



PAVEMENT CAFÉS

A guide to their operation in
Calderdale



CALDERDALE METROPOLITAN BOROUGH COUNCIL

PAVEMENT CAFÉS

A guidance note for applicants

1 INTRODUCTION

- 1.1 Calderdale MBC supports the provision of pavement cafés within the borough, making a positive contribution to the street scene and adding vitality, colour, life and interest to the street. They can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people that live, work and visit Calderdale.
- 1.2 This guide is intended to help businesses understand where pavement cafés might be encouraged, the permissions needed and how applications will be assessed. Although each application will be considered on its merits this guide contains key points that must be considered in every case.
- 1.3 Provisions of pavement cafes has proved successful in enhancing town centre life and attractiveness but there is now a need for improving the management of site layout and quality, without affecting the objective of promoting and encouraging their existence. Without adequate management pavement cafes can potentially cause obstruction to pedestrians and detract from the surrounding environment.
- 1.4 Should you wish to apply to use the area outside your premises as a pavement café please read this guide thoroughly to check that your proposal meets all the criteria. Council officers will also be pleased to offer advice and help, which may prevent wasted time and money on applications that will not succeed.
- 1.5 Following the advice in this guide will help to minimise expenditure on fees although it cannot guarantee that permission will be granted.

2 LEGAL SITUATION

- 2.1 For the purpose of this guide pavement cafés are considered to be tables and chairs placed within a designated area on the public highway where food and drink is served.
- 2.2 The council must be indemnified against proceedings, claims, demands and liability which may at any time be taken, made or incurred in consequence of the use of the chairs and tables and other objects on the designated area of the highway.

- 2.3 The licensee shall make no charge or claim against the council in the event of the chairs, tables or other objects being lost, stolen or damaged in any way from whatever cause.
- 2.4 Before agreeing to licence a pavement café on a public highway, the Council must ensure that the public's rights to use the highway are not affected detrimentally.
- 2.5 The Council's byelaws, policies and standards also need to be complied with for health, safety and environmental reasons.
- 2.6 The guide relates only to the possible establishment of a pavement café on a public highway. (This guide does not cover pavement cafes on private land.) 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 become public highway if the public have enjoyed access over it for at least twenty years or if the Council have formally adopted the land.
- 2.7 Before proceeding it would be wise to check with Planning Services at Northgate House Northgate Halifax HX1 1UN, whether planning permission and or Listed Building Consent would be required for the work. Applications for planning permission require a fee. If any work is carried out without the necessary consents then you may be at risk from formal planning enforcement action. Application forms and more information about planning is available on the Council's website. A duty officer service is available between 9am and 5 pm at Northgate House for general information about planning matters. See Contacts section at the end of the guide.

3 PERMISSION REQUIRED

- 3.1 Permissions to use the highways for pavement cafés 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 to remove such obstacles in such cases.
- 3.2 The licensee's attention is drawn to the Highways Act 1980 Section 115K (failure to comply with terms of permission), which provides as follows:

Section 115K

- (1) If it appears to a Council that a person to whom they have granted a Permission under section 115E of the Highways Act has committed any breach of 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.

- (2) If a person on whom a notice is served under subsection (1) above fails to comply with the notice, the Council may take the steps themselves.
- (3) Where a Council have incurred expenses in the exercise of the power conferred on them by sub-section (2) above, those expenses, together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses, may be recovered by the Council from the person on whom the notice under sub-section (1) above was served.

Failure to comply with any Conditions of the permission will require the Council to consider whether any subsequent permission should be granted to the holder of this permission.

- 3.3 If you wish to serve alcohol at the pavement café you will need a Premises Licence, which includes the area of the proposed pavement café, from the Licensing Unit. See Contacts.
- 3.4 Noise, disturbance, smells or litter, which causes a nuisance to other premises, are not acceptable. Amplified music will not be permitted unless specifically approved by the Head of Customer Services and Communications. Advice on how to minimise noise disturbance, smells and litter can be obtained from the Councils Environmental Health section. See contacts. Section 62 of the Control of Pollution Act 1974 prohibits the use of loudspeakers in the street between the hours of nine in the evening and eight the following morning, for any purposes; or at any other time, for the purpose of advertising any entertainment, trade or business.
- 3.5 Food businesses are required by law to be registered with the local authority. This is an entirely separate consideration to granting a pavement café licence. This can be done by obtaining an application form from Environmental Health Services. See contacts section at the back of this guide.

4 DESIGNING THE PAVEMENT CAFÉ

Size and Layout

- 4.1 The size and layout of your proposed pavement café will depend on available space, type of premises, street furniture, pedestrian and vehicle flows. It should be seen as an integral part of the main premises rather than an unrelated after-thought.
- 4.2 The café should ideally occupy an area directly in front of and be visible from your existing premises and not extend beyond the width of your frontage. However where it is proposed to locate a café in an area which is not directly in front of the existing

premises then applicants should include details of how the pavement café area will be supervised and managed to ensure that all conditions of the licence are adhered to.

- 4.3 A clear pedestrian route must be maintained. There must be a clear width of 1.8 metres between the boundaries of the pavement café and the kerb at all times. In a pedestrianised area there must be at least 3.6 metres of clear unobstructed space in front of the café to allow access for emergency vehicles.
- 4.4 Emergency exits and visibility splays from the adjacent premises must be unobstructed.
- 4.5 In pedestrianised areas it may be permissible to place tables and chairs in a clearly defined area away from the building providing this area does not impede pedestrians or create a hazard for blind or partially sighted people or people using wheelchairs.
- 4.6 If it is intended to design the café with a pedestrian route passing through it then that route should be as straight as possible and free from obstructions.
- 4.7 The presence of tables and chairs should never discourage pedestrians using the footway.
- 4.8 When designing the pavement café you should consider whether your existing toilet and washing facilities are adequate to accommodate an increase in customers.
- 4.9 Access must be given at any time for the Council, police, fire and ambulance services, any statutory undertaker or telecommunications code operator or builder's vehicles, hearses and furniture removal vans.
- 4.10 The applicant must include a scaled plan showing the area of highway included in the proposal, the layout and maximum number of seats and perimeter treatment and illustrations and dimensions of the furniture to be used (or opportunity to inspect similar type).
- 4.11 Space should be left between tables and chairs and other items of street furniture giving adequate circulation space to allow access for all users including those in wheelchairs. This may mean reducing the number of tables and chairs.
- 4.12 The tables and chairs should be placed so as not to obstruct drivers' sightlines or obstruct highway signs.

- 4.13 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 may lie.
- 4.14 Adequate lighting must be provided whenever lighting levels are reduced in order for the pavement café to operate safely. This should be indicated on the application form. If it is proposed to attach the lighting to the building, consent may be needed if the building is listed.

Boundaries

- 4.15 A physical barrier of approximately 1m in height must be provided to guide persons with disabilities safely around the area. Such barriers must not be permanently fixed to the ground where this is a public highway. Please consult with the Councils Highway section if in any doubt.
- 4.16 The means of enclosure can be lattice-like barriers or structures, substantial planters or a combination of both but must be attractive and in keeping with the area in which they will be sited. They can be made in timber, metal or plastic but must be stable and sturdy, not contain any protruding parts and be light enough to be removed and stored elsewhere when the café is not operating.
- 4.17 A-boards are not permitted on the highway. You may therefore wish to consider using part of the enclosure barriers to show the name of your business.
- 4.18 Post and chain or post and rope barriers are potentially hazardous to pedestrians, particularly the visually impaired, and are not considered suitable.
- 4.19 If planters are proposed either to define and contain the site or for decoration, good quality plastic or glass fibre may be permitted as a means of reducing their weight to maintain portability. Ideally, the combined height of planter and plant/s should be at least 1m.
- 4.20 Structures must be substantial enough to prevent collapse if accidentally walked or stumbled into. They should have at least two solid horizontal bars or elements, the lower not more than 155mm above the ground (tapping rail) and the second between 800mm and 1000mm above the ground.
- 4.21 All activities associated with the café must be contained within the agreed boundary.

- 4.22 Storage of furniture, signboards or anything else associated with the business must not occur outside the boundary at any time without the prior written consent of the Head of Customer Services and Communications.
- 4.23 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 Licence. A copy of the Licence and plan must be kept on the premises at all times and be available for inspection.

Furniture

- 4.24 This guide does not wish to define a standard style of furniture for pavement cafes but the Council reserves the right to reject applications where inappropriate furniture is proposed.
- 4.25 In choosing your furniture you should have regard to the highway surface on which it will stand. For example, uneven or sloping surfaces may require more sturdy styles of tables and chairs, whereas narrow or thin legs may cause damage to certain paving. All furniture should be manufactured from quality materials.
- 4.26 The colour of furniture should be attractive but not too bright, garish or overly reflective. The design however, should take into account the needs of people with a visual impairment, particularly to contrast with the background where they will be sited.
- 4.27 Colours and designs of parasols will not be restricted to a particular type but the same basic design criteria to that of the furniture will apply.
- 4.28 All furniture, accessories and boundary treatment must be of a design and materials agreed in writing by the Head of Customer Services and Communications.
- 4.29 The Head of Customer Services and Communications, must agree any change of furniture or accessories in writing.
- 4.30 All furniture, boundaries and associated structures and accessories must be removed from the public highway within 30 minutes of closing of the Pavement Café.
- 4.31 All furniture, accessories and boundary treatment must be maintained in good condition.
- 4.32 Any umbrellas must not overhang the boundary of the pavement café. Use of umbrellas along with their location, materials and colour must be specified as part of the design. Umbrellas must remain unopened in high winds.

- 4.33 Pavement cafés will be allowed only for established cafés, licensed premises or catering establishments who have seating within the premises and employ sufficient waiting on staff to cover the extra service to the outside area.
- 4.34 Canopies, awnings and blinds, which are to be attached to the building, may require advertisement consent or planning permission. Advice should be sought from Planning Enquiries. See contacts.
- 4.35 If you intend to use patio/space heaters their dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan. 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, (someone who has knowledge of the law, British Standards, and Health and Safety Executive Codes of Practice and Guidance).
In considering an application, Calderdale Council will have regard to the inherent safety of the equipment; it's location, storage of Liquid Petroleum Gas cylinders, maintenance and training arrangements. The Council will require a risk assessment to be carried out, which must: -
- Identify the hazards, for example, fire, explosion, burns, impact from falling heaters/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.

5 MANAGING THE CAFÉ

Service guidance

- 5.1 Food and drink must be transferred from indoor premises to the outdoor area by waiter or waitress service.
- 5.2 Food should be served on ceramic plates and not in plastic or cardboard containers, paper bags or other wrappers.
- 5.3 Drinks should be served in ceramic cups or polycarbonate glasses or bottles. Cutlery should be stainless steel.
- 5.4 Toilet and hand washing facilities must be provided within the premises.
- 5.5 Menus should be readily available either at the tables or on request. A-boards must not be used to display menus or advertise the café.

- 5.6 The Council will require that all customers be offered the choice to purchase both food and drink at pavement cafés.

Hygiene and Health & Safety

- 5.7 Health & Safety and Fire risk assessments must be completed as part of the application process.
- 5.8 The pavement café area is for the service and consumption of food and drink only. Preparation and storage of food and drink must not be undertaken 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 utilised at all times.
- 5.9 All the food and drink, which is consumed within the pavement café, should be ordered and purchased there.
- 5.10 All vacated tables must be cleared of all uneaten food, crockery, cutlery and any other associated debris as soon as possible, to reduce the risk of attracting pests.
- 5.11 Any spillage of food and drink on the highway must be removed immediately and the area washed at the earliest opportunity. This will minimise the likelihood of pests scavenging in the area.
- 5.12 Applicants should consider providing umbrellas or some other form of cover in order to minimise the risk of food contamination if birds roost on buildings in the area. See 4.32 for conditions relating to umbrellas.

Site Cleanliness

- 5.13 All litter, grease or spillages must be removed as and when requested and at the end of each working day. The cost of dealing with any drainage blockages resulting from the unauthorised disposal of effluent or solid waste shall be the responsibility of the licensee.
- 5.14 The licensee will be responsible for cleanliness of the pavement café area at all times. An area of approximately eight metres around the site must also be kept clear of litter and care should also be taken to ensure that litter does not stray or get blown further a field.
- 5.15 Spillages and breakages should be cleared immediately following procedures set out within an appropriate risk assessment.
- 5.16 The pavement café area should be carefully washed at the end of each trading day.

- 5.17 All tables and chairs and other associated equipment must be maintained in a clean, tidy and safe condition at all times.
- 5.18 The Council is not in favour of wheeled refuse containers, plastic refuse sacks, beer kegs, bottle crates, bins and other unsightly items being kept on the streets. It is desirable that applicants make arrangements, which are acceptable to the Council, to store all such items associated with their business within the premises.
- 5.19 Failure to comply with the cleaning requirements during the hours of operation may jeopardise renewal of the licence. Failure to comply with them at the end of the working day may result in the Council carrying out the work for which the licence holder will be charged.

Good Citizenship

- 5.20 It will be the responsibility of the licensee to ensure that the pavement café is operated in accordance with the conditions of the licence. The pavement café must be suitably managed by staff to control the use of the outside area and maintain the area to as high a standard as is required inside their premises.
- 5.21 The Council will not permit any fixtures to or any excavation of any kind to the surface of the highway.
- 5.22 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 highway or nearby premises.
- 5.23 Where drinking takes place in the pavement café, polycarbonate-drinking vessels must be used. The use of glassware will not be permitted.
- 5.24 In the event of bottles being ordered they must be decanted into polycarbonate-drinking vessels, unless plastic bottles can be supplied.
- 5.25 The café area should be kept under supervision at all times of its operation and all customers should be seated at all times.
- 5.26 Every effort should be made to avoid causing (directly or indirectly) damage to the highway or adjoining property. Any damage caused to the highway surface or to street furniture by any activity in connection with the pavement café operation will be recharged to the licensee.
- 5.27 The licensee is responsible for the conduct of people within the pavement café. Rowdy or unruly behaviour may lead to the withdrawal or non-renewal of the licence.

- 5.28 It is the licensee's responsibility to ensure drinking and eating remain within the boundary of the pavement café. Consumption outside of the boundary of the pavement café will not be permitted.
- 5.29 Any officers from West Yorkshire Police and authorised Council Officers have the power of closure of the Pavement Café if it is deemed an immediate risk to public safety or there is a risk of crime and disorder. In these circumstances it will be the responsibility of the licensee to ensure quiet dispersal of the customers from the pavement café and that all furniture, boundaries and associated structures and accessories will be removed at the earliest opportunity.
- 5.30 Where premises have been required to close by either West Yorkshire Police or an authorised Council Officer the pavement café licence will be the subject of an immediate review. The premises will be required to remain closed until the review of the licence has been determined and a letter issued by the Council advising that the pavement café may recommence operation.
- 5.31 Where premises have an occupancy limit, the pavement café will be inclusive of this permitted occupancy figure.
- 5.32 All applications will be considered in consultation with the West Yorkshire Police. In certain circumstances and in some locations it may be necessary to suspend the licence for pavement cafes on days when sporting or other events are taking place that are deemed problematic by West Yorkshire Police.
- 5.33 The Council will require the licensee to take out third party public liability insurance in the sum of at least £3,000,000 with an insurance company who shall be approved by the Council.
- 5.34 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 would need access to the highway for cleaning, repairs and access to equipment. Others, particularly statutory undertakers, may also require access for maintenance and repair of their equipment. The Council reserves the right to suspend the licence temporarily for any reason if it becomes necessary.

Hours of Operation

- 5.35 The Council does not wish to be too prescriptive on the hours of operation for the pavement café. It will however be expected that all activities in the pavement café to have ceased by 11pm. The proposed hours of operation will need to be included on your application together with a management plan and any relevant risk assessments detailing steps to promote the four licensing objectives; (1) prevention of crime and disorder, (2) public safety,

(3) prevention of public nuisance and (4) protection of children from harm.

5.36 In certain pedestrianised areas the roadway is sometimes required for general vehicle passage, normally up to 9.30 am and after 4.00 pm. It may therefore be necessary in a few cases to restrict the hours of opening to between these times.

6 GETTING THE PERMISSIONS NEEDED

Your neighbours

6.1 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 neighbouring premises affected by the proposal before it can approve your application. Letters confirming these agreements should be forwarded with your application.

6.2 The granting of a licence does not remove the requirement of the applicant to investigate and obtain any consents and licences that may be required for the activities proposed.

Premises Licence

6.3 If any of the following licensable activities take place within the pavement café, you will need to apply for a new or varied premises licence in addition to the application for a pavement café licence; sale of alcohol by retail, supply of alcohol in club premises, provision of regulated entertainment, late night refreshment. See Licensing Unit in contacts section.

6.4 In the event that licensable activities take place in the area covered by the pavement café licence, it shall be the licensee's responsibility to ensure compliance with any other relevant legislation.

Applying for a Pavement Café Licence

6.5 It is recommended that you seek advice of the Council 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.

6.6 To apply for your pavement café licence you will need to complete an application form, which is included with this guide.

6.7 The application must include a scaled plan showing the area of highway included in the proposal, the layout and the maximum number of seats and perimeter treatment and illustrations of the furniture to be used (or opportunity to inspect similar type). The plan should be drawn to a scale of 1 centimetre to 1 metre, unless the Council have previously confirmed in writing to the applicant that an alternative scale is acceptable.

6.8 The application should be supported by a written specification describing the proposed pavement café with details of the furniture and the means of enclosure to be used (dimensions, colours, materials, photos/pictures) refuse storage arrangements and any other relevant information.

7 HOW LONG WILL IT TAKE?

7.1 Under the terms of the Highways Act 1980 the Council has to publish street notices which have to be in place for not less than 28 days. These notices set out details of the proposals and invite representations to be made by people who may be affected.

7.2 The Council also needs the express consent of neighbouring premises before it can grant permission.

7.3 The Council will consult with West Yorkshire Police and Environmental Health in relation to public nuisance, crime and disorder, protection of children from harm and public safety. Their views will be taken into account when determining whether a licence is granted and under what terms.

7.4 Each application will be different so they will each take a different time to process. Some may provoke many objections; some may provoke none at all. If your application conforms to the good practice procedures contained in this guide, the time taken will be reduced. In general it is estimated that it will take approximately two months to process an application from its receipt to granting permission.

7.5 Submission of an incomplete application form or the failure to comply with the good practice procedures contained in these guidelines will extend the time it takes to process your application.

8 FEES

8.1 The fee for an approval of an application for a pavement café is based on the administration and legal costs incurred in the preparation and issue of the licence and ongoing enforcement responsibilities.

8.2 Please see attached list for the current application fees. If the application is refused a charge of £150 will be retained in respect of the Council's administrative costs.

8.3 In the event that the licence is cancelled, the whole of the fee shall be forfeited and the grant of another licence to that person will not be reconsidered within three years.

8.4 A cheque for the respective amount should be attached to each application.

9 THE PAVEMENT CAFÉ IN OPERATION

9.1 The pavement café licence must be displayed along with the pavement café plans in a prominent place and be available for production at the request of authorised council officials and officers from West Yorkshire Police.

9.2 Licences for pavement cafes, which are issued by the Council are not transferable and should not, therefore be regarded as a transferable asset. The licence will include a number of terms and conditions, which are based on this guide and must be complied with. The Council has powers to ensure compliance.

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

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

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

9.6 If any minor or occasional breaches are found the Council will work with the operator to find a mutually acceptable solution. If major or persistent variances from the conditions are found to be happening the licence will be withdrawn.

9.7 A licence holder may terminate a licence at any time by informing the Council in writing.

9.8 In the event that any of the above conditions or the attached specifications are not complied with, the Head of Customer Services and Communications has the right to cancel the licence, having first given one oral and one written warning.

9.9 In the event that the licence is cancelled, the whole of the fee shall be forfeited and the grant of another licence to that person will not be reconsidered within three years.

10 CONTACTS

10.1 Please send all completed applications to the following address:

Licensing Unit
2nd Floor Westgate House
Westgate House
Westgate
Halifax
HX1 1PS

10.2 The following contacts may also be useful on more detailed issues both before and during the progress of the application:

Environmental Health Services, including:

- 1) Trade refuse, storage and collection arrangements
- 2) Health & Safety and Food Hygiene

Calderdale Council
Environmental Health Services
Northgate House
Northgate
Halifax
HX1 1UN

t: 01422 392 325

e: environmental.health@calderdale.gov.uk

Licensing Unit:

Customer Services & Communications
Westgate House
Westgate
Halifax
HX1 1PS

t: 01422 393001

e: licensing@calderdale.gov.uk

Planning Enquiries, (including Access for Disabled People):

Northgate House
Northgate
Halifax
HX1 1UN

t: 01422 392237

e: town.planning@calderdale.gov.uk