



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin
**Newry, Mourne
and Down**
District Council

Licensing of Pavement Cafés Act (Northern Ireland) 2014

Guidance for Applicants

Completed Applications to be sent to:

Oifig Dhún Padraig

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Enterprise, Regeneration and Tourism
Department
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Definitions

Furniture	includes tables, chairs, umbrellas, barriers, heaters, menu boards, advertising boards, lighting or other approved fittings.
Temporary furniture	furniture that can be removed from the pavement within 20 minutes.
Licensed area	a public area as defined on a plan approved by the Council as a pavement café.
Licensed period	the hours and days approved by Council when the licensed area can be used as a pavement café.
Licensing Order	the Licensing (Northern Ireland) Order 1996.
Pavement Café Licence	the permission given by Council to allow you to place temporary furniture on a specified public area for customers to consume food or drink supplied from the licence holder's premises.
Public area	a place in the open air, to which the public has access, as of right and which is not a market area.
Public nuisance	noise disturbance or other nuisance caused to residents or neighbouring businesses.

Introduction

Pavement cafés are becoming a familiar sight across the UK and Ireland. They can help develop a local café culture, which in turn can have a positive effect on urban environments, promote town and city centres, contribute to the general well-being of communities and appeal to tourists.

Tourism is a key driver for economic growth in Northern Ireland offering business opportunities to create jobs and generate wealth. Visitor attitude surveys undertaken by the Northern Ireland Tourist Board have highlighted the attractiveness of a vibrant café culture, especially for short breaks where shopping, good food and evening entertainment are high on the agenda. Well-regulated pavement cafés can contribute to an excellent visitor experience, enhance the attractiveness of a local area and encourage visitors to stay longer and spend more.

Legislation

Council's power to regulate pavement cafés in the District is contained in the Licensing of Pavement Cafés Act (NI) 2014 and associated Regulations.

How to use this guidance?

This guidance document has been prepared by Newry, Mourne and Down District Council to help you prepare an application for a Pavement Café Licence. Further advice or guidance in relation to the legislation can be found on the Newry, Mourne and Down District Council website www.newrymouredown.org or by contacting the Licensing Section on 0330 137 4030.

Please note that this document is for guidance only and is not intended to be a legal interpretation of the legislation.

What is a Pavement Café Licence?

A Pavement Café Licence authorises a person who carries on a business involving the supply of food or drink (in or from premises) to place furniture (tables, chairs etc) on a public area for use by customers. This includes cafes, restaurants, pubs, retail outlets providing refreshments, takeaways, supermarkets with a deli counter etc.

Note: A licensed pavement café area will remain a public place for the purpose of public order, environmental or other legislation.

Who may apply?

Any person or persons who carry on the business (in or from a premises) involving the supply of food or drink to the public, may apply for a licence.

Is the area you want to use suitable for a pavement café?

This guidance document (Section 2) offers advice on what the Council will consider appropriate for a pavement café licence including:

- Pedestrian and vehicular access;
- Size and layout;
- Likely disturbance to other businesses or residents
- Furniture design
- Safety issues

In general, the pavement café area will need to be set-up immediately adjacent to the premises. However, a licence for a remote café may be granted where:

- The proposed café does not interfere with both vehicular and pedestrian traffic flow; and
- The licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.

Hours of operation

The Council will confirm the hours and days of use for the pavement café area having regard to the location, likely disturbance to local residents or other businesses and representations from interested parties.

Normally the Council will consider that pavement café licences will be granted for hours between 8am and 11pm.

What enforcement powers do Council have?

Failure to obtain an appropriate licence or failure to comply with the conditions attached to a licence may result in enforcement action being instigated.

- **Unlicensed pavement cafés**

It is an offence to place furniture (for the use of consumption of food and drink) on a public area without a pavement café licence. The offence is liable to a fine of up to £1,000 on summary conviction.

- **Suspension/Compulsory variation of a licence**

Council may suspend a licence when maintenance of street utilities is required, or road works are scheduled. The licence can also be suspended a breach of licence conditions, making false statements or failure to pay any fee to Council without good reason.

During any period of suspension, the pavement café licence is invalid, and Council may remove any furniture placed in the public area during the period of suspension.

Council may also compulsorily vary a licence where part of an area has become unsuitable or its continued use is likely to result in interference or inconvenience to persons or vehicles in the vicinity or public order concerns.

Council will consult with PSNI before varying a licence on public order grounds.

- **Revocation of licence**

A pavement café licence may be revoked following breaches of licence conditions, where the licensed area is no longer suitable for temporary furniture, or where there is undue interference or inconvenience to persons or vehicles in the vicinity or public order concerns. Council will consult with PSNI before revoking a licence on public order grounds.

- **Notice of revocation, suspension or compulsory variation**

If the Council proposes to revoke, suspend or vary the licence condition you will be given 21 days' notice unless it is considered that such action needs to be taken in the public interest.

You can make representations to persuade us not to revoke, vary or suspend the licence, within a specified period of 21 days of receipt of notification of Council's intention to do this.

Making an Application

Before you submit your application, you should read this guide thoroughly to check whether your proposal meet all the criteria. You are advised to contact the Council to consider your proposals PRIOR to submitting your application. This may help to minimise time wasted and expenditure on fees for applications which may later be refused.

Applicants are advised to read the guidance document carefully and ensure they fully understand the requirements before they complete the attached application form.

All applications for a Pavement Café Licence must be accompanied by the following:

- **Licence fee**

	Administration costs (Non-refundable)	Compliance monitoring (2 visits)	Actual cost for 3-year licence
Grant of pavement café licence	£280.00	£95.00	£375.00 total
Renewal or Variation of pavement café licence	£185.00	£95.00	£280.00 total

- **Location plan/map**

A plan must be provided to a scale not less than 1:2500 (preferably ordnance survey) showing the proposed pavement café marked in red and the adjoining streets and properties.

- **Proposed café plan**

A plan must be provided to a scale of not less than 1:100 showing the proposed pavement café area, the streetscape and all utilities and services including lampposts, bollards, fire hydrants, manholes, cycle stands, litter bins and any other items of street furniture located within the immediate vicinity. The dimensions of the proposed pavement café area must also be shown. Please see Appendix 1 for examples of pavement café plans.

- **Details of the furniture**

Provide details of the number, materials and types of chairs, tables, umbrellas, etc, to be provided in the café. Photographs/manufacturers detailed brochures of existing furniture would be an advantage.

- **Public liability insurance**

Confirmation for premises showing cover with minimum indemnity of £5million.

- **Planning permission**

Where appropriate, evidence of planning permission to be provided.

- **Risk assessment and management control plan**

Must be provided if the café is to be located away from the main premises or patrons/staff need to cross a public pavement to reach the café area.

Public Notice

Applicants are required to fix a public notice (see application form) to the premises on the day the application is made to the Council. The notice must be positioned so as to be visible and legible to the public for 28 days to allow for representations. In addition, the Council will make the application available to be viewed by the public on the Council's website, until the end of the period allowed for representations. You must complete the declaration on the application form that you have erected the notice and that you will maintain it for 28 days from the date of application. Photograph of notice displayed on the premises to be provided.

Consultation

It is recommended that businesses discuss their proposals with adjacent property occupiers to inform them of the application.

When an application is made for the grant, renewal or variation of a licence the applicant must display a public notice indicating that they have made application for a pavement café licence and that any objections can be made in writing to Council within 28 days of display. Twenty-eight days will be given for comments and any objections will be considered prior to the licence determination.

The Council will also give notice of the application on its website: - www.newrymournedown.org/pavement-cafes

We will also consult with the following:

- the Transport NI to ensure that any implications for vehicular traffic, pedestrians and public safety impacts are properly taken into account; and
- the Police Service for Northern Ireland where the premises is licensed to sell alcohol;
- the Planning Department; and
- any other Council Department, organisations or individuals as appropriate.

Can my licence application be refused?

Yes. Due to factors such as visual impact, width restrictions, obstructions or very heavy pedestrian flow it may not be possible to accommodate pavement cafés in all locations. However, we will consider each application on its own merits. We will normally follow the policy however if we have to depart substantially from the policy we will explain why.

Following consideration of your application Council may make changes to your proposal to meet the licensing criteria including amending the size and shape of the licensed area. Once these changes are agreed by the applicant and implemented the licence will be granted.

If your proposal fails to meet the criteria and your application is refused by the Council, you will be informed of that decision and you will be refunded the administrative fee. Following refusal of an application the applicant may appeal against the refusal to the Magistrates' Court within 21 days of being notified of the Council's decision. Licence holders may also appeal a decision to suspend or revoke a licence or vary the area and conditions of a licence (as an alternative to revocation), or to limit the duration of a licence.

How long will it take to process my application?

Council aims to provide you with a determination within 6 weeks from date of receipt of a completed application including all the required plans and licence proposal. This is to allow full and proper consultation in line with statutory guidance, site visits and consideration of any objections or other input from consultees.

Application Form: Suitability Criteria for Licence

1. Design

The applicant will need to demonstrate that the café will make a positive contribution to the street scene and is in keeping with the surrounding street scene and other buildings and public realm. Simple robust designs will be preferred, and excessive or elaborate detail or signage should be avoided unless clearly justified by the particular context. Applicants should also demonstrate commitment to the care and/or refurbishment of the external appearance of the building in which the business is housed, to ensure that the appearance of the street scene will be maintained and, where necessary, enhanced.

Street café proposals should not hinder reasonable use of the footpath, cause nuisance to adjacent frontages, or interfere with apparatus or access to apparatus within the footpath. To this end the applicant shall comply with all statutory requirements and obtain all necessary permissions before making a licence application.

2. Size and Layout

The extent of the area to be licensed will depend on the site characteristics, safety considerations and the criteria set by the Council and Transport NI to maintain adequate space for both pedestrian and vehicle movement.

The outdoor seating area should:

- Avoid conflict with the principal lines of pedestrian movement.
- Avoid conflict between customers going in and out of the café, passing pedestrians and neighbouring premises.
- Ideally be confined to the frontage of its own premises with close integration of internal and external activities however this does not preclude a remote location.

In order to safeguard the interests of pedestrians, particularly disabled people, older people and those with mobility needs including pram and wheelchair users, a minimum width of 2 metres clearance must be maintained on the pavement including at the kerbside. Where conditions permit, a reduction to 1.5 metres will be considered. This reduction shall be regarded as the absolute minimum and shall be restricted in length to a maximum of 6.0m.

However, where the seating area is adjacent to a road junction or vehicular access, 10 metres clearance should be left to allow for junction visibility. In pedestrianised areas, 6 metres of unobstructed space must be left. For examples of pavement cafés please refer to Appendix 1.

The area to be used must take into account other needs in the immediate vicinity (e.g. kerbside parking, loading bays, bus stops, emergency vehicle access, emergency exits, street cleaning machines, and pedestrian crossings).

Where an application contains a proposal to establish a pavement café abutting neighbouring premises, the Council would advise that the applicant should discuss their proposal with the owners or occupiers of the adjoining premises before an application is made.

The limits of the approved café area will be agreed as part of the application process and it is important that no obstructions such as tables, chairs, portable advertising boards, planters or barriers are placed outside this approved area or left on the pavement or any part of the licensed area outside approved hours. A copy of the Pavement Café Licence (including approved plan) should be available on the premises for inspection on request.

3. Boundaries

All furniture, including menu boards, associated with the Pavement Café is to be placed within the licensed area. The licensed area must be screened with appropriate screening to the satisfaction of the Council to demarcate the licensed area and in order to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians, unless the licensee can justify a reason not to do so. Portable, sturdy barriers with a tap rail are recommended. Bases should not cause an obstruction or tripping hazard to pedestrians.

The enclosure shall be removed both outside the licensed period and when the pavement café is not operating within the licensed period. The materials should, therefore, be lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked into or overturned by a sudden gust of wind.

The design of the barrier should complement the character of the surrounding area and may be required to be of a specific design in order to maintain continuity along the street frontage. The colours and materials used for the enclosure should ensure that it is not visually dominant in longer views but will allow key elements to stand out against the background in close up.

Well maintained planters can be particularly attractive and can be appropriately used as part of the means of enclosure but must be positioned within the licensed area. In certain circumstances, it may be possible to utilise existing street railings, planters and bins as a suitable means of enclosure.

4. Furniture

The furniture must be of a high-quality design and suitable for outdoor commercial use. Poor quality furniture will not be permitted.

The use of parasols, along with their locations, materials and colours must be specified as part of the design and must be positioned so that their extent is contained within the boundary to ensure they do not present a danger to any user of the pavement café or any other pedestrians.

Limited advertising may be permitted on both the enclosure and parasols only. Proposed details should be provided with the application.

Non-furniture items, e.g. menu boards, signs and portable gas heaters also need to be approved as part of the licensed area. Where heating is to be provided, this must be of a type suitable for outdoor use and placed within the licensed area. If patio style liquid petroleum gas (LPG) heaters are to be used, they need to be adequately secured upright, be fitted with a flame failure device and to be maintained in an efficient working order.

All furniture must be of a temporary nature that can be removed swiftly within 20 minutes at the end of the permitted period or when access to the area is required by any statutory body or in the event of an emergency.

If the main premises operate for longer than the licensed period the applicant should give consideration where furniture is to be stored, this should be made clear within the application.

5. Environmental implications and other requirements

It will be the responsibility of the pavement café operator to keep the area clean and free of litter, during licensed/operational hours and after the conclusion of business each day.

The conduct of customers using the outdoor seating area will also be the responsibility of the operator.

All food premises should be registered with the Council.

The licence does not imply an exclusive right to the area and others have rights over it for events, maintenance, repairs etc.

No amplified music or loudspeaker equipment shall be used in the pavement café area.

Proprietors must promote a safe, clean and generally welcoming environment in the pavement café area. Councils may make it a requirement that patrons using the area are seated at the furniture provided.

Proprietors should give consideration to dividing their outside café area into smoking and non-smoking sections, with each section clearly marked.

6. Safety and Control

It is the responsibility of the applicant to ensure that the pavement café and equipment used comply with all appropriate legislation in relation to food safety, health and safety and alcohol sales requirements. Applicants are reminded of their duties, to carry out a risk assessment, under the Health and Safety at Work (NI) Order 1978 as they relate to the area and activities covered by the pavement café.

Applicants proposing to licence a café which is separate from their main premises or where you need to cross a public pavement to reach the café area must provide a risk assessment for the café and a proposal as to how the café will be controlled and supervised.

Individual pavement café operators with the required Pavement Café Licence will be responsible for securing full and proper insurance cover which should also indemnify the Council against public liability claims from members of the public arising from café users on the footpath.

7. Other statutory bodies

You should also consider the requirement of Planning and Rates before making your application.

Planning Service

Depending on the circumstances of a proposed pavement café on a public area, a planning application may be required if development is to be undertaken. Anyone considering the establishment of a pavement café is advised to contact the planning office of the relevant council for advice and guidance on whether an application for planning permission is required or not. To this end, the council planning office may request from a potential applicant, full details of a proposed pavement café, including drawings identifying the site, proposed layout and means of enclosure, as well providing details of proposals such as alteration works, canopies, blinds, awnings and details of proposed advertisements/signage. Other consents, such as Consent to Display an Advertisement and Listed Building Consent may also be required and if so an application in each appropriate case should be submitted to the planning office of the relevant council.

Rates liability on grant of licence

The Department for Finance and Personnel has advised that for the vast majority of cases a marginal, seasonal increase in seating of a temporary nature under the terms of the licence would be regarded as de-minimus in rating terms and would not warrant a change in Net Annual Value (NAV). Where the type of arrangement goes beyond the marginal, seasonal or temporary arrangement and it is assessed or evidenced that it adds to the rental value of the premises, an adjustment to the NAV may be warranted. Each case will be judged on its merits and will be the decision of the District Valuer. Councils will wish to refer prospective applicants, who have concerns in this respect, to the District Valuer, Land and Property Services.

8. Consumption of Alcohol

Alcohol **may** be consumed (but not sold) in a pavement café area unless:

- The business is an 'off sales' as defined under Article 5(1) (b) of the licensing Order; or
- The Council is satisfied that permitting persons to consume intoxicating liquor in a pavement café would be likely to result in disorder; or
- The premises are not licensed under the licensing Order (see note below) and are located within an area designated under bye laws prohibiting the consumption of intoxicating liquor.

Note: Only premises licensed under the Licensing Order as a public house, a hotel, a restaurant or a guest house with a restaurant will have their licensed area for the consumption of alcohol extended to include the pavement café area.

Examples of pavement cafés



