

UPDATE ON IMPLEMENTATION OF NEW POLICY – PAVEMENT CAFÉ LICENCES

1.0 SUMMARY

- 1.1 This report provides an update on the implementation of the Pavement Café licence policy. The demand for pavement cafés across Argyll and Bute is increasing, in particular in the towns that have had public realm improvements. New issues may arise and have to be taken into consideration. For this reason, the policy may have to be reviewed and updated on an annual basis.
- 1.2 The Policy and Resources Committee at its meeting on 15 May 2014 approved the policy for use of pavements-Café Culture and requested that a report be brought back to the Committee with a review of the policy after its first year of implementation.

RECOMMENDATIONS

Members are asked to:

- Note and endorse the report.
- Approve the proposal to waive the Pavement Café Licence fee for a further year.
- Approve that the amended Pavement Café licence Policy be taken to the Policy and Resource Committee for approval.

UPDATE ON IMPLEMENTATION OF NEW POLICY – PAVEMENT CAFÉ LICENCES

2.0 INTRODUCTION

- 2.1 The Policy and Resources Committee at its meeting on 15 May 2014 approved the policy for use of pavements-Café Culture and requested that a report be brought back to the Committee with a review of the policy after its first year of implementation.

3.0 RECOMMENDATIONS

- 3.1 Members are asked to:
- Note and endorse the report.
 - Approve the proposal to waive the Pavement Café Licence fee for a further year.
 - Approve that the amended Pavement Café licence Policy be taken to the Policy and Resource Committee for approval.

4.0 DETAILS

Background

- 4.1 The new pavement café licence policy was implemented in August 2014. The demand for pavement cafés and display of goods across Argyll and Bute has increased, in particular in the towns that have had public realm improvements. There was a need to regularise and control the use of public footways to ensure that the purpose of the footway, i.e. a pedestrian thoroughfare, was not compromised, whilst at the same time provide vibrancy to our towns and stimulate economic growth.

Amendment to Policy

- 4.2 Item 21 within – ***Standard Conditions for Pavement Café Licences and the Display of Goods for Sale on the Public Highway*** (see appendix 1), should be revised to comply with the requirements of the New Roads and Street Works Act 1991. This condition should be replaced with the amended item as follows:-

“21. The Council may require the Pavement Café to cease operation immediately to allow public utility or footway repairs to be undertaken. Neither the Council or public utility company will be liable for any loss of income attributable in any way to repair and/or maintenance of any road, footway, pavement, or public services, to be laid, or already laid within the pavement”

- 4.3 Item 4 within – **Things to consider** (see appendix 2), contains reference to the possible requirement that toilet facilities may have to be considered where overall occupancy figures are increased. A new internal process within the Central Roads Team will be implemented to ensure that before a licence is issued, the applicant can demonstrate that Building Standards have been consulted and the assessment of toilet provision has been carried out if necessary. Application forms will be updated to include this requirement.

Applications

- 4.4 The Council offers free pre-application advice. A number of enquiries have been received and advice given within the first year of the implementation of the new policy, however there have been a limited number of formal applications received. A total of three applicants have been issued a licence and benefited from the waived fee. See table 1.1 below for further information.

Table 1.1 Licences Issued/Refused - First Year of Implementation of New Policy

Area	OLI	H/L	MAKI	BC
No. of licences issued	2	1	0	0
No. of applications received – Approval pending	1	0	0	0
No. of licences refused – Policy requirements not met	0	0	0	1
Approximate No. of pre-application enquiries with no formal application received to date	2	4	0	1

- 4.5 Licences have been issued for street cafés in Oban and Helensburgh. The pre-application enquiries are in relation to cafés in Oban, Helensburgh and Dunoon. As there are still a number of unlicensed pavement cafés operating, an awareness raising campaign will be undertaken to encourage existing cafés to either apply for a licence or remove their furniture from the footway. Officers will be visiting known street cafés without licences to encourage proprietors to formally apply as soon as possible. Guidance and assistance will be provided to businesses on the process that should be followed. Enforcement will only be carried out after a reasonable time has elapsed following the campaign.

- 4.6 The desire to encourage “pavement café culture” in our town centres is on-going as they add to the vibrancy of the townscape, provided it is done well. The need to set limits and rules for what is acceptable and what is not is also required. The best opportunities to develop a pavement café culture have been created through the council’s flagship regeneration/public realm projects. Two of these projects have now been completed and officers are considering ways in which pavement café opportunities can be actively promoted at these locations.
- 4.7 It was agreed that the fee for the licence of £165 be waived for the first year up to August 2015 to provide a transitional period allowing individual businesses time to adjust and work to the policy. Due to the slow uptake of licences this report proposes that the pavement café licence fee shall be waived for a further year to encourage proprietors to apply for a licence and work to the policy. An awareness campaign across the whole area and proactive engagement with operators of unlicensed pavement café licences, together with a further year of waived fees should increase the number of formal applications being submitted for approval. The premises operating street cafés without licences will be encouraged to formally apply when the charges are waived.
- 4.8 Whilst the number of formal licences issued within the first year is lower than anticipated, the number of pre-application enquiries indicates awareness of the policy is on the increase. The processing of the applications that have been received has allowed internal processes to be tried and tested. Initially uncertainty of the requirements and lack of administrative procedures resulted in a delay to the issue of licences. Officers are now familiar with the application procedures and are prepared for dealing with new enquiries and applications as they are received.
- 4.9 Whilst the Policy is not intended to apply to business premises such as fruit and vegetable businesses and narrow displays of goods at the front of premises, on-going consideration must still be given to the requirement for free flow of pedestrian movements. Where these displays have an impact on pedestrian flow, such displays will be required to be removed.

5.0. CONCLUSION

- 5.1 Café Culture is an increasing trend and an encouraging improvement to the vibrancy and economic growth of our towns. It is important for the policy to meet the demands of the businesses and at the same time provide safe and efficient management of our pavements. It is important for our policies to be regularly reviewed and revised to meet the changing needs of our communities.

6.0. IMPLICATIONS

6.1	Policy	Proposed amendment of the Policy for the Use of Pavements – Café Culture.
6.2	Financial	None
6.3	Legal	Avoids contravention of the Roads (Scotland) Act 1984. Amendment to the policy to comply with the requirements of the New Roads and Street Works Act 1991
6.4	HR	None
6.5	Equalities	Policy continues to ensure sufficient space is maintained for all pedestrian users.
6.6	Risk	None

APPENDICES

Appendix 1–Extract from the Development and Infrastructure Services Guidance Policy for Use of Pavements Café Culture–Standard Conditions for Pavement Café Licences and the Display of Goods for Sale on the Public Highway
Appendix 2 - Extract from the Development and Infrastructure Services Guidance Policy for Use of Pavements Café Culture – Things to Consider

Pippa Milne, Executive Director Development and Infrastructure Services
Policy Lead – Councillor Ellen Morton
13 July 2015

For further information contact: Aileen Simpson, Traffic & Development Manager. Tel: 01546604653

APPENDIX 1 – Extract from the Development and Infrastructure Services Guidance Policy for Use of Pavements- Café Culture

STANDARD CONDITIONS FOR PAVEMENT CAFÉ LICENCES AND THE DISPLAY OF GOODS FOR SALE ON THE PUBLIC HIGHWAY

1. The boundary and layout of the Pavement Café as defined by the plan attached to the Licence shall be adhered to at all times. A copy of the licence with this plan must be displayed at the premises at all times.
2. All activity associated with the Pavement Café shall be within the boundary. This includes tables, chairs, menu boards, advertising etc.
3. Pavement cafés will only be permitted where adequate footway width is available. Generally there must be a remaining width of thoroughfare between the proposed café and any street furniture or the kerbline of half of the width of the footway to a minimum width of 1.8 metres. Where an area of footway is to be used for the display of goods for sale, the permitted area will normally be restricted to 1 metre in depth across the frontage of the premises. i.e. extending 1 metre from the front of the building into the footway. In exceptional circumstances and where the width of the footway permits a depth of 1.5 metres may be allowed at the discretion of the local roads office.
4. Planning approval will also be required for the Pavement Café.
5. The Licensee shall comply with Food Hygiene Regulations and any other relevant regulations applying to the sale of food.
6. The Licensee shall ensure tables are immediately cleared when customers have finished eating to minimise attraction of birds and flying insects.
7. The licensee shall provide a written assessment of the risks to which their employees are exposed whilst at work and must also assess whether there are risks to members of the general public that arise out of the general conduct of their business specifically in relation to the highway. Following assessment and identification of risk, a course of action shall be implemented to either eliminate the risk or reduce it to its lowest reasonably practicable level. Reviews of risk assessments shall always be carried out when there is reason to suspect that a current assessment is no longer valid (and the result of the review must be written down).
8. No permanent obstruction will be allowed in the footways within the Pavement Café area that may cause a safety hazard to users of the public highway. No

Advertisement Boards shall be allowed outside of the designated area.

9. The designated area will be delineated by barriers which present an adequate visible reference for partially sighted pedestrians, their design and nature will require to be agreed by the Council prior to use. For the display of goods for sale, an adequate toe rail must be provided, such that visually impaired cane users can identify the obstruction.

10. The licensee shall keep the area within the boundaries clean and litter free. Any litter that escapes from the inside of the licensed area to the outside of the area shall be collected by the Licensee.

11. Suitable litter/refuse bins shall be provided within the Pavement Café area at all times of operation. The Licensee shall be responsible for disposing of all waste produced at the Pavement Café.

12. The licensee shall be responsible for ensuring the immediate cleaning of spillages etc.in the Pavement Café and surrounding areas. At the end of each trading session the entire Pavement Café area shall be cleaned.

13. Standard types of crockery, i.e. china cups and saucers, used within the premises may also be used within the pavement café.

14. Outside of the permitted licence hours, all furniture must be removed from the footway and stored safely.

15. The maximum permitted hours of operation will be between 8.30 am and 9.00 pm. Note these are MAXIMUM HOURS. The Licence for particular premises may specify permitted hours that are less than the maximum.

16. The Licensee shall ensure that the Pavement Café operates in a safe and efficient manner at all times, and that there is not a safety risk or nuisance caused to other users of the public road or nearby premises.

17. The Licensee shall be responsible for the conduct of people, both patrons and employees, within the Pavement Café area. Unruly or rowdy behaviour will not be tolerated and may lead to the refusal of a renewal of licence.

18. Only patrons seated at tables should be served or permitted within the pavement café.

19. To reduce the likelihood of nuisance being caused, the playing of amplified music is not permitted within the Pavement Café area or outside of the premises without the prior written approval of the Council.

20. The licensee must take out 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 or permission, (e.g. damage to the road or street furniture) to a minimum value of £5,000,000 unless such claims arise of the Council's own negligence.

21. The Council can, with two days' notice, require the Pavement Café to cease operation to allow utility or road or footway repairs to be undertaken. Neither the Council nor any public utility company will be liable for any loss of income attributable in any way to repair and/or maintenance of any road, footway, pavement or public services, to be laid, or already laid within the pavement.

22. The licence will be subject to annual review. Notwithstanding the foregoing, however, if the Council determine that the operation of the pavement café area is causing undue public nuisance or issues of public disorder then the licence may be terminated on 7 days' notice.

23. If the licensee wishes to serve alcohol in the pavement café area then they will require to obtain the necessary licence/ approval in terms of the Licensing (Scotland) Act 2005 from Argyll and Bute Licensing Board.

APPENDIX 2 – Extract from the Development and Infrastructure Services Guidance Policy for Use of Pavements- Café Culture

THINGS TO CONSIDER

Before a trader or retailer comes forward to the Council with their proposal to use the pavement for seating or display of goods there are a number of things for them to consider and submit as part of their applications for planning or road authority consent.

Things to consider:-

1. **Space** - Is there room for the use as proposed and existing pavement users?
2. **Environment** - Is the quality of the furniture and immediate environment suitable for the use proposed?
3. **Neighbours** - How will the proposed use affect the neighbouring properties?
4. **Management** - Does the proposal meet the various criteria outlined in legislation and can it be operated in a safe and supervised manner?

1. Space

The extent of the seating or display of goods area will be agreed in each individual case, but an overriding principle is that it must not unduly impede public or private access within the street and to and from buildings.

The width of an outdoor seating area or display of goods will normally be no greater than the frontage of the premises from which it is served. The appropriate depth will be determined by its location on the highway; however a minimum width of unobstructed highway of 1.8 metres must usually be provided for safe and convenient pedestrian movement. This allows wheelchairs and prams to pass comfortably and provides a reliable, safe route for visually impaired pedestrians; however, in some cases additional width will be required in streets where there is a high level of pedestrian activity or permanent obstructions such as street furniture.

Tables and chairs should normally be placed adjacent to premises, at the back (building side) of the footway. In special areas this requirement may be waived. The positioning of tables and chairs should never discourage pedestrians from using the footway. There should generally not be a situation where trays of drinks or food are carried across thoroughfares. Any remote areas should be provided with independent facilities i.e. coffee machines, fridges and the like, this would be an exception to the norm.

2. Environment

The extent of the outdoor seating area must be clearly defined by an enclosure. This will ensure that a clear movement zone is retained for all users and emergency vehicles and that the pavement cafes do not expand.

The detailed design of any form of enclosure will be considered on their merits, but in all cases they must be of a temporary nature, able to be erected and demounted easily. Posts and chains/ropes and railings should not create a hazard for visually

impaired people. Where screens are used, solid panels should not extend above 0.9m in height from the ground. Whatever is used to enclose an area there should be a tonal contrast with the background but should not be too visually dominant.

The external corners should provide some form of visual contrast for easy identification by partially sighted people. A low level-tapping rail should be incorporated into the enclosure. Planting in containers is acceptable where this does not extend beyond the defined area, does not stain the paving, and are free standing so they can be removed if required.

Details of any outdoor heaters / parasols for use must be included within the drawings at the time of application.

Advertising within an outdoor seating area is not permitted without obtaining consent from the Council. Requirements for this approval include the submission of photographs or brochures to identify the material, colour and design whether it is to be sited on a banner, poster, flag, umbrella or other structure.

Proposals will be considered individually on their merits in terms of design, materials and colour. Plastic garden furniture, wooden picnic benches or generic branded enclosures (i.e. – name of a brewery) will not normally be considered to be appropriate. Tables and chairs should be separate to allow for a variety of configurations and must be high quality and robust. The provision of external seating or display of goods should not detract from the visual amenity of the area.

3. Neighbours

It is vitally important that the needs of adjoining properties, nearby residents, pavement users and delivery/emergency services are fully considered when proposing a use on the highway. These needs will be examined closely by the authorities dealing with the formal applications made under the current legislation. It may be helpful if you have consulted with your neighbours before submitting the formal application. The hours and days of use of the tables and chairs may be restricted to prevent nuisance to local residents and businesses.

4. Management

The extent of the outdoor seating area or display of goods will normally be directly in front of the premises that it serves to allow for robust surveillance and accountability. It will be the responsibility of the retailer / trader to ensure that the conditions of the road consent, planning permission and alcohol licence are adhered to along with the safe maintenance of their furniture. The trader / retailer will be responsible for the behaviour of and actions by his customers whilst in the consented pavement area.

At all times (particularly in poor weather conditions) it shall be the sole responsibility of the trader / retailer to ensure the safe use of their outdoor furniture. Where there is already internal seating associated with the building additional toilet facilities may be required if overall occupancy figures are increased. The approved licensed area will be kept clean and litter free; and every effort should be made to ensure that litter does not stray onto neighbouring areas. The responsibility for removing tables and chairs and other obstructions from the highway rests with the owner/operator of the premises.