



Derry City & Strabane
District Council

Comhairle
**Chathair Dhoire &
Cheantar an tSraitha Báin**

Derry Cittie & Stràbane
Destrìck Cooncil

Pavement Café Licences:

A Guide for Applicants

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Foreword

Covid-19 has created unprecedented challenges for business, many of whom have either had to cease trading entirely for several months or have had to significantly modify their operations.

The hospitality sector has been particularly badly affected and even once lockdown restrictions are lifted and cafes, pubs and restaurants are permitted to open again, social distancing guidelines will have a considerable impact on their capacity to accommodate customers.

Derry City and Strabane District Council is keen, therefore, to do all it can to support businesses reopening, to help them succeed in these new and challenging conditions.

Towards this end, Council will issue temporary pavement café licences, subject to eligible premises being able to demonstrate their ability to meet criteria designed to ensure safety, accessibility and public health and wellbeing.

These licences will permit the placement of furniture, such as tables and chairs, on the pavement outside premises, and businesses selling food and drink will thereby be able to maximise their capacity whilst adhering to social distancing guidelines.

The licences will be issued for an initial six month period and, in order to assist businesses' financial recovery, will be free of charge, the normal fee having been waived.

While not every business will be able to avail of a pavement café licence and many other challenges will remain, those that are will be able to serve more customers safely, which will help in ensuring their financial viability and securing jobs.

It will be essential that pavement café areas are managed in accordance with Government guidelines designed to reduce the spread of coronavirus.

Summary

1. A pavement café licence permits furniture to be placed on a specified public area for customers to consume food or drink supplied from the licence holder's premises.
2. "Furniture" includes tables, chairs, umbrellas, barriers, heaters, menu boards, etc., which must be of a temporary nature and be capable of being removed within 20 minutes.
3. A "public area" is a place in the open air, to which the public has access, as of right and which is not a market area.
4. The types of business which may apply for a "pavement café licence" are those supplying food or drink (in or from premises), including cafés, restaurants, pubs, retail outlets providing refreshments, takeaways and supermarkets with a deli counter.
5. An application must be made in the prescribed format and be accompanied by the information specified on the application form.
6. Council has waived the normal fee for a pavement café licence.
7. A Public Notice must be displayed on the premises for 28 days from the date of application.
8. Council will consult DfI Roads in all cases, PSNI where the premises is licensed under The Licensing (Northern Ireland) Order 1996, and any other persons as it considers appropriate.
9. In exercising its functions, Council must take into account any representations made in connection with an application.
10. Council will aim to make a determination within 5 weeks of receipt of a complete application.
11. Licences will last for an initial period of 6 months and will be granted subject to conditions.
12. If a condition of the licence has been breached, Council may revoke the licence or may require steps to be taken to remedy the breach.
13. Further grounds for revocation of the licence include where the furniture is giving rise to risks to public health and safety or risks causing a public nuisance.

Pavement Café licences

Introduction

It is recognised that social distancing may reduce the viability of some premises serving food and drink in or from premises. Using outdoor space, where possible, will assist businesses to reopen safely and serve more customers, while social distancing measures remain in place. Council has, therefore, introduced a free, temporary pavement café licensing scheme that will permit businesses such as cafes, restaurants and bars to place furniture on public areas for use by customers.

Purpose of this guide

Not every public area will be suitable for use as a pavement café. In order to be considered suitable for a pavement café licence, an area will need to satisfy particular safety, public health and accessibility criteria.

This guide details the application process and the criteria that must be satisfied.

It is not intended to be an authoritative interpretation of the law; however, reading the guide will assist those wishing to apply for a licence.

Before submitting their applications, applicants should read this guide thoroughly to check whether their proposal meets all of the required criteria. This will help to minimise time wasted on applications which may later be refused.

Note:

As this guide has been developed during uncertain times, it will be subject to a planned review in six months' time.

However, during the interim period, Council may modify or dispense with such aspects of this guide as may be considered appropriate, depending upon any issues that may arise, including developments regarding Covid-19 and any revision of the Department's Pavement Cafés Guidance.

Scope

Health risks associated with Covid-19 are outside the scope of this guidance; however, it will obviously be important that, as part of their reopening plans, businesses give due consideration to those risks and implement any necessary controls, taking into account the prevailing social distancing guidelines.

The Government has produced guidance “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery>

Further advice and guidance on managing the risks of Covid-19 is available by contacting Council’s Health and Safety team: telephone 028 71253253 or e-mail healthandsafety@derrystrobane.com

Legislation

Under the provisions of the Licensing of Pavement Cafés Act (Northern Ireland) 2014, Council may grant pavement café licences on such terms and conditions and subject to such restrictions as may be reasonably specified in the Licence.

What is a Pavement Café Licence?

A pavement café licence (“a 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 cafés, restaurants, pubs, retail outlets providing refreshments, takeaways, supermarkets with a deli counter, etc.

Note:

A licensed pavement café area will remain a public place and is, therefore, subject to all other legislation applicable to such areas, except alcohol bye-laws in certain circumstances.

Who may apply?

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

What businesses are eligible?

Businesses that are eligible include: public houses, cafes, restaurants, snack bars, coffee shops, retail outlets providing refreshments, takeaways, supermarkets with a deli counter and ice cream parlours.

Will the pavement café area you hope to use be suitable for use as a pavement café?

Appendix 1 outlines the criteria that will be considered when applications are being assessed. These cover a range of issues, including:

- Size and layout;
- Pedestrian and vehicular access;
- Furniture design;

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- Screening
 - Safety issues; and
 - Likely disturbance to other businesses or residents.

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

Council will set 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.

Licences will normally be granted for a set period between 8.00 am and 11.00 pm and will be reflective of the normal operating hours of the business. If the premises are licensed under the Licensing Order, a licence will not be issued beyond 11.30 pm, regardless of any additional operating hours that may apply to the premises.

How much does a licence cost?

Applications for a pavement café licence would normally require payment of the fee that has been determined by Council. However, in order to support businesses, the fee has been waived for licences at this time.

Pre-application consultation with neighbouring premises

The applicant is encouraged to talk to neighbouring businesses and occupiers prior to applying to Council, and so take any issues around noise, and nuisance into consideration as part of the proposal.

This will be particularly important where it is intended to establish a pavement café abutting neighbouring premises. It is recommended that

Consideration of planning issues

Depending on the circumstances, planning permission may be required if development is to be undertaken. Anyone considering the establishment of a pavement café is advised to contact Council's Planning Department for advice and guidance on whether an application for planning permission is required or not and design advice when appropriate.

Rates liability on grant of licence

The Department of Finance 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.

Applicants, who have concerns in this respect, should contact the District Valuer, Land and Property Services.

Making an Application

What information does an applicant need to provide?

Applicants must submit a fully completed application form together with the requested supporting documentation. Failure to do so will result in applications being returned, which will delay processing of the application.

Application form

The application form must be completed in full and the declaration signed and dated.

The application may be returned:

- by post, to Derry City and Strabane District Council, Licensing and Safety Advisory Group, 98 Strand Road, Derry, BT48 7NN, or
- by e-mail, to licensing@derrystrabane.com

Completed application forms **must** be accompanied by following supporting information and material:

Site location plan

Applicants must provide a map (preferably an ordnance survey map, to a scale not less than 1:2500) showing the location of the premises, shown by a red line, so the application site can be clearly identified.

Pavement café site plan

Applicants must submit a plan showing the dimensions of the proposed pavement café area and the relationship between the pavement café area and the streetscape, for example, the proposed pedestrian corridor and existing street furniture in the immediate vicinity.

The plan must include details of the following:

- all utilities/services, including lampposts, bollards, fire hydrants, manholes, cycle stands, litter bins and other items of street furniture located within the immediate vicinity; and
- dimensions of the proposed pavement café area and the dimensions and location of the tables, chairs or other items of furniture to be located within the area.

It is strongly recommended that the plan is **drawn to scale** (not less than 1:100), particularly if the application relates to licensed premises. If not drawn to scale, measurements must be clearly shown on the site plan. **Plans which are not sufficiently detailed or clear may be returned, leading to delays in the application process.**

Please refer to example pavement café site plans in Appendix 2.

Details of the furniture

Photos or brochures showing the proposed type of furniture would be helpful.

Note:

Furniture must be capable of being removed in 20 minutes at the end of the licensed period or when access to the area is required by any statutory body, including for street cleaning purposes and utilities work, or in the event of an emergency.

Risk assessment / Management Plan

If the application is for a location remote from the business, the application must be accompanied by a management plan or risk assessment outlining how you intend to maintain control over the pavement café in order to ensure safety and to prevent nuisance.

Risks to public health and safety to consider will include failure to ensure government guidelines on social distancing (e.g. tables and chairs being too close together); the footpath being obstructed (other than by anything permitted by the licence); anti-social behaviour and public nuisance, such as noise or litter is not being cleaned up.

What other information is required?

The following information must be submitted prior to a licence being issued:

Public liability indemnity cover

Evidence of public liability insurance cover for the pavement café area, with minimum indemnity of £5m, will be required prior to any licence being issued.

The Public notice

The applicant is required to affix a public notice to the premises, in the format prescribed by Council.

The notice must be displayed on the day the application is made to Council and positioned so it is easily visible and legible to the public.

Applicants are encouraged to keep evidence of this by taking a photograph of the notice in place.

Applicants must ensure the notice remains in place for the public consultation period which is the period of 28 days from the date of application.

During this time interested parties can make representations to Council in respect of an application.

Determining the application

What happens once an application is submitted to Council?

Once an application is received, Council will consult on and make a determination whether to grant or refuse the licence.

Who will Council consult with?

When assessing an application, Council will consult with the following agencies:

- Department for Infrastructure (Roads); and
- Police Service for Northern Ireland, where the premises is licensed to sell alcohol; and
- Such other Council Departments, organisations or individuals, as may be considered appropriate, e.g. planning department, environmental health (regarding health and safety, noise nuisance, etc.).

Council will also make the application details available to be viewed by the public on its website <https://www.derrystرابane.com/Licensing/Pavement-cafe-licences> until the end of the 28 day consultation period allowed for representations.

Council will have regard to any representations made, including those made by members of the public within the statutory 28 day consultation period.

How long does it take to process an application?

Council will aim to provide a determination within 5 weeks from the date of receipt of a full and proper application. Failure to provide sufficient detail will, however, result in delays.

If there are objections to the granting of the licence, or other input from consultees, this period will be extended to allow consideration of the objections or considerations. This may necessitate providing the applicant and the persons making representations an opportunity to be heard by Committee.

Can my licence application be refused?

Yes. Each application will be considered on its own merits; however, it will not always be possible to accommodate pavement cafés in all locations due to factors such as width restrictions, obstructions or heavy pedestrian flow.

As an alternative to refusing an application Council may suggest changes to your proposal to make the proposal acceptable, for example, by amending the size and shape of the licensed area.

If your application is refused by the Council you will be informed of that decision and the reasons why.

Can decisions be appealed?

Should an application be refused the applicant may appeal the decision to the Magistrates' Court within 21 days of being notified of the Council's decision.

Are licences issued with conditions?

Every licence will include a condition requiring temporary furniture not to be placed on any public area other than that covered by the licence.

A condition requiring the licence holder not to allow consumption of alcohol when using the furniture on the area in the licence will be included where the premises are licensed as an off licence.

This condition may be included in any other pavement café licence (whether or not the premises are licensed), if the council is of the opinion that it would be likely to lead to disorder.

The council has discretion to impose such other conditions as it considers reasonable, including; limiting the days and times when the furniture can be placed in the area; limiting the kind, amount, size, nature of the furniture; etc.

Consumption of Alcohol

Alcohol may be consumed (but not sold) in a pavement café area where the premises are licensed under the Licensing Order unless:

- The business is an 'off sales' as defined under Article 5(1) (b) of the Licensing Order; or
- The council has prohibited the consumption of alcohol where it is likely that there would be disorder caused by permitting consumption of alcohol.

What enforcement powers do the 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 use for the consumption of food and drink) on a public area without a Pavement Café Licence. This offence may be liable to a fine of up to £1,000 on summary conviction.

Council may also remove any furniture placed on the pavement without a licence and may recover the costs reasonably incurred in removing and storing this furniture.

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 for a breach of licence conditions, making false statements or failure to pay any fee to the 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.

The 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.

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

Appendix 1: Suitability Criteria for a Pavement Café Licence

In determining an application for a pavement café licence, consideration will be given to a range of factors.

While the legislation enables Council to take into account any factor it considers reasonable, for temporary licences issued at this time, the key factors have been determined, as follows. These should be considered at the design stage.

Each application will be evaluated on its own merits, having regard to possible implications for vehicular traffic or pedestrians, public safety issues, and environmental impacts.

Covid-19 will be an important consideration, as will social distancing, queuing and crowd management arrangements being implemented by neighbouring businesses.

Size, layout and design

The suitability of any location will depend on a range of factors, including the type of premises, the space available, the existing streetscape, traffic volume and level of footfall in the immediate area and proximity to crossings and bus stops.

The needs of other users of the public area will be of paramount importance and the pavement café will need to be designed in such a way as not to compromise safe access for pedestrians or vehicles.

The pavement café must not result in undue interference or inconvenience to pedestrians or vehicles in the vicinity, particularly in relation to disabled people, older people and others with mobility needs including all pram and wheelchair users.

Issues to consider include:

- other, permanent street furniture or structures in place on the footway that already reduce access; and
- other users of the space, for example if there are high levels of pedestrian footfall.

Decisions will, therefore, be made on a site by site basis, taking account of the characteristics of the site and its surroundings, the space available and the proposed layout of the café area.

In general, the licensed area should:

- Avoid conflict with the principal lines of pedestrian movement, particularly for disabled people, older people and those with mobility needs

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- Avoid conflict between customers going in and out of the pavement 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 pedestrianised areas, a 4.0 metre corridor of unobstructed road width must be maintained in the street at all times, to facilitate emergency vehicle access.

Accessibility

A clear pedestrian route must be maintained at all times, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of “Inclusive Mobility”.

In order to safeguard the interests of pedestrians, particularly disabled people, older people and those with mobility needs including pram and wheelchair users, a clear width of 2.0m clearance should be maintained on the pavement, between the edge of the licensed area and the kerbside.

This will be considered as the minimum under normal circumstances; however, exceptionally, where this is not possible, due to physical constraints, a lesser clearance width may be acceptable, down to an absolute minimum of 1.5m.

Additional width may be required at bus stops and by shops.

In addition to consideration of persons using the footpath, pavement cafes must be designed to comply with relevant disability discrimination legislation, which requires all businesses to make “reasonable adjustments” in relation to access to premises and services by the disabled.

The Equality Commission for Northern Ireland has published guidance, “The impact of Covid-19 on disabled customers – some recommendations for the hospitality” that includes advice on Outside Seating Areas. The advice is extracted in Appendix 3.

Boundary screening

Where practicable, pavement café areas should always be enclosed by way of adequate screening, with the extent of enclosure depending on size and location. For smaller café areas, with limited pavement width, screens may only be required at each end of the licensed area.

The main purpose of any pavement café screening is:

- to clearly demarcate the licensed area, within which all furniture must be placed
- to make it distinguishable to other pavement users
- to reduce risks associated with obstructions and tripping hazards and
- to assist blind and visually impaired pedestrians

Portable, sturdy barriers with a tapping rail are recommended. Barriers of the “post and chain” type are potentially hazardous to pedestrians and should not be used. Bases should not cause an obstruction or tripping hazard to pedestrians.

In certain circumstances, it may be possible to utilise existing street railings, planters and bins as a suitable means of enclosure.

Screening should not be placed in areas where it is likely to block visibility splays (sight lines) such as at junctions. Therefore, screening may not be appropriate at areas within 10.0 metres of a junction.

Screens should be colour contrasted from their surroundings to assist partially sighted persons.

Furniture

Furniture must be of a high-quality design and suitable for outdoor, commercial use.

All items of furniture, including menu boards and portable gas heaters, must be approved as part of the licensed area and details must be included within the application.

All furniture must be of a temporary nature that is capable of being removed within 20 minutes. The materials used should, therefore, be lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked into or overturned by a gust of wind.

If the business trades later than the licensed period consideration must be given as to where the furniture is to be stored and this should be made clear within the application.

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 full 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.

- Parasols should be of the heavy-duty commercial type and suitably secured by purpose designed pavement weights to avoid being blown over.
- Where heating is to be provided, this must be of a type suitable for outdoor use and shall be placed within the licensed area. If patio style liquid petroleum gas (LPG) heaters are to be used, they must to be adequately secured upright, be fitted with a flame failure device and be maintained on a regular basis.

General safety and environmental management issues

It is the responsibility of the applicant to ensure that the pavement café and equipment used comply with all relevant legislation.

Applicants are reminded of their duty to carry out a risk assessment, under the Management of Health and Safety at Work Regulations, in relation to the pavement cafe area and the activities carried on in connection with its use.

Applicants proposing to licence a pavement café which is remote from their main premises or where they need to cross a public pavement to reach the café area must be able to demonstrate that they will be able to exercise proper control and supervision of the remote pavement café area.

Pavement cafes must not obstruct emergency egress from neighbouring properties.

Use of pavement café areas must not result in nuisance to neighbours.

It will be the responsibility of the licence holder to keep the licensed area clean and free of litter, during the licensed hours and at the conclusion of business each day. This will include the cleaning of liquid spillages onto the pavement.

The conduct of customers using the licensed café area will also be the responsibility of the licence holder.

The licence does not create or imply an exclusive right to use the licensed area.

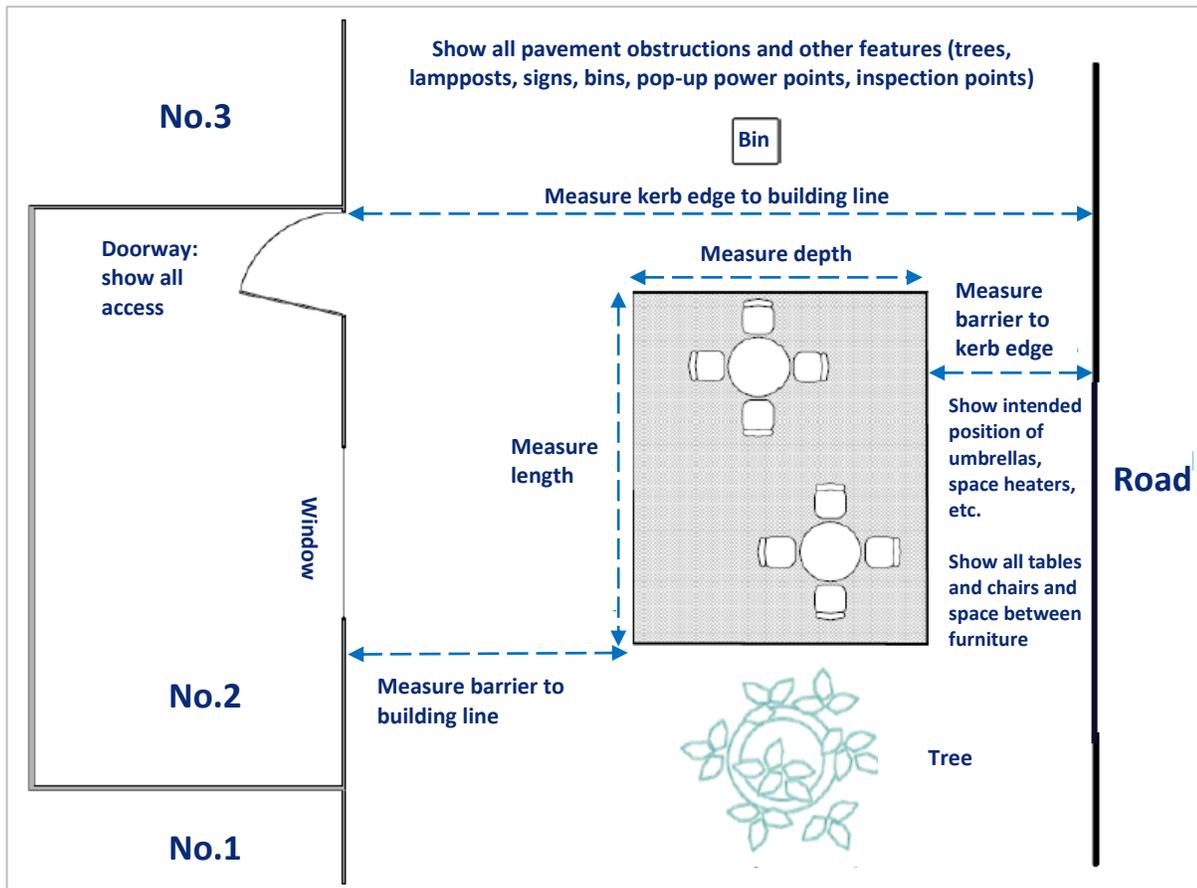
The licence will not permit the use of amplified music or loudspeaker equipment. If you wish to provide entertainment you must apply for an entertainment licence.

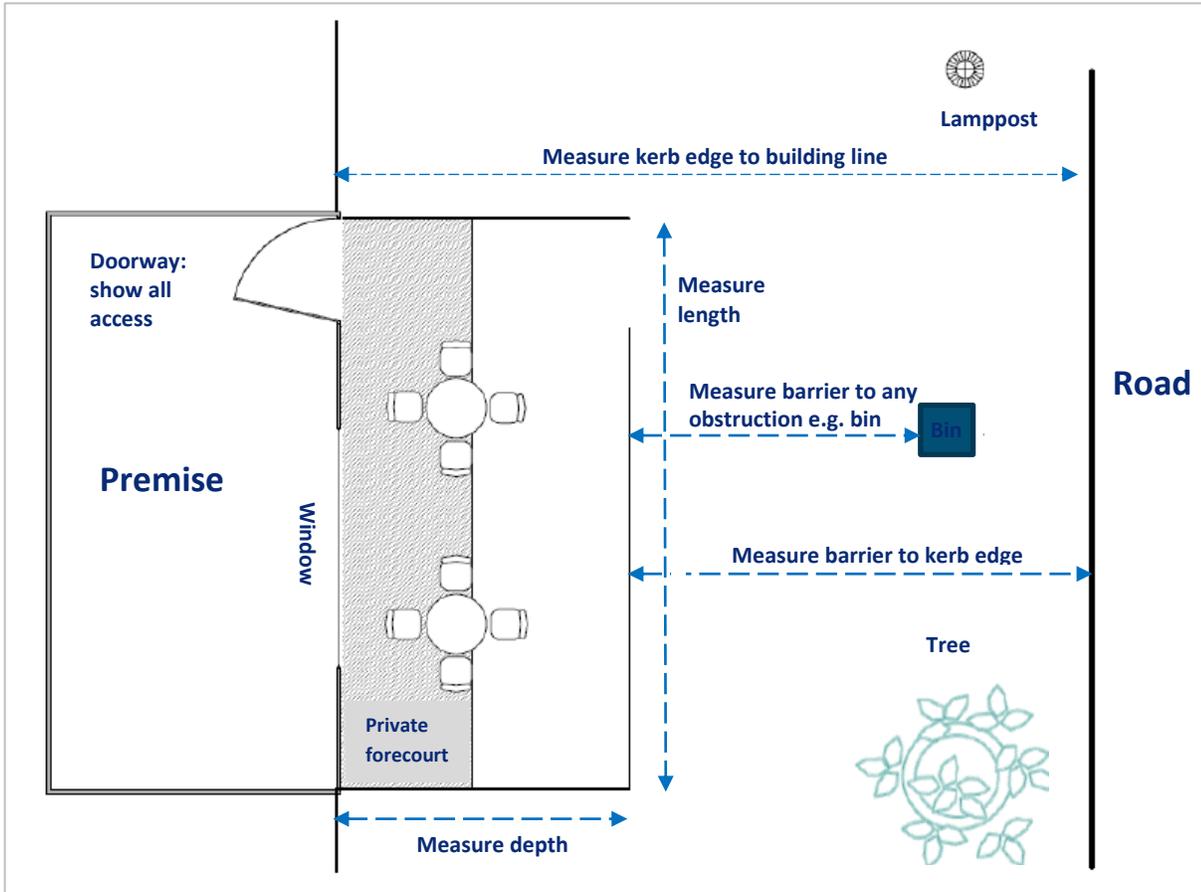
Licence holders must promote a safe, clean and generally welcoming environment in the pavement café area.

Licensees may wish to consider, for the convenience of their patrons, dividing their licensed café area into smoking and non-smoking sections, with each section clearly marked.

Licence holders are reminded that they must comply with smoke free legislation.

Appendix 2: Examples of Pavement Café Plans





Appendix 3: Outdoor Seating Areas



The following information is extracted from the Equality Commission for Northern Ireland’s publication, **“The impact of Covid-19 on disabled customers – some recommendations for the hospitality”**.

Outside Seating Areas

Ensure that a clear route is maintained outside your seating area to allow pedestrians, wheelchair users, and people with mobility aids or pushchairs to pass by easily. This should be at least 2 metres between the edge of the seating area and the edge of the pavement, where practicable.

Tables should be of a design to allow ease of use for wheelchair users and those accompanied by assistance dogs and adequate space should be provided between tables for wheelchair access.

The seating area should be enclosed and edges should be defined with screens, not ropes, so that customers with visual impairments can identify the boundary of your premises.

Remove A-boards, pavement sited menu boards and other street clutter to allow pavement access for people with restricted mobility and visual impairments.