



Newport City Council's Pavement Café Licensing Policy.



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1. Introduction

Alfresco eating is becoming a more widespread aspect of urban life and the presence of tables and chairs on the pavement can make a positive contribution by adding vitality, colour, life and interest to an area. Newport City Council supports and encourages the provision of pavement cafes in the city as they can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people who visit, live, and work in Newport.

Tables and chairs placed on the highway without permission can be illegal as they could amount to an obstruction. However, permission to use the highway for pavement cafes may be granted the Council under Section 115E of the Highways Act 1980.

Accordingly, whilst the Council wishes to encourage pavement cafes, it is important that they are properly located and managed. This is ensure that they meet the standards we expected in Newport and that they do not obstruct the highway nor create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.

The area to be used must take into account other needs in the immediate vicinity e.g. kerbside parking, bus stops and pedestrian crossings. Pedestrians' needs must be paramount. The expanse of the pavement café must not conflict with any access or dropped crossings that are required for free passage of normal road users. Barriers and tapping rails should be positioned and maintained to the satisfaction of Newport City Council and should be totally removed outside the permitted hours of operation of the café, restaurant or bar.

The pavement café is normally expected to be in an area directly in front of and be visible from the existing premises. Emergency exit routes, including those of adjacent buildings, should not be obstructed by the pavement café and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.

In general, all parts of the highway may be used for Pavement Cafés, assuming all safety and non-obstruction requirements are met. The exceptions are:

- Any carriageway or 'shared use surface'
- Any highway verge
- Where width of the pavement makes it impractical.
- Where authorised street furniture makes it impossible

Licences will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the tables and chairs, or from customers visiting or leaving the licensed area, or

- Where there are concerns over the recorded level of personal injury accidents in the locality where the tables and chairs will be sited, or
- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes, or
- There is a conflict with Traffic Orders, such as waiting restrictions, or
- The site obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use, or
- The tables and chairs obstruct the safe passage of users of the footway or carriageway, or
- The area to be licensed interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities, or
- The site does not allow the licence holder, staff and customers to park in a safe manner, or
- The trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.
- The existing toilet and washing facilities are not adequate to accommodate an increased number of customers using the pavement café, or
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business or
- The Council is not satisfied that applicants have made satisfactory arrangements for the storage of all tables and chairs off the highway without impeding any access or egress from the premises.

In considering the above matters, the standard guidance will be that a licence will only be issued if an unimpeded pedestrian route can be maintained at all times. The route shall ensure that all pedestrians and particularly those with a disability can maintain their normal path where feasible. All applications will be considered on their own merits.

Pavement café licences will only be issued to cafes, restaurants, public houses or other catering establishments that serve food and drink within the premises.

The Council will carry out periodic inspections to make sure that all the terms and conditions of the licence are being observed.

A pre-licensing visit will be made to each premise upon receipt of an application for the grant, renewal or variation of a pavement café licence, to discuss the application process, the proposed operation of the cafe etc. to provide advice and information to the applicant.

Once the pavement café licence has been issued, a further visit will be made to the premises to review the practical day-to-day operation of the café. An additional visit may also be undertaken to ensure the premises is meeting licence conditions.

2. Legal Framework and Controls

Permissions to use the highway for pavement cafes are granted by the issue of licences by the Council as the Highway Authority under Section 115E of the Highways Act 1980. Tables and chairs placed on the highway without permission are an illegal obstruction and the Council will take enforcement action in such cases. A fine of up to £1,000 can be levied by a Magistrates' Court for committing an offence of obstructing the highway.

Granting a licence to operate a pavement café does not imply an exclusive right to the area. The operator of the café should be aware that the Council reserves the right to gain access to the café area for cleaning, repairing and maintaining the highway or street furniture. Other statutory organisations may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the licence temporarily if, for any reason, it becomes necessary.

If it appears to a council that a person to whom they have granted a permission under Section 115E above, has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.

If a person who is served a notice and fails to comply with the notice, the Council has the power to take whatever steps are necessary themselves.

Where the Council has incurred expenses in the exercise of the power, then those expenses, together with interest at a reasonable rate, may be recovered by the Council from the Licence holder.

Under the terms of the Highways Act 1980, the Council cannot grant permission unless it obtains the express consent of interested frontages that may be materially affected by the proposal.

(Section 115A(7) of the 1980 Act states that "frontagers" means: "the owners and occupiers of any premises adjoining the part of the highway on, in or over which facilities for recreation or refreshment or both, have been, are being or would be provided.")

For express consent to be required, the frontage would have to be affected by the placing of the structure etc. between his own frontage and the highway, rather than a structure adjacent to his own frontage.

The Pavement Café must operate in accordance with the conditions of the licence. Any breach of the conditions may lead to action by the Licensing Section to revoke or refuse a licence in the future.

The Council will not permit any wheeled refuse containers, beer kegs, bottle crates on or adjacent to the pavement café area.

The barriers, table, chairs, and layout shall be as agreed by the Council and conform to the plan at all times.

The premises should not use A boards or advertising signs or any other unsightly or unapproved items to be placed adjacent to the area.

The Licence holder shall make no claims or charge against the Council in the event of the street furniture being lost, stolen or damaged in any way from whatever cause except where the same is attributable to negligence of the part of the Council or any of its officers.

If for whatever period or reason a public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.

The licence holder shall not cause or undertake any alterations to the highway surface.

The licence holder shall not assign, sub-let or part with his interest or possession of a licence.

The Council may suspend or terminate a licence if any of the conditions of the licence are breached.

The licence does not take precedence over Police powers to preserve public order.

3. Private Land

This policy relates only to pavement cafés on a public highway. Cafes on private land are not covered by this policy. However, although a pavement cafe on private land may not need a licence, it may require planning permission if the structures and fittings are not of a temporary nature.

Land that might to be private may in fact have become part of the highway if the public have enjoyed access over it for at least twenty years or if the Council has formally adopted the land. Before proceeding, it would be wise to check with Council Planning Services to establish if planning permission is necessary.

4. Right of Access

Authorised Officers of the Council and Police Officers shall have access to a pavement café at all reasonable times.

5. Advertising

Advertising of alcoholic or smoking products or their manufacturers will not be permitted on the barriers or furniture within the Pavement Café area. Advertising may only relate to the premises or business and will require the approval of Newport City Council.

6. Designing the Pavement Cafe

The size and layout of the proposed Pavement Café will be dependent upon the characteristics of the site outside of the premises particularly the space available taking into account the needs of other users and it is not appropriate for this Policy to set a standard size for the Pavement Café.

Plans will need to be submitted with an application and shall be drawn to scale and must include:

- An up-to-date location plan (1:1250 scale) showing the outline of the premises and the proposed location of the street café;
- Site layout plan (1:100 or 1:50 scale) showing the proposed boundary, kerb and building lines, enclosure barriers, points of access, table and seating layout, location of parasols, heaters etc. ,

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.

The Pavement Café should:

- occupy an area directly in front of the Applicant's premises;
- be visible from these premises; and
- Not extend beyond the width of its frontage (unless in exceptional circumstances and granted by Licensing Authority).

Emergency routes from adjacent buildings and the Applicant's premises should not be obstructed by the Pavement Café. If the emergency services object to the proposal on safety grounds, it is very likely that the Council will refuse it.

7. Minimum Unobstructed Space Criteria

On a normal street, there must remain at least 2.0 metres of unobstructed space between the carriageway and the front of the pavement cafe to allow pedestrians to pass by safely.

On streets with high pedestrian usage, there must remain at least 2.75 metres of unobstructed space.

Each case will be judged on its merits and the unobstructed space will be set between 2.0 and 2.75 metres according to the frequency of pedestrian usage and

other relevant parameters. This requirement may however be waived by the Council in certain locations but ultimately, the decision will be made on safety grounds.

8. Lighting

The Applicant for a pavement café licence should, if intending to open beyond dusk, carefully consider the level of lighting in the proposed pavement café area. Whilst street lighting may be perfectly adequate for a public highway, it may need supplementing to allow the pavement café to operate safely. Any additional lighting equipment and supply must be specified in the application to enable its impact upon the highway to be considered.

9. Tables and Chairs shall be:

Of a neutral colour scheme e.g. chrome, brushed aluminium, black, brown, beige, grey or white, with natural or neutral stained timber or wicker detailing; all must be fitted with rubber feet to reduce noise when moving and damage to paved surfaces.

The Council reserves the right to reject applications where inappropriate furniture is proposed. So it is advisable to discuss furniture proposals with the Licensing Section before any furniture is purchased. Full details of proposed furniture will be required upon submission of the application, including metric dimensions and material and a photo or drawing. When choosing furniture regard needs to be had of the highway surface on which it will stand uneven or sloping surfaces may require more sturdy styles of furniture and tables and chairs with narrow or thin legs may cause damage to certain paving, hours of proposed furniture, accompanied with photographs or drawings.

10. Parasols

If you intend to use parasols their metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan.

Parasols, when opened, should be safely secured and contained entirely within the boundaries of the street café to ensure they do not cause an obstruction or present a danger to any user of the street café or any other users of the highway.

The design and colour of parasols will not be restricted to a particular type but they should be made of high quality materials and fabric and be of a uniform design and colour. Garden style umbrellas are not acceptable. The base of the parasol must not cause a trip hazard in the street café area.

The only advertising permitted on parasols is the name of the café/ business. Such advertising must not be too dominant and should not detract from the appearance of

the building and its setting, especially in conservation areas. Parasols advertising alcohol or tobacco will not be allowed.

Canopies, awnings, blinds etc. which are to be attached to the building may require advertisement consent or planning permission. Advice should be sought from Planning Services. See the contacts section at the end of this guide.

11. Space Heaters

If you intend to use space heaters their metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout.

In considering an application, the City Council will have regard to the inherent safety of the equipment, its location, storage of Liquid Petroleum Gas cylinders, maintenance and training arrangements.

You will be required to submit a formal risk assessment as required by the Management of Health and Safety at Work Regulations 1999 in support of your application. This should be carried out by a competent person (someone who has knowledge of the law, British Standards, and Health and Safety Executive Codes of Practice and Guidance).

The City Council will consider the adequacy of the risk assessment which must:

- Identify the hazards e.g. fire, explosion, burns, impact from falling equipment / cylinders
- Decide who may be harmed and how
- Evaluate the risks and decide whether proposed precautions will be adequate or whether more could be done.
- Record findings
- Review assessment and revise if necessary

12. Barriers

Barriers or other means of enclosure are required in order to ease/ guide pedestrian movement, guide the visually impaired, protect users of the facility and mark the boundary of the licensed area.

The agreed street cafe boundaries shown on the plan that will be attached to the licence if successful must be adhered to at all times. The boundaries are required to be enclosed by either barriers or planters. These must be portable.

It is essential that the means of enclosure is fit for purpose and suitable for the terrain in which that the pavement café operates. Should the Council deem barriers

unsafe, we may ask that the tables and chairs to be removed until suitable barriers are provided. The means of enclosure must:

- Be stable and sturdy for all weather conditions the pavement café will operate in, including windy conditions: additional weights may be necessary to ensure barriers remain stable and secure;
- Not contain protruding parts;
- Have a tapping rail along the bottom of the barrier that visually impaired pedestrians can use to navigate around the street café using a stick;
 - Only display the name of the café/ business. They must not be used to advertise products or services. No alcohol advertising or tobacco is permitted. Proposed details of means of enclosure must be provided with the application.
 - Hoops or post and chain type barriers and low-level objects will not be acceptable.

Barriers must not be permanently fixed to the ground where this is public highway

13. Example of Good Practice



Examples of furniture not permitted



14. Managing the street café & Insurance.

The licensee will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the highway under the permission granted. The Council will, therefore, require the licensee to take out third party public liability insurance in the sum of at least £5,000,000.

15. Operation

Hours of operation will be determined on the application merits; although the following maximum hours will apply;

The Licensing hours for street furniture will only be granted between the hours of 9:30hrs to 23:00hrs.

All furniture should be removed between the hours of 23:00hrs to 9:30hrs unless the premises is licensed under the Licensing Act 2003 (for sale of alcohol). In this case, barriers can remain in place until either when premises close, or no later than 04:00hrs to create a “smoking area”. No furniture other than space heaters, parasols should be present in the “smoking area” and no alcoholic drinks nor should glassware present in this “smoking area” after 22:30hrs. The smoking area will be required to be covered by CCTV and by SIA door staff and comply with smoking regulations.

Licences are granted for a maximum of one year and are renewable annually. Licences for new sites will be subject to a three month probationary period.

A copy of the Licence and plan must be kept on the premises at all times and be available for inspection. When the area of a street café has been agreed, a definitive plan of the area showing the boundaries and the dimensions will be attached to, and form part of, the Licence.

16. Fees

The administration fee for processing a street café licence application is £156 and covers the administrative and legal costs incurred in the preparation and issuing of the licence.

Upon approval of the licence, the balance of the fee will be required which covers the monitoring and enforcement and is based upon the number of chairs and tables and hours of use.

| Number Tables & Chairs | Annual Fee* |
|--|--------------------|
| No more 4 chairs (1 to 2 tables) | £57.20 |
| No more 12 chairs (1 to 6 tables) | £88.40 |
| No more than 24 chairs (1-12 tables) | £156 |
| More than 24 chairs (unspecified number tables) | £192.40 |
| If the Premises wishes to operate a “Smoking | Additional £52 |

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| Area” after 23:00hrs | |
| Change of name on licence or duplicate licence. | £26 |

*This fee will be subject to an annual review and may increase.

17. Granting of a licence

Under the terms of the Highways Act 1980, the Council is required to advertise applications for street café licences for not less than 28 days by posting notices in the vicinity of the proposed street cafe. These notices set out details of the proposals and invite representations to be made by people who may be affected. If no objections are raised, the Licence will be granted within 5 working days, if an objection is raised, the delegated Service Manager will be required to determine the application within 20 working days.

18. CONDITIONS FOR PAVEMENT CAFÉ LICENCES.

Please note that these conditions are not an exhaustive list, and each application will be considered on its own merits and bespoke conditions may be attached where deemed appropriate.

1. The maximum permitted hours of operation as stated on the attached licence shall not be exceeded without prior permission from the Council.
2. A copy of the licence and pavement café layout must remain at the premises and must be produced to any authorised officer on request.
3. Food or non-alcoholic drinks must be available at all times when the pavement café is open.
4. Posts, barriers tables and chairs shall not be placed upon the highway before the commencement of operational hours and shall be removed entirely before the end of the operational hours. The area shall be left clean and tidy and free of any rubbish.
5. Furniture stored within the premises should not at any time block a fire exit.
6. The use of advertisement boards is prohibited
7. The advertising of alcohol or cigarettes is prohibited
8. Barriers and parasols can advertise the name of the business only.
9. The café area must be supervised at all times whilst it is operational.
10. No live or recorded music shall be played within any part of the Pavement Café.
11. Emergency routes from adjacent buildings and the applicant's premises shall not be obstructed by the pavement café.
12. The licence holder shall not cause or permit any alterations to the highway surface.
13. The licence holder shall not assign, sub-let or part with his interest or possession of a licence.
14. Authorised Officers of the Council and Police Officers shall have access to a pavement café at all reasonable times.
15. If requested by a police officer or an authorised officer of the Council, all items shall be removed from the highway. These items shall remain off the highway for as long as is required.
16. The licence holder shall be responsible for the conduct of people, both patrons and employees, within the pavement café area.
17. Patrons shall not be permitted to remove food, drinks, crockery or any cutlery from the pavement café.
18. All tables must be cleared of all uneaten food, used crockery, cutlery etc. and properly cleaned of any spillage immediately they are vacated by customers.
19. Food and drink must not be stored or prepared outside the normal premises
20. All the food and drink that is consumed within the pavement café area must be ordered and purchased there.
21. All furniture shall be of high quality constructed of wood or metal and approved by the Council.

22. Parasols, when opened must not overhang the boundary of the pavement café and must remain closed in periods of high winds.
23. Permitted receptacles to be used within the pavement café are:-
 - Glasses made of toughened or tempered safety glass
 - Glasses made of polycarbonate or plastic
 - Paper Cups
 - China cups, saucers and plates
24. The use of barbecues, rotisseries, ice cream machines, drinks machines or any other equipment for the preparation and / or sale of food and drink for consumption on or off the premises will not be permitted within the pavement café area.
25. The entire pavement café (apart from entrances) shall be enclosed in its entirety with a suitable barrier, the design and dimensions of which must be agreed, in writing, by the Council. Space will be required for circulation and access within the enclosed area in addition to that for tables and equipment.
26. All activity associated with the pavement café shall be contained within the boundary including tables, chairs and other permitted equipment.
27. The agreed boundary and layout of the pavement café as defined by the plan attached to the Licence shall not be altered without the express permission of the Council.
28. Barriers must not be permanently fixed to the ground on a public highway.
29. A minimum distance of 2.0 metres between the edge of the pavement café and the edge of any adjacent carriageway or vehicle route shall be maintained. If the pavement café is on a street with a high pedestrian usage this minimum may be increased to 2.75 metres. An absolute minimum clear width of 2.0 metre is required from any single point of obstruction e.g. bollard
30. The licence holder shall keep the area within the boundaries clean and litter free at all times Any litter that escapes from the inside of the licensed area to the outside of the area shall be collected by the licence holder.
31. Suitable litter/refuse bin(s) shall be provided within the pavement café area at all times of operation and taken inside at close of trading. The licence holder shall be responsible for disposing of all waste produced at the pavement café.
32. The licence holder shall provide Public Liability insurance cover for the pavement café and shall indemnify the Council against all claims in respect of injury, damage or loss arising out of the granting of permission, (eg damage to the highway or highway furniture) to a minimum value of £5,000,000 unless such claims arise out of the Council's own negligence.
33. If for whatever period or reason a public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.
34. Where repair or maintenance of the pavement/highway is to be undertaken, Newport City Council will not be liable for any loss of trade and/or income

whilst repair/maintenance is carried out. The Licence Holder/s must allow the Council reasonable access for such works.

35. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis and not be exposed in such a way that they are a trip hazard.
36. All customers using the Pavement Café will be required to be seated. Vertical drinking will not be permitted unless SIA door staff are present to monitor the area.
37. If the area is going to be used after 21:00hrs, CCTV will be installed to cover all of the area. The date and time settings on the system must be correct and the CCTV system must be capable of recording images to a suitable medium that allows reply. Recordings must be retained for a minimum of 31 days. Staff shall be trained in the maintenance and operation of the CCTV system with a record kept of the date and name of person trained. A trained member of staff should be on duty to operate the system whenever the premises are open.
38. All drinking vessels shall be polycarbonate at request of Gwent Police.
39. If 6 or more tables are used, 50% of the area should be also a non-smoking area until 23:00hrs