

Pavement Cafés

A guide to their operation in Newcastle upon Tyne



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Newcastle upon Tyne City Council

Guidelines for the Operation of Pavement Cafés

1.0. Introduction

- 1.1. Newcastle City Council has produced this Guide with a view to promoting the use of Pavement Cafés in the City and to establish a pattern of good practice. Pavement Cafés are very popular on the Continent and are becoming increasingly common in this Country. The City wishes the Cafés to be places to eat, drink and provide cultural changes. When they are operated properly they can do much to add to the street scene and the general ambience of a City Centre. They can be a means of adding vitality and life to an area and if carefully managed, they can help maximise the use of our public spaces for people, not cars, help the local economy and add to the range of facilities that Newcastle offers to people who live, work and visit our City.
- 1.2. This Guide has been produced to help businesses understand where Pavement Cafés might be encouraged, the permissions that are needed from the City Council and others, and how applications will be assessed. It should be noted that special arrangements have been put in place for parts of Old Eldon Square and applicants seeking to establish Pavement Cafés in this area should initially contact Eldon Square Centre Management.
- 1.3. Before you submit your application for the various permissions you should read this Guide thoroughly to check whether your proposal meets all of the criteria set out. This document is only a Guide and each application will be determined on its merits. Following the steps in this Guide cannot guarantee permission but will help to minimise time wasted and expenditure on fees for applications which are later refused.
- 1.4. Although not a strict requirement, the application for a Pavement Café should normally relate to an existing Café, public house or catering establishment. However, it is possible to make an application for a proposed development in advance of construction / conversion.

2.0. The Legal Position

- 2.1. For the purposes of this Guide, Pavement Cafés are considered to be tables and chairs placed on the public highway where food and/or drink is served and/or consumed.
- 2.2. Public highways exist to allow the general public to pass along them. Before agreeing to place a Pavement Café on the public highway, the Council has to ensure that the public's right to use the highway is not detrimentally affected. It is important to ensure that Pavement Cafés are located, designed and managed in a way that protects the rights and safety of all users, particularly pedestrians. People with impaired vision, in wheelchairs or with pushchairs can be particularly affected. The Council's policies, standards and byelaws also need to be complied with for health, safety and environmental reasons.
- 2.3. This Guide relates only to the possible establishment of a Pavement Café on the public highway. You should check with the Council to establish the status of the land in question. Land that you consider to be a private forecourt may in fact have become public highway if the public have enjoyed access over it as of right for at least twenty years.
- 2.4. In addition to consent under the Highways Act, planning permission will also be required and a formal planning application must be submitted. Please see the Contacts section at the end of this Guide. You should also note that planning permission, if granted, may be temporary and run concurrently with the Highways permission. The Council has extensive enforcement powers under planning and highways legislation to prevent the unauthorised use of land as either indoor or outdoor cafés.
- 2.5. It is possible for landlords to make applications for Planning Permission and Highway Permission, and if successful the Highway Permission can be assigned / leased to a third party operator / tenant under a separate agreement.

What Permission Do You Need?

- 2.6 There are two main types of permission which have to be obtained from the City Council:
- Highway Permission under S.115E of the Highways Act 1980
 - Planning Permission for the change of use of the highway to a Pavement Café, even if there is an existing Café or food use in the adjacent building.
- 2.7 If you wish to serve alcohol at the Pavement Café you will also need to apply for a new Premises Licence (Alcohol) from the City Council as Licensing Authority, or a variation of your existing Premises Licence.
- 2.8 Details on how to obtain these permissions are given in Section 7 of this Guide.

3.0. Designing the Pavement Cafe

Size and Layout

- 3.1 To a large extent the size and layout of your proposed Pavement Café will be dependent upon the characteristics of the site outside your premises, the space available, the street furniture, the type of premises etc. There are however a few fundamental principles to follow with the design: -
- The Pavement Café should generally occupy an area directly in front of and be visible from your existing premises and should not extend beyond the width of your frontage.
 - The needs of other users of the City Centre should be taken into account i.e. pedestrians, street traders, local vehicles, adjacent businesses, etc. Be a Good Neighbour!
 - A clear pedestrian route should be maintained for those passing the premises and the proposed Pavement Cafe. Under normal circumstances the Pavement Cafe should be against the building with a minimum of 2.0m clear footway left between the edge of the Pavement Café and the edge of any adjacent carriageway or vehicle route to ensure that pedestrians, and particularly those with a disability, can pass by easily. Due to the many different possible locations for a Pavement Café, each case will be determined on its merits.
 - Emergency routes from adjacent buildings and your own should not be obstructed by the Pavement Café. If the emergency services object to your proposal on safety grounds the City Council will refuse it.
 - The proposed layout should ensure that sufficient space is left between the tables and chairs to allow access for all, for example wheelchair users.
 - It is not appropriate for this Guide to set a standard size for the Pavement Café. Under normal circumstances it should not exceed 20 tables, however each case will be dealt with on its merits.
 - It is important that no permanent structures are left in the footway that may cause a trip or safety hazard to users of the public highway. Any permanent structures within the Pavement Café area must be approved and licensed by the Council.
 - If the Pavement Café is proposed to be laid out so as to have a pedestrian route passing through it, then that route should be as straight as possible, free from obstruction and obvious to the user. The positioning of tables and chairs should never discourage pedestrians from using the footway.

- The tables and chairs should be placed so as not to obstruct driver's sightlines or obstruct highway signs.
- The applicant should carefully consider the level of lighting in the proposed Pavement Café area. Whilst this may be perfectly adequate for a public highway it may need supplementing to allow your Pavement Café to operate safely. This may result in additional costs.

4.0. Creating a Boundary

- 4.1. It is important for all concerned that once the size and layout of a Pavement Café is agreed that it is adhered to at all times.
- 4.2. The Pavement Cafe operator will need to define the boundary of their Pavement Café by a barrier and details of this should be included in the application.
- 4.3. A series of brass studs will also be fixed into the footway to define the legal extent of the Pavement Café. This work will be carried out by the City Council.
- 4.4. All activities and furniture associated with the Pavement Café must be contained within the approved boundary including all tables, chairs, menu boards etc. All such items must be removed at the terminal hour – see Section 6.17.
- 4.5. Once the area of the Pavement Café has been agreed and permission granted, the City Council will provide a definitive plan showing the boundary. A copy of this plan must be kept on the premises at all times and be available for inspection.

5.0. Pavement Café Furniture

- 5.1. It is not the aim of this Guide to define a standard style of furniture for the Pavement Café. Instead it is the Council's wish to create high quality Pavement Cafés using quality furniture. The Council reserves the right to reject an application using inappropriate furniture or to withdraw a permission if inappropriate furniture is substituted during the year.
- 5.2. All tables, chairs, benches etc should be constructed out of quality materials, preferably metal or wood. Plastic furniture will not be acceptable. A mixture of furniture styles is not recommended. If you need guidance in this area please call the appropriate Officer shown in the Contacts section at the end of this Guide.
- 5.3. The furniture colour should be attractive but not too bright, garish or overly reflective. However, the design of the furniture should take into account the needs of those pedestrians with a visual impairment.
- 5.4. The use of parasols will have to be specified as part of the design, along with their location, material and colour. Any parasols will have to be positioned so that they cannot present a danger to any user of the Pavement Café or any passing pedestrian and will need to be removed when the Pavement Café is not in operation. In certain circumstances it may be appropriate to leave parasols in place overnight and during periods of non-trading providing they are folded up and chained / padlocked shut. Applications for this type of arrangement should be discussed at an early stage and permission must be obtained.
- 5.5. The colours and design of the parasols will not be restricted to a particular type. Nevertheless, too bright or garish colours must be avoided.
- 5.6. Limited advertising of the premises will be permitted on parasols but this should not be too dominant and should be sympathetic to the building and it's setting, i.e. in a conservation area.

In some instances express advertisement consent may be required and applicants are advised to check the position with the Planning Officer.

6.0. Managing the Pavement Café

Service

- 6.1. Where the Pavement Café does not abut the frontage of the main premises, waiter / waitress service must be used at all times. In these circumstances the customers must not use the normal premises for the collection of food and/or drink.
- 6.2. Where the Pavement Café abuts the frontage of the building both of the above requirements can be waived until 8pm. Thereafter the above requirements will apply.
- 6.3. Where the Pavement Café does not abut the frontage of the main premises a Health and Safety Risk Assessment covering the operation of providing waiter / waitress service must be submitted with your application. This should cover issues such as staff training, use of correct equipment etc.
- 6.4. No glass shall be taken out onto the Designated Area after 7pm and any glass and glass materials shall be removed from the Designated Area by 8pm. The type of drinking vessels and drinks containers taken out onto the Designated Area before 7pm or used in that area prior to 8pm shall be at the discretion of the Council (note – different requirements may apply to individual premises)
- 6.5. Table menus should be available, although menu boards can supplement these. The boards should be of an acceptable size and sympathetic to the overall character of the Pavement Café and building.
- 6.6. The Council requires that all customers are offered the choice to purchase both food and drink at a Pavement Café. An application for the sale of drinks and particularly the exclusive sale of alcoholic drinks will not normally be approved.
- 6.7. The City Council requires that a section of your Pavement Café should be specifically identified and managed as a “No Smoking” area.

Food Hygiene and Toilet Facilities

- 6.8. The Pavement Café area should be used for the service and consumption of food and drink only. Under normal circumstances there should be no preparation or storage of food or drink outside the normal premises as there is a risk of contamination and potential difficulties with temperature control. This requirement can only be varied with the written consent of the Council.
- 6.9. It is imperative that good food hygiene practices are adhered to at all times.
- 6.10. Where food is to be served, applicants should consider providing parasols to protect food from risk of contamination from birds etc.
- 6.11. To minimise attraction from birds, flies etc all tables should be immediately cleared of uneaten food etc once the customer has finished and left.
- 6.12. The City Council has a number of standards it enforces in respect of the provision of customer toilet facilities in Cafés. These standards vary according to the seating capacity of the Café, and applicants are advised to consult with the appropriate officer of the Council (see contact list in section) prior to preparing their application. Although each application will be dealt with on its merits, under normal circumstances any application which does not meet the appropriate standard for the new seating capacity, including any Pavement Café area, would not be successful.

Litter / Cleaning

- 6.13. The licensee will be responsible for the cleanliness of the Pavement Café at all times. The area should be kept clean and litter free. Care should be taken to ensure that litter does not stray onto adjacent areas. Be a good neighbour!
- 6.14. Suitable litter/refuse bin(s) should be provided within the Pavement Café area at all times of operation. A commercial emptying service is available.
- 6.15. The area should be regularly swept, avoiding nuisance to customers, and kept clear of all litter/refuse. The operator should promptly cleanse the Pavement Café area in the event of spillages occurring. At the end of each trading session the Pavement Café area should be carefully washed down.
- 6.16. Failure to comply with the cleaning requirements under the Highways Permission may result in the service of a notice requiring compliance with the terms of the permission. Failure to comply with the notice may result in the Council carrying out the necessary cleaning operation for which the licensee will be charged. Repeated failure to comply with the cleaning requirements may jeopardise renewal of the permission.

Hours of Operation

- 6.17 The City Council does not wish to be too prescriptive on the hours of operation for the Pavement Café. The proposed hours of operation must be included as part of your application for the Highway Permission and Premises Licence. Your proposal will need to have due regard to the surrounding environment and land uses and should be discussed at an early stage with the Council. In order to minimise any issues with crime and disorder and nuisance, the terminal hour for Cafés generally should be no later than 8.00pm. Should you require a terminal hour later than 8.00pm you should seek the advice of the Police and Environmental Health prior to submitting the application. If approval to a later terminal hour is given then waiter / waitress service must be provided for the period after 8.00pm, irrespective of the Pavement Café's location in relation to the frontage of the building. Remember that after 8.00 pm, existing customers will not be allowed to carry previously purchased drinks or food from the main premises into the Pavement Café under any circumstances.

Being a Good Neighbour

- 6.18 The licensee will be responsible for the operation of the Pavement Café in accordance with the conditions of the permission.
- 6.19 The licensee shall ensure that the Pavement Café operates in a safe and responsible manner ensuring that there is no safety risk or nuisance caused to customers and users of the public highway or nearby premises.
- 6.20 The Pavement Café area should be kept under supervision at all times of its operation. Remember – it is your responsibility to make sure that this happens.
- 6.21 All users of the Pavement Café must be seated at all times.
- 6.22 All tables, chairs, parasols etc should be removed from the Pavement Café area outside the hours of operation (subject to Section 5.4). They should be stored off the public highway during this time in an appropriate place with due consideration being given to the health and safety of staff and the public.
- 6.23 Responsibility for the conduct of people within the Pavement Café area rests with the licensee. Unruly or rowdy behaviour may lead to the withdrawal or non-renewal of the permissions.
- 6.24 In order to reduce the likelihood of a nuisance being caused, the playing of any amplified music will not be permitted within the Pavement Café area or outside the building.

- 6.25 The City Council will require the licensee to take out Third Party Public Liability insurance cover in the sum of £5,000,000 for the operation of the Pavement Café. The licensee will be required to indemnify the Council against claims in respect of injury, damage or loss arising out of the granting of permission, unless such claims arise out of the Council's own negligence.
- 6.26 The granting of permission to operate a Pavement Café does not imply an exclusive right to the area. The operator of the Pavement Café should be aware that the City Council will need access to the public highway at various times for cleaning, repairs and access to equipment, e.g. lighting columns, traffic signals, pavement repairs etc and on occasion for the carrying out of Special Events. In addition to this access may be required by others for maintenance, repairs etc. In particular statutory undertakers (electricity, telephone, gas etc) have rights which may require the Pavement Café to cease operation for a period if maintenance or repairs to their apparatus is needed. Furthermore, access by the Council, the Emergency Services or others must be available at all times. If the Operator is requested to move any tables, chairs or other items within the Designated Area by the Council, Emergency Services or Statutory Undertakers the Operator shall immediately comply with that request. Access to the designated area shall be afforded at all reasonable times to authorised representatives of the Council for the purpose of inspection.

It should be noted that the Council will not be held liable for any loss of trade and/or income from the Café as a result of such activity.

7.0. Getting the Permissions You Need

- 7.1. In order to operate your Pavement Café you will need the following permissions:-
- a) Highway Permission for placing tables and chairs on the public highway.
 - b) Planning Permission for the change of use from a public highway to a Pavement Café.
 - c) If you wish to serve alcohol a new Premises Licence (Alcohol), or a variation of your existing Premises Licence, will be required from the City Council as Licensing Authority.

Pre-Application

- 7.2. It is strongly recommended that you seek the advice of the various officers of the City Council before you submit your application. These officers will be pleased to provide advice on specific cases before applications are made. This does not guarantee approval of the permissions being sought, but it may help to minimise expenditure on preparing an application, fees etc for schemes which are subsequently turned down.

Advice - Your Neighbours

- 7.3. Before approving any new Highway Permission, or a variation to an existing permission, the City Council will need to obtain the consent of the frontagers with an interest. It will be easier to obtain this consent if you have discussed your proposals with them first. Formal arbitration is possible if the Council believes the consent is being unreasonably withheld.

Highway Permission

- 7.4. In order to apply for your Highway Permission you will need to complete the application form contained in the application pack.
- 7.5. You will also need to supply two copies of the following plans:-
- A 1:1250 location plan showing the outline of the premises, the existing situation and the proposed location of the Pavement Café.

- A 1:100 site plan showing the proposed boundary, kerb and building lines, points of access, seating / table layout, key dimensions etc.
 - A 1:20 elevation plan of the proposed Pavement Café and its relationship to the building.
- 7.6. The application should be supported by a written specification describing the proposed Pavement Café, furniture to be used, colours, boundary treatment, materials etc and any other relevant information, i.e.photos etc.
- 7.7. Third Party Public Liability insurance cover in the sum of £10,000,000 (£5,000,000 if the premises is located outside of the city centre) for the operation of the Pavement Café is required.

Planning Permission

- 7.8 In order to apply for Planning Permission you will need to complete four copies of the 'Application for Planning Permission' form contained in the application pack.
- 7.9 You will also need to provide a further four copies of each of the plans detailed in Section 7.5 showing the current business premises (edged in blue) and the area of the proposed Pavement Café (edged in red), together with a site plan showing the extent of the proposed operation.

Premises Licence (Alcohol)

- 7.10 If you wish customers to consume alcohol as well as food from the Pavement Café, you will need to obtain a new Premises Licence or a variation to your existing Premises Licence from the Licensing Authority. The City Council's website advises as to how you should apply www.newcastle.gov.uk/licensing and click on Licensing Act 2003.

8.0. How long will it take?

- 8.1. Upon receipt of a valid application, your application for Highways Permission and Planning Permission, if made at the same time, may be dealt with in parallel. This will save time. Please make sure that all of the details on your application are correct.
- 8.2. Under the terms of the Highways Act 1980, Newcastle City Council cannot grant permission unless it obtains the consent of the frontagers with an interest. In order to gauge this, the City Council will arrange to publish street notices and will consult with nearby frontagers who may be affected. The street notices will need to be in place for a minimum of 28 days.
- 8.3. Planning applications for Pavement Cafés will normally take up to 8 weeks from the time the Council receives a valid application and would normally be an officer Delegated Decision.
- 8.4. As each application will be different, the time taken to process the applications also varies. Some will generate many objections, others may result in none at all. However, in general, it is estimated that it will take approximately two months to process an application, from receipt of a valid application to obtaining all permissions.
- 8.5. If the Council refuses Planning Permission for a proposed Pavement Café, a formal appeals process exists under national Town & Country Planning legislation.

9.0. How much will it cost?

- 9.1. The fee for the application is stipulated on the documentation accompanying this guide and includes the application fee for the Planning Permission. Please note that the fee is not refundable if Permission is refused.
- 9.2. Details of the fees applying to premises licences can be found on the Council's website

10.0. The Pavement Café in Operation

- 10.1. Once your application has been approved you will receive notification. The 'Permission' will include a number of terms and conditions (based on this Guide) which must be complied with. The Council has powers to ensure compliance with the terms and conditions.
- 10.2. In the interests of safety and fairness, the Council will carry out periodic inspections to make sure that all of the terms and conditions of the permission and the various Acts of Parliament (i.e. Highways Act 1980, Environmental Protection Act, Town & Country Planning Act, Licensing Act 2003 etc) are being adhered to.
- 10.3. If minor breaches are found the Council will aim to work with the operator to find a mutually acceptable solution. If major or persistent breaches are found to be occurring the Highway Permission is likely to be withdrawn.
- 10.4. The Highway Permission lasts for 12 months and applicants must reapply in sufficient time for the grant of a new permit if a continuous operation is desired.

11.0. Finally

- 11.1. The idea of a Pavement Café is to offer the public the chance to eat and / or drink outside by extending your existing facility outside your building. It is not aimed at increasing the overall size of your restaurant or café. If the Council consider that the overall effect of your application will result in a significant increase in size you may be asked to provide more parking / toilets / kitchen facilities etc.

12.0. Contacts

- 12.1. In order to make the application process simple and straightforward for the applicant, the City Council operates a 'One Stop Shop' principle. Initially all contact regarding your proposal should be made to: -

Gillian Danskin

Telephone: (0191) 2115079

E-Mail gillian.danskin@newcastle.gov.uk

- 12.2. However, during the progression of your application it may be necessary for you to make contact on a number of detailed issues. The following contacts may prove to be useful: -

Highway issues and Access:

Zaffar Chowdry (0191) 2778964
zaffar.chowdry@newcastle.gov.uk

Planning Issues:

(0191) 2777296
planning.control@newcastle.gov.uk

Transportation Issues:

Philip Harrison
philip.harrison@newcastle.gov.uk

Food Safety & Hygiene & Sanitary Accommodation: psr@newcastle.gov.uk

Noise and Health and Safety Issues :

psr@newcastle.gov.uk

Licensing Authority:

Keith Smith (0191) 2116171
keith.smith@newcastle.gov.uk