



PAVEMENT CAFÉS ON THE PUBLIC FOOTWAY

ROADS (SCOTLAND) ACT 1984 – SECTION 59
A Design Guide for Applicants

1. Introduction

Aberdeen City Council supports and encourages the provision of pavement cafés in the City, as they make a positive contribution by adding vitality, colour, life and interest to the street scene. 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 Aberdeen.

Whilst the provision of street cafes is encouraged, it is important that they are properly administered and managed to ensure that they meet the high standards expected in Aberdeen City. They should not obstruct the Footway or create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.

This guide is intended to help businesses understand where pavement cafés might be encouraged, the permissions needed from the Council and others and how applications will be assessed. Although each **application will be considered on its merits** this guide contains key points which must be considered in every case.

Should you wish to establish and operate a pavement café outside your premises please read this guide thoroughly to check that your proposal meets all the criteria. Council officers will also be pleased to offer advice with your application.

Pavement café permits will only be issued to cafes, restaurants, public houses or other catering establishments that serve food and drink within the premises, **as covered by the existing licence**, and employ sufficient staff to provide table management to the outside area. Alcohol may be consumed at the pavement café only if permitted under the terms of the applicant's liquor licence.

2. Legislative requirements

For the purpose of this guide pavement cafés are considered to be tables and chairs placed on the Footway where food and drink can be consumed by customers.

Before agreeing to permit a pavement café on a Footway, the Council must ensure that the public's rights to use the Footway are not detrimentally affected, and would also need to consider the impact of a pavement café on neighbouring activities, in particular whether there is likely to be an impact on residential amenities.

The Council's policies and standards also need to be complied with for health, safety and environmental reasons.

The guide relates only to the possible establishment of a pavement café on a Footway (Cafés on private land are not covered by this guide. They do not need a pavement café permit, although they will require planning permission). You should check with the Council to establish the status of the land in question. Land which you consider to be private may in fact have the status of a Footpath if the public have enjoyed access over it for at least twenty years or if the Council have formally adopted the land.

Before proceeding it would be wise to check with Regulatory Services if any permissions are necessary - see **Contacts Section** at the end of the guide.

3. Permissions Required

Permissions to use the Footway for pavement cafes are granted by the issue of permits by the City Council as the Roads Authority under **Section 59 of the Roads (Scotland) Act 1984**. **Tables and chairs placed on the Footpath without permission are an illegal obstruction and the Council will take enforcement action in such cases.**

A proposal to extend the pavement café beyond the width of your own frontage also needs the express written consent of any other interested frontagers who are affected by the proposal.

Planning permission will also be required if the pavement café is to be in use for more than 28 days in any calendar year.

Permanent fixtures such as canopies will require planning permission.

4. Designing the Pavement Café - Size and Layout

To a large extent the size and layout of your proposed pavement café will depend upon the characteristics of the site outside your premises, the space available, the street furniture, the type of premises, etc. Ideally it should be seen as an integral part of the main premises rather than an unrelated after-thought. There are however a few fundamental principles to follow.

The pavement café should generally occupy an area **directly** in front of and be visible from your existing premises.

The needs of other users of the Footway should be taken into account e.g. pedestrians, tradespeople, adjacent businesses etc. Be a good neighbour!

A clear pedestrian route of at least 2.0 metres must be maintained between the kerbline and the pavement café boundary. Where this is not possible applications will be deemed to be unsuitable and refused. In areas of very high pedestrian flow it may be necessary to leave a clear route of greater than 2 metres in width. It must be clearly understood that even when these dimensions are available the Footway may not be suitable for occupancy as a pavement café.

Depending on the scale of the pavement café and its location, it may be necessary for an application to be accompanied by a pedestrian/disabled audit, which can be supplied by a qualified member of the Royal Society for the Prevention of Accidents.

In pedestrianised areas the pavement café boundary should be **a maximum** of 4 metres from the building line.

No structures or signs will be allowed outside the designated area, the presence of tables and chairs should never discourage pedestrians from using the footway.

Emergency exit routes from your own and adjacent buildings should not be obstructed by the street café and emergency service vehicles must have access along all streets at all times, even in pedestrianised streets.

It is not appropriate to set a standard size for pavement cafés. Each application will be evaluated on its merits taking account of the site characteristics, the space available and the proposed layout.

The layout of the café's furniture and means of enclosure must provide adequate access and circulation space for all customers including wheelchair users and those with push chairs, buggies, etc.

Tables and chairs should not be located where they will impede drivers, sight lines or obscure Footway signs.

The area to be used must allow for other requirements such as kerbside parking, bus stops, pedestrian crossings and access to inspection chambers.

When designing the pavement café you should consider whether :

your existing toilet and washing facilities are adequate to accommodate any increased customer numbers; and is the pavement café seating provision of appropriate proportions to that of the internal – it should ideally not be of a greater proportion than 25% of the interior seating provision.

The pavement café should not adversely affect the architectural or historic character of a listed building or its setting or the conservation area in which it is located.

If it is intended to operate the café during the hours of darkness the applicant should consider the level of lighting in the proposed café area. Whilst this may be perfectly adequate for a Footway it may need supplementing to allow your café to operate safely. If it is proposed to attach the lighting to the building, consent may be needed if the building is listed.

5. Boundaries

Once the size and layout of a pavement café is agreed it is important that it is adhered to at all times. All activities associated with the café must be contained within the agreed boundary including all tables, chairs, parasols, planters, barriers/fencing etc.

In all instances, unless it is inappropriate or impracticable, you will have to provide a portable means of enclosure for the pavement café area such as barriers or planters. These should be stable and sturdy, e.g. colourful canvas separators on metal uprights, not contain protruding parts and have a tapping rail. Ropes or chains do not provide sufficient positive guidance for the blind and visually impaired and therefore are not considered suitable. Limited advertising may be permitted on the enclosures and is generally limited to the name of the premises but the advertising of products sold may be allowed if discreet. They must not be used to advertise services, but can contain the premises title and logo or products sold, and proposed details should be provided with the application.

When the area of a pavement 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 Permit. **A copy of the Permit and plan must be kept on prominent display on the premises at all times and be available for inspection.**

6. Furniture

This guide does not wish to define a standard style of furniture for pavement cafes but **the furniture should be of a high quality, uniform in style, capable of being moved in and out of premises, and should not detract from the surrounding architecture.** Plastic, garishly coloured or picnic style equipment is not suitable and will not be approved. Only furniture approved by the Council may be used. **The Council reserves the right to reject applications where inappropriate furniture is proposed.**

When choosing your furniture you should have regard to the Footway 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.

Full details, including metric dimensions, materials and colours, of proposed furniture, ideally accompanied by photographs, illustrations or drawings, will be required as part of the application.

At least one children's high chair should be available for customers to use within the street café.

Please Note: If planters are to be used within your permitted area, these MUST be well maintained with a vibrant array of bedding plants/flowers. If planters are noted poorly maintained, without plants, or contain litter, cigarette stubs, glass products, the Roads Authority will request their removal with immediate effect.

If you intend to use parasols, they must not be attached to the building. You will be required to use the large heavy-duty commercial type, fitted with wind flaps, and be tested to withstand up to force 8 gales. Garden style umbrellas are not acceptable and bright, garish or reflective colours should be avoided. 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 pavement café

to ensure they do not cause an obstruction or present a danger to any user of the pavement café or any other users of the Footway. If heating or lighting is to be provided it is recommended that it should be electrical and attached to inside of the parasol, in a safe manner

All items which constitute a Pavement Café must be readily portable by staff and are to remove at the close of business each day or at any time if required in an emergency.

The only advertising permitted on parasols is the name of the café. 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 food, drink or other products will not be allowed.

Canopies, awnings, blinds etc. which are to be attached to the building will require advertisement consent or planning permission. Advice should be sought from Planning Services.

If you intend to use space heaters, their metric dimensions materials and colour must be specified as part of the application. **You will also 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 i.e. someone who has knowledge of the law, British Standards, and Health and Safety Executive Codes of Practice and Guidance. In considering an application, the Council will have regard to the inherent safety of the equipment, its location, storage of Liquid Petroleum Gas Cylinders, maintenance and training arrangements. The City Council will consider the adequacy of the risk assessment which must:

- Identify the hazards e.g. fire, explosions, 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 on an annual basis or more frequently if the situation requires it e.g. a significant change in equipment, etc.

7. Managing the Pavement Café Service

Alcohol must be purchased within the premises for consumption outside. Advice on this may be sought from the Licensing Board, however it is the responsibility of the applicant to be aware of whether or not the licence held allows for the consumption of alcohol off the premises. The permit holder will be held responsible for the control of customers using the pavement café, discouraging disorder. They must ensure that their customers are informed that they must remain within the boundaries of the pavement café, when in possession of alcohol, otherwise they are in contravention of the bylaw that bans drinking alcohol in public places. Where there is evidence of continuous breaches of this, the permit will be withdrawn.

The crockery or cutlery used in pavement cafés should be of good quality and a uniform style. Menus should be readily available either at the tables or on request.

It is a requirement of the Council that customers are able to purchase **food only** at pavement cafes at all times. This is intended to create a relaxed and sociable European style of eating and drinking that will appeal to a wide range of customers.

The pavement café area is to be used only for the service and consumption of food and drink. Food and drink must not be stored or prepared outside the normal premises, as there may be difficulties with temperature control and a risk of contamination. It is imperative that good food hygiene practices are followed at all times.

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 off the premises will not be permitted within the pavement café area.

All the food and drink which is consumed within the pavement café area should be ordered and purchased from within the existing premises.

All notices required in terms of Consumer Protection/Environmental Health legislation must be displayed in

accordance with the requirements of the law. Further advice is available from the Commercial /Trading Standards Service

All tables must be cleared of all uneaten food, used crockery, cutlery etc. and properly cleaned of any spillage immediately customers vacate them.

Any food spilt on the Footway must be removed immediately and the area washed immediately. This will minimise the likelihood of birds and/or vermin scavenging in the area.

If birds roost on buildings or in trees adjacent to the pavement café, applicants must provide parasols to cover the area of the tables and chairs in order to minimise the risk of food contamination.

8. Site Cleanliness

The permit holder will be responsible for the cleanliness of the pavement café area at all times. Care should also be taken to ensure that litter does not stray or get blown further afield. An area of approximately five metres around the site should be kept clear of any stray or wind blown litter from the café.

The area should be swept when necessary to keep it clear of litter and refuse. Spillage and breakage, especially of glass and crockery, should be cleared up immediately. Care must be taken to avoid nuisance to customers and to ensure that hazards are not created during this work. **The café area should be thoroughly washed at the end of each trading day.**

There must be at least one suitable litter bin and one suitable smoking bin provided within the café area at all times of operation. Wheelie bins are not suitable for this purpose.

If smoking is permitted in the pavement café each table should be provided with an ashtray which should be emptied each time the table is cleared. If smoking is not permitted a "No Smoking" sign should be placed on each table. **At the end of each day all discarded cigarette stubs must be cleared.**

All tables and chairs and other equipment must be properly maintained and kept in a clean, tidy and safe condition at all times, and removed overnight for storage off site.

Failure to comply with the cleaning requirements will jeopardise renewal of the permit. Failure to comply with them at the end of the day may result in the Council carrying out the work for which the permit holder will be charged.

9. Good Citizenship

It will be the responsibility of the permit holder to ensure that the pavement café is operated in accordance with these guidelines and the conditions of the permit. The pavement café should be managed and maintained to the same standards as the interior of the premises.

The pavement café must be operated in a safe and efficient manner ensuring that there is no safety risk or nuisance caused to other users of the Footway or nearby premises.

The pavement café area should be kept under supervision at all times of its operation and all patrons/customers should be seated at all times. Patrons/customers are not permitted to drink whilst standing in the café area.

The Council will not permit any fixtures to or any excavation of any kind to the surface of the Footway.

Every effort should be made to avoid causing damage to the Footway or adjacent property. The cost of rectifying any damage to the Footway surface or to street furniture caused by any activity connected with the pavement café operation may be recharged to the permit holder.

Police Scotland will be consulted on all pavement café applications.

The permit holder is responsible for the satisfactory conduct of people within the pavement café. Rowdy or unruly behaviour may lead to the suspension or termination of the permit.

Music, whether amplified or not, will not be permitted to avoid nuisance to any residents or businesses in the vicinity or to any other users of the Footway.

The permit holder will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the Footpath under the permission granted. The Council will, therefore, require the permit holder to take out third party public liability insurance in the sum of at least £5,000,000 with an insurance company of repute to be approved by the Council. **Details of the third party liability insurance should be enclosed with the pavement café permit application.**

Granting a permit 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 Footway or street furniture. Other organisations, such as statutory undertakers, may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the permit temporarily if, for any reason, it becomes necessary.

The Council will not allow any wheeled refuse containers, beer kegs, bottle crates, A-boards or advertising signs or any other unsightly or unapproved items to be placed on or adjacent to the pavement café area. The Council will need to be satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business. The Council reserves the right to refuse a permit to any applicant who has not made suitable arrangements for the internal storage and collection of refuse and to withdraw the permit if the approved arrangements are not adhered to.

10. Hours of Operation

Pavement cafes will not be permitted to remain open later than 10:30pm. This may be extended if the normal closing time of the premises has been extended with permission from the licensing board for **a special event in the City**. The proposed hours of operation will need to be included on your application. **All furniture, etc is to be removed and the pavement café area swept and washed within 30 minutes of the pavement café closing.** This condition may be waived in pedestrianised areas with the proviso that the Council has the right to change its mind should circumstances change.

In certain pedestrianised areas the Footway remains open to vehicular traffic during part of the working day; if the presence of a pavement café in such areas would obstruct the free flow of traffic it may be necessary to restrict the opening hours of cafes to between these times. In any case the Council reserve the right to stipulate the hours between which the pavement café can operate.

11. Getting the Permissions Needed from Your Neighbours

If you propose to extend the pavement café beyond the width of your own frontage the Council will need to be certain that agreement has been reached with any neighbour whose frontage is affected by the proposal before it can approve your application. Letters confirming these agreements should be forwarded with your application.

12. Footway Permission

It is recommended that you seek advice before you submit your application. Council officers will be pleased to provide advice on specific cases before the formal application is made. This does not guarantee approval of permissions being sought but it may help to minimise expenditure on preparing an application and save expenditure in cases where an application would be turned down. We are here to help.

To apply for your permission to use the Footway for a pavement café you will need to complete an application form for a pavement café permit

You should enclose with your application details of the furniture, parasols and the means of enclosure to be used. These details should include their metric dimensions, colours, materials, etc., as well as drawings, photos or pictures of the proposed items. City Council may refuse an application if it is felt that in our opinion, the location is generally unsafe for such reasons as:-

- Dangerously busy adjacent road

- Distraction to motorists approaching nearby junctions.
- A particularly intensive pedestrian volume at the location
- etc

Applicants are reminded that no sales from the pavement are allowed and the use of unbreakable glasses and ashtrays is recommended.

13. How Long Will It Take

As each application is different, then the time taken to process them will inevitably vary. In general, it is estimated that it will take approximately one month to process an application from its receipt to issuing a permit. The application process will be expedited if your proposal complies with the good practice procedures contained in these guidelines, and your application is accompanied by all the required supporting information.

14. What Will It Cost?

The fee for processing an application for a pavement café permit covers the administrative and legal costs incurred in the preparation and issue of the permit, and the rental of part of the public footpath, in line with the Council's rules on street trading.

The cost is **£200 annual administration fee for up to 24 chairs and a supplementary fee of £25 for each additional chair.**

Once your application has been processed and approved you will be invoiced for the relevant amount.

In addition, the Planning Permission standard charge for change of use is £401.

The fees will only be charged once both approvals are given but all proposals need both permissions to proceed.

16. The Pavement Café in Operation

Pavement café permits issued by Aberdeen Council are not transferable and should not, therefore, be regarded as a transferable asset.

Permits are normally granted for a maximum of one year and are renewable annually at the discretion of the Council.

Permits and plans of the Pavement Café should be displayed in a prominent position.

The permit will include a number of terms and conditions based on these guidelines that must be complied with. **The Council will carry out periodic inspections to make sure that all the terms and conditions of the permit are being adhered to. These guidance notes and plans of the pavement café MUST be kept on your premises at all times.**

The Council/Police may suspend or terminate a permit if any of the conditions of the permit are breached.

In the event of streetworks requiring to be done in the area of a pavement café the Council will serve 3 days written notice to the pavement café owner/manager to remove all furniture/barriers etc.

16.Contact

Roadwork Coordination
Direct Dial (01224) 522290
Direct Fax (01224) 523315
Email roadworkcoordination@aberdeencity.gov.uk

Applications should be returned to:

Aberdeen City Council
Operations and Protective Services
Business Hub 11
Marischal college
Broad Street
Aberdeen
AB10 1AB