



# DEVELOPMENT AND INFRASTRUCTURE SERVICES GUIDANCE POLICY FOR USE OF PAVEMENTS – CAFÉ CULTURE

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# CONTENTS

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Guidance for Use of Pavements – Flow Chart	3
Policy Context	4
Appendix A – Things to Consider	7
Appendix B – Standard Conditions For Pavement Café Licences And The Display Of Goods For Sale On The Public Highway	10
Appendix C - Information Required When Submitting a Planning Application	13
Appendix D - Public Realm Areas Used For Outdoor Cafés	14

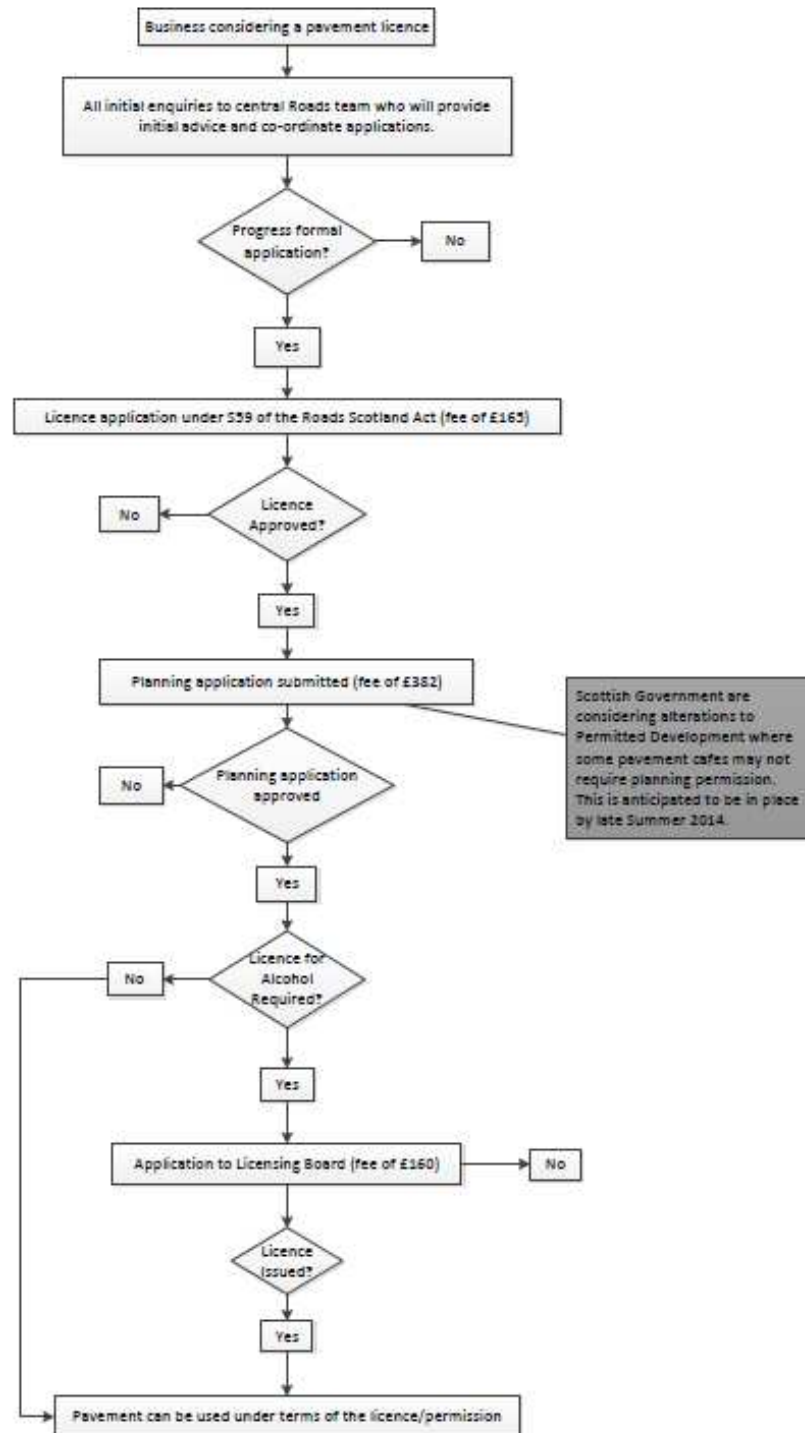
# INTRODUCTION

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This policy has been developed holistically to enable consideration to be given to road/footway use, planning matters and licencing for establishments serving alcohol. The pre-application engagement has been designed to make the process as straight forward as possible for business seeking to provide facilities within open public areas.

This policy has also been designed with a view to encouraging economic activity and improving experience for residents and visitors alike.

# GUIDANCE FOR USE OF PAVEMENTS



# Guidance for Use of Pavements

## - Café Culture

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### Policy Context

The Council seeks to protect and enhance the vitality and viability of Argyll and Bute's town centres by working positively with retailers / traders and encouraging the development of a mix of retail and other related uses in our core shopping areas.

If appropriately managed, the provision of outdoor tables and chairs or display of goods on the pavement adjacent to shop fronts can add life and vibrancy and can be a real asset to a town centre. It can also assist in the overall creation of a more social setting by attracting visitors and economic spend (Café Culture).

The Council supports the development of Café Culture through the Local Plan and provisions of footpath widening and improvements to public realm as part of the CHORD Project in our towns. Notwithstanding this, certain consents and authorisations must be obtained to allow individual retailers / traders to use the footpaths for their activities.

### Consents

Tables, chairs or display of goods on Council controlled pavements can add character to an area however if they are not carefully managed pedestrians may be put in danger. People with impaired vision, in wheelchairs or with prams can be particularly disadvantaged. In some places, people eating or drinking outdoors can also cause considerable noise nuisance for residents and impede access for emergency vehicles. The visual appearance and size (no. of tables) must also be taken into consideration on a case by case basis.

Most retailers / traders will be responsible and shall be very well aware of the capacity of the pavement outside their property for diversification so will quickly identify the most suitable solution and obtain the necessary consents. The traders will also need to consider how they will monitor, manage and insure their goods, customers or furniture outside of their premises. **Please see 'Things to Consider at Appendix A.' and 'Public Realm Areas used for Outdoor Cafés at Appendix' D**

To ensure the safe and efficient management of pavement uses 3 consents are likely to be required from the Council prior to the commencement of trade:-

1. Roads Authority Consent
2. Planning Consent – Change of Use
3. Licence / Amendment to Licence (where sale of alcohol involved)

The Council offers free pre-application service on all of these matters and it is strongly advised that early contact is made with the relevant service. The Council shall endeavour to deal with requests and application for consent as quickly as possible.

## 1 - Roads Authority Consent

The first step in the process is to obtain a Roads Authority Consent (sometimes referred to as a pavement licence).

### **Roads (Scotland) Act 1984**

Section 59 of the above Act states:

*“...nothing shall be placed or deposited in a road so as to cause an obstruction except with the roads authority’s consent...”*

In considering an application the Council must ensure that sufficient footway width is retained for pedestrians to move about safely and will require indemnity against liability for injury to third parties caused by the presence of the tables, chairs and related items.

The Council will usually stipulate that at least 1.8m of footway is retained unobstructed for pedestrians.

Suitable boundary enclosure, opening hours and statement of management shall also be requested as part of the Road Authority Consent Process.

You will be required to submit:-

- Plan at 1:500 & a location plan at 1:1250
- Application Fee of £165
- Proof of Indemnity Insurance
- Statement of Management Arrangements
- Risk Assessment

All Licences shall be subject of an annual review at a charge of £56 and be required to operate under the Councils Conditions as set out in **Appendix B**.

We recommend early engagement prior to the submission of your application with your local Roads Officer which is free of charge. The application process usually takes between 2 and 3 weeks to process.

### **Enforcement**

Traders who do not obtain the necessary consents or persistently breach the conditions outlined at **Appendix B** may have their outdoor furniture removed by Council Officers.

## 2 - Planning Consent – Change of Use

Planning consent is required for the change of use of pavement area into a seating or display of goods area. Any planning application should only be progressed **AFTER a Roads Authority Consent has been obtained**. This is because the acceptability of a proposal is heavily reliant on the views of the Council’s Road Engineers in terms of accessibility, safety and sightlines. The fee for a Change of Use application is £382 and once implemented shall be limited to a time period of 5 years.

The Local Plan generally supports the development of Class 1 (*Shops*) and Class 3 (*Food and Drink*) in our defined town centres under Policy LP RET1 and LP RET2.

The Planning Department shall also review the proposal in the context of the existing streetscape and surrounding land uses. They will take into consideration the size, boundary / enclosure treatment, appearance, proximity of residential properties, cumulative impact and views of the public following consultation. A separate Listed Building Consent may be required where tables/enclosures are proposed to be attached to a Listed Building.

The Change of Use application should be accompanied with the details outlined at **Appendix B**.

Please note that the Scottish Government are currently considering alterations to Permitted Development Rights which may mean in some scenarios 'Pavement Cafés' shall not require planning consent. The change in legislation is not likely to be enacted until late summer 2014 and shall only apply to Cafés / Restaurants where there remains 3 metres worth of unobstructed pavements. Public houses and larger pavement cafes will still require full planning consent.

### **3 - License (where sale of alcohol involved)**

Any premises that is licensed to sell alcohol and wishes to have an outside seating area will require to apply to Argyll and Bute Licensing Board for a variation to their licence. As this will result in an increase in the capacity of the premises then it falls within the category of a major variation and the fee is £160. Advice and guidance on the process can be obtained by contacting the Licensing team on 01546 604128.

It is also worth noting that there are byelaws in place in various areas throughout Argyll and Bute, including the main towns, which make it a criminal offence to consume alcohol in public places. A public place would include the pavement area. The byelaws do not apply, however, to any area that has been licensed as detailed above. Accordingly, provided the outside area/ pavement café has been licensed then anyone consuming alcohol within that area is not committing an offence. For enforcement purposes, it is important that the extent of the outside area is marked out in some way, perhaps by markers or bollards.

# APPENDIX A – THINGS TO CONSIDER

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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 (ie – 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.

# APPENDIX B - STANDARD CONDITIONS FOR PAVEMENT CAFÉ LICENCES AND THE DISPLAY OF GOODS FOR SALE ON THE PUBLIC HIGHWAY

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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 kerblines 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.

# APPENDIX C - INFORMATION REQUIRED WHEN SUBMITTING A PLANNING APPLICATION

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In submitting your planning application for a change of use, you are required to submit the following:

- A completed application form (*available on Council website*)
- The application fee (£382)
- An advert fee (£156) – in certain circumstances where ‘*vacant land*’ is present
- **A Location plan** (1:1250 or 1:2500) showing location of premises (*available from Council*)
- **A Site plan** (1:500 or 1:200) showing boundary, kerb and building lines, points of access and street furniture, including the property, key dimensions, seating and other furniture layout.
- **Elevation plans** with supporting detail if required to show the means of enclosing the pavement – bollards, roped enclosures, banner enclosures.
- **Photos and/or brochures** showing types of furniture, planters, enclosures, umbrellas, etc to be placed on the pavement.
- **A written specification** describing details, materials, hours of operation, goods to be sold, seasons of operation and colours (these could be notes on drawing).

In certain circumstances special additional requests for further information may be added to the license or permission as and when necessary.

# APPENDIX D - PUBLIC REALM AREAS USED FOR OUTDOOR CAFÉS

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Public realm areas can be very diverse in their structure, layout and nature. In the majority of cases the same issues that affect the establishment of individual street cafés are likely to affect the use of public realm areas as cafés.

It is necessary to regularise the use of public realm spaces in the interests of public safety, the environment and the viability of the businesses adjacent to the area. The Council cannot resource any level of daily management beyond normal street cleaning operations.

Before any organisation can establish any street café in a public realm area they must produce a management plan for the establishment and operation of the street café. In the event that several organisations wish to establish street café facilities in the same general public realm area they must work together to provide one management plan, which will be adhered to by all parties involved in the provision of the facilities. One of the organisations will be required to be the lead organisation, acting on behalf of the others and liaising with the Council. The plan must be submitted to Argyll & Bute Council and be approved by the Council in writing. The plan will be the subject of regular review to ensure it is fit for purpose and is providing the desired controls. Should the organisations providing the facilities fail to implement the plan or fail to adhere to the plan during the operation of the facilities in a manner that the Council believe is to the detriment of the public realm space or public safety authorisation to operate the facilities may be withdrawn. Should authorisation be withdrawn the organisations operating the facilities will cease to do so until further authorisation is given, after resolution of any issues.

## **Management Plan**

In preparing a management plan an organisation or group of organisations shall include measures which address the following issues;

- Public safety, as most public realm areas will also be public thoroughfares the safety of all users of the thoroughfare must be taken into consideration, the potential conflict between café users and other thoroughfare users must be managed to reduce the potential for injury from, for example, scalding with hot drinks
- Environmental issues such as litter, staining of surfaces, grease deposits on surfaces, attraction of pests such as seagulls and vermin, all must be addressed to minimise the effects of such detrimental issues
- Furniture will be required to be secured in bad weather, protected from vandalism and kept in good general appearance and well maintained
- Obstruction of the thoroughfare must be avoided, all users have the right of passage along public thoroughfares, provision must be included for able bodied and those who have additional challenges such as blindness, impaired mobility, wheelchair users and those with prams or pushchairs.
- The general conditions in appendix B should be considered and where relevant addressed when preparing the plan, specific restrictions such as minimum footway

widths need not be adhered to but adequate thoroughfares must be maintained for access by all

- Direct thoroughfare routes along the frontage of premises serving hot drinks to be consumed in areas away from the frontage must be avoided on safety grounds, adequate means of making the path way convoluted, should be explored and included in the design. Access for wheelchairs and prams being maintained