

Development Services

Pavement Cafe Policy

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South Tyneside Council

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1. Background

- 1.1 South Tyneside Council first introduced its Pavement Cafe Policy in 2004. The intention was to promote and control the use of the highway for pubs, cafes and restaurants and to extend their activities outside.
- 1.2 Recent growth in businesses such as sandwich shops and delicatessens has resulted in an increased number of premises wishing to place tables and chairs on the highway. In view of this the Council has issued licences for those simply wishing to place tables and chairs on the highway.
- 1.3 The Council has in recent years and in collaboration with the private sector undertaken and supported substantial regeneration and redevelopment of its town centres. That process is ongoing. A successful cafe culture can play an important role in ensuring the vitality and vibrancy of the towns. Public expectation of pavement cafes has also evolved with the expansion of established coffee shops and similar.
- 1.4 Since the first introduction of the scheme case law has also established that a pavement cafe or placing of tables and chairs on the highway, constitutes a material change of use of the highway and therefore requires planning permission.
- 1.5 This updating of the original policy is intended to:
 - Streamline the application process to take account of new case law on pavement cafes and planning permission;
 - Take account of the changing nature of the pavement cafe operators in the Borough in recent years and changing expectations of cafe customers;
 - Ensure continued effective regulation of cafes within the public realm, in the public interest.

2. Pavement Cafes: wider context

- 2.1 The Council has an ambitious regeneration programme being delivered across the Borough. This will present opportunities for those in the hospitality sector to extend their businesses into the outdoor environment.
- 2.2 Pavement cafes should be a place to enjoy alfresco dining and should provide a positive contribution to the area by adding additional facilities which enhance what is on offer to people living in, working in and visiting South Tyneside. When operated responsibly they can add to the street scene and general ambience of their location.
- 2.3 The provision of pavement cafes are welcomed by the Council but it is important that they are properly managed to ensure that they meet the high standards required by the Council. They should not obstruct the highway or create a hazard for pedestrians, especially the blind or partially sighted or other disabled people.
- 2.4 The policy has been introduced to assist businesses in understanding where pavement cafes can be provided and the permissions needed from the Council.
- 2.5 Before submitting applications please read through this policy and the 'Pavement Cafes - A Guide for Business' document to see whether your proposed pavement cafe meets the relevant criteria. Following the steps in this policy and the associated guidance does not guarantee any permission will be granted but it will assist in minimising the risk of an application being refused. Each application will however still be considered on its own merits.

3. Legal Position

- 3.1 For the purposes of this policy a pavement cafe is a designated area where tables and chairs are placed on the public highway where food and/or drink is served.
- 3.2 There are two main types of permission which have to be obtained from South Tyneside Council before you will be permitted to provide a pavement cafe facility on the public highway;
 - Planning permission for the change of use of the highway to a mixed use of the highway/pavement cafe.
 - Permission under Section 115E of the Highways Act 1980.

- 3.3 The Council has enforcement powers under highways and planning legislation to prevent unauthorised use of land as either indoor or outdoor cafes.
- 3.4 Should the premises be sold or the operator change, a new licence or variation to the existing licence may be required.
- 3.5 All food premises must be registered with South Tyneside Council's Environmental Health Service for food safety. Registration can be completed online at Gov.uk.
- 3.6 The granting of permission to operate a pavement cafe does not imply an exclusive right to the area. The operator of the pavement cafe should be aware that South Tyneside Council will need access to the public highway at various times for cleaning, repair and access to equipment e.g. lighting columns, traffic signals, pavement repairs and on occasions for carrying out of special events. In addition this access may be required by others for example utility companies for maintenance, repair etc.
- 3.7 In considering applications, the Council must comply with its duty under Section 17 of the Crime and Disorder Act 1998. Therefore prior to granting any consent for tables and chairs on the highway the Council will give significant weight to the views of the local police.
- 3.8 Applications are likely to be refused if they are likely to cause excessive amounts of litter, noise, disturbance, smell or other nuisance to users of the pavement/highway or adjacent properties, particularly residential properties.

4. General considerations

- 4.1 Generally, any pavement cafe will be expected to meet the following requirements. The pavement cafe should normally occupy an area directly in front and be visible from your existing premises. It should not extend beyond the width of the frontage of the premises.
- 4.2 Applications for areas away from premises will be considered where the design and layout of development supports this approach.
- 4.3 A minimum unobstructed footway width of 1.8 metres must be available for safe and convenient pedestrian movement. This distance must be measured from the edge of the licensed area to any significant amount of street furniture (such as lamp posts, bollards etc.) Where there is heavy pedestrian flow, additional footway space is likely to be needed.
- 4.4 For fully pedestrianised streets a minimum width of 1.8 metres or two thirds of the total width of the public highway, whichever is the greater,

must remain free and unobstructed to facilitate pedestrian movement. The unobstructed width may need to be greater where there is heavy pedestrian flow.

- 4.5 Unobstructed routes shall fall equally either side of the centre lane of the highway to ensure the space available for tables and chairs is shared equally between premises on each side of the street.
- 4.6 Only the area as specified by the licence can be used to place tables and chairs and for service and consumption of food and drink.
- 4.7 Emergency exit routes from your own and adjacent buildings should not be obstructed by the pavement cafe and emergency service vehicles must have access along all streets at all times even in pedestrianised streets.
- 4.8 The Policy does not set out a standard minimum or maximum size for a pavement cafe as every case will be considered on its own merits taking into account all of the requirements included in this Policy.
- 4.9 It is important that no permanent structures are left on the footpath that may cause a tripping hazard to users of the public highway. Any permanent structures associated with the pavement cafe must be approved along with the application by the Council prior to their placement.
- 4.10 Generally pavement cafe licences will be issued to operate between 8.00am and 8.00pm. The Council may permit operating times to run until 9.00pm during the summer months (1st April until 30th September). Should you require operating times of later than 8.00pm then you should speak to the local Police Licensing Officer before submitting your application.
- 4.11 When requesting finishing hours later than 8.00pm, you will need to have due regard to your surroundings in particular whether you are in a residential area and any relevant highway issues. This may mean that later operating times may not be suitable for all applications.
- 4.12 Third Party Liability insurance must be in force to the value of £5,000,000 to cover the pavement cafe area and indemnify against claims of injury, damage or loss arising from incidents as a result of the pavement cafe licence being in place.

5. Application Process

- 5.1 **The first stage in the application process is to submit an application for planning permission to change the use of the highway. Information and advice regarding this process is available at www.southtyneside.gov.uk/planning.**
- 5.2 Online applications are encouraged and can be submitted via the planning portal at: www.planningportal.gov.uk . All applications should be accompanied by:
- A plan showing the proposed size and layout;
 - Images of the proposed furniture and barriers to be used;
 - Any other relevant documentation in support of the application;
 - Payment of the relevant fee.
- 5.3 In addition completion of an application form for a pavement cafe licence will be required. These can be downloaded at www.southtyneside.gov.uk or requested from the Council's Licensing Service by emailing licensing@southtyneside.gov.uk.
- 5.4 The Planning Service will process your planning application as legally required and will circulate the application to Northumbria Police, the Highways Authority, the Environmental Health Service, local elected members and any other organisation or individual considered necessary. They have 21days in which to respond.
- 5.6 To avoid unnecessary duplication of consultation, responses to the planning application will be considered in determining the pavement cafe licence.
- 5.7 In addition once the application for a pavement cafe licence under the Highways Act 1980 is received the Council will publish street notices which must remain in place for not less than 28 days. The notices set out the detail of the application under consideration and offering anyone that may be affected by the pavement cafe the opportunity to make representations.
- 5.8 Consent to establish a pavement cafe is also required from both the premises owner and occupier if different. It is important that applicants provide this information when completing the pavement cafe application form.
- 5.9 If necessary officers will contact applicants to arrange any site visits necessary to determine applications for both planning and the pavement

cafe licence. Where possible these visits will be coordinated to minimise impact on the business.

5.10 Providing all relevant information and documents are submitted with the applications the Council has a target of determining both applications within 8 weeks. Should the Council be unable to determine the application within this timescale because of the complexity involved, it will notify you that it requires a single time limited extension. In any such case the Council will explain the reason why this additional time is required.

5.11 Pavement Cafe Licences are subject to renewal on an annual basis together with payment of the relevant fee.

***Development Services
South Tyneside Council
Town Hall & Civic Offices
South Shields
NE33 2RL
www.southtyneside.gov.uk***