing nature of each application, the time taken to process an application will vary. The timescale must include a consultation period of 28 days.

The following gives an overview of the application determination process:

- The information submitted will be checked for completeness.
- If incomplete the applicant will be contacted and the necessary information obtained.
- If complete, a 28 day notice period will commence.
- The Council must also serve notice to the owners and occupiers of the neighbouring premises, that are likely to be materially affected by the application, who have 28 days in which to respond.
- Consultation is also carried out with other council departments and public bodies.
- If no objections are received, the licence will be granted by officers under delegated powers.
- Applicants will be notified of any objections and are encouraged to engage with the objector in order to seek a resolution to the objection.
- At the conclusion of the consultation period, any unresolved objections will be considered by the next available meeting of the Council's Licensing Committee. The Committee can:
 - Approve the application
 - Refuse the application
 - Approve the application with either amendments to the application, and/or attaching additional conditions to the licence.

4. INFORMATION TO ACCOMPANY APPLICATION

A formal application will only be considered on receipt of:

The completed application form.

The correct supporting information (see below).

The correct fee.

Full details of the proposed pavement café are required which, as a minimum, should include:

- Details of the business address of the proposed Licensee
- Details of ownership and tenancy of the business premises
- Details of the nature of the business, including the proposed hours of operation
- Copy of the valid certificate of public liability insurance covering the operation of the proposed pavement café
- Payment of the correct annual fee
- Up-to-date Location Plan (suggested scale 1:1250)
- Layout Plan (suggested scale 1:100) of the proposed pavement café, including dimensions, and details of any street furniture, accesses, pedestrian crossing points, etc., in the immediate vicinity of the site
- The layout plan must include details of the number, position and type of tables and chairs and details of the number, position, and type of other furniture, e.g. advertising boards, barriers, parasols, planters, waste bins, etc.

The plans must be accurate and clearly show what is being applied for. A copy of the approved plans will be attached to the licence. The operation of the pavement café must adhere to the agreed layout and hours of operation.

5. RENEWAL

Licences are renewable on the anniversary of the grant of the licence at the discretion of the City Council. Any application for renewal must be determined before that date. If the consent is not renewed by that date, trading is not permitted until a new consent has been granted. Renewals are not guaranteed and may be subject to further consultation.

6. PROPOSED CHANGES TO THE PAVEMENT CAFE

Any proposed variation from the approved position, layout, type of furniture, or operation of the pavement café must be submitted for approval and will be subject to the consultation and decision making process

7. FEES

Fees will be reviewed annually. The current fees for Pavement Café Licences are available on the Council's website or can be obtained from the Licensing Section. The fee is payable upon application and then annually upon renewal.

8. CONDITIONS

All Pavement Café Licences are granted subject to standard conditions, (shown at **Appendix A**). Further special conditions may be added to a licence on a case by case basis.

9. ENFORCEMENT

The operation of a pavement café must adhere to the agreed layout and hours of operation. Periodic inspections will be carried out in order to ensure that the terms and conditions of the licence are being adhered to. The Council will enforce the terms and conditions of the licence which may be revoked if conditions are breached.

The licence may also be temporarily suspended in order to allow for highway works to be undertaken or to allow other events to take place on the highway. Where this is the case, the Council will aim to give reasonable notice. No claim for potential loss arising from such suspension may be made against the Council

All enforcement activities will be carried out in accordance with the Council's Enforcement Policy.

10. CONTACT

Hull City Council
Licensing Section
33 Witham
Hull
HU9 1DB
01482 300 300
Licensing.requests@hullcc.gov.uk

11. GLOSSARY OF TERMS

Highway - The majority of roads and streets in the city are public highway, which is defined as a way over which the public has a right of passage and which is maintainable at the public expense. It is an offence to wilfully obstruct the public's right of passage.

Carriageway - A highway or part of a highway over which the public have right of way for vehicles. The public's right of way may be restricted by the implementation of a Traffic Regulation Order; for example in a pedestrianised area.

Pavement - That part of a highway (that also comprises a carriageway) over which the public have a right of way on foot only.

Pavement Café - defined as an outside seating area which is an ancillary use to a café, restaurant, or public house. Where a pavement café is to be located on a street that is public highway a pavement café licence is required. Where a pavement café is to be located on private land (e.g. a private forecourt, or a private street), a pavement café licence is not required.

Pavement Café Licence - Hull City Council in its role as Local Highway Authority can grant permission for a pavement café on the public highway under powers given in Section 115 of the Highways Act 1980.

Appendix A

Pavement Café Licence Conditions

1. The Licensee shall ensure that the Facilities are placed and remain wholly within the Licensed Area.
2. The Licensee shall not use the Licensed Area other than for the Permitted Use.
3. The Licensee shall remove the Facilities outside the Permitted Hours.
4. The Licensee shall immediately remove the Facilities from the Licensed Area if required to do so by
 - i. The Council or emergency services.
 - ii. Verbal or written request of a local police officer where in their discretion circumstances shall occasion such a request.
 - iii. Any other reasonable cause.
5. The Facilities shall, in any interval between utilised Permitted Hours, be stored within the Property.
6. The Licensee shall be responsible for keeping the Licensed Area and its immediate surroundings in a clean and tidy condition at all times.
7. No charge shall be made by the Licensee for the use of the Facilities or for access to the Licensed Area.
8. This licence does not absolve the Licensee of any Planning, Environmental Health or Licensing Regulations.
9. The Licensee shall indemnify the Council against all losses, claims, demands, actions, proceedings, damages, costs, expenses or any other liability arising from or in connection with this licence.
10. The Licensee shall hold and maintain a policy of public liability insurance, covering the Licensed Area, approved by the Council in the sum of at least five million pounds (£5,000,000.00).
 - i. The Licensee shall provide the Council, on request, with a copy of the insurance policy to demonstrate the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under the policy.
 - ii. If, for whatever period or reason, the public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this licence for the period during which the policy is not in force and the Licensee may be held liable for obstruction of the highway and be liable to prosecution under section 137 of the Highways Act 1980.
11. Where the Property has the benefit of a premises licence issued under the Licensing Act 2003 or any modification or re-enactment thereof, which permits the sale by retail

of alcohol and/or late night refreshment, no table service shall be permitted within the Licensed Area unless the Licensed Area also benefits from a premises licence.

12. This licence may be terminated by either party giving one calendar month's prior written notice to the other.
13. If the Licensee breaches any provision of this licence, the Council may serve notice on the Licensee requiring the Licensee to remedy the breach within a specified time. If the Licensee fails to comply with the notice, the Council may remedy the breach itself and recover the expenses of doing so from the Licensee together with any interest accrued.
14. In the event of non-compliance with any provision of this licence, the Council shall have the right to immediately revoke this licence.
15. This licence is personal to the Licensee and shall not be assigned or otherwise transferred.

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