

Leicester
City Council

WARDS AFFECTED: ALL

LICENSING & PUBLIC SAFETY COMMITTEE

22 October 2019

PAVEMENT CAFÉ LICENSING – POLICY REVIEW

Report of the Director of Neighbourhood and Environmental Services

1. Purpose of Report

- 1.1 The purpose of the report is to seek the views of Committee on the forthcoming consultation on pavement café licensing.

2. Background

- 2.1 The council's policy on pavement café licensing has been in place for several years and it is appropriate to carry out a review to ensure it complies with current law and best practice and reflects the council's current position.
- 2.2 The Deputy City Mayor has been briefed on this matter and has approved a public consultation to seek the views of existing licence holders, responsible authorities, other stakeholders and the public.

3. Proposals for change

- 3.1 This is a light touch review. The current policy includes a requirement for all pavement café licences to expire on 31 May each year. It is proposed to amend this, subject to the outcome of public consultation. Other than this, there are no changes proposed prior to public consultation.

4. Public consultation

- 4.1 The consultation will be online for one month. Existing licence holders and responsible authorities will be informed in writing and invited to participate. General publicity will be given via media releases, including social media.
- 3.2 The existing policy on pavement café licensing is attached at Appendix A.
- 3.3 The consultation questions are attached at Appendix B.

4. Recommendation

- 4.1 Members are asked to comment on the café licensing policy and any changes that may be appropriate.

5 Financial & Legal Implications

Financial Implications

- 5.1 No significant financial implications for the Council are expected to arise from this report.

Colin Sharpe, Deputy Director of Finance, ext 37 4081

Legal Implications

- 5.2 Permissions to use the highway for street/pavement cafes are granted by the issue of licences by the City Council as the Highway Authority under Section 115E of the Highways Act 1980. Licences granted by the City Council are subject to payment of a fee and subject to standard terms and conditions. As the Council is proposing to change its terms and conditions, it is good practice to consult with existing licence holders and the public at large. Once the Consultation is closed, Council Officers will need to demonstrate that proper consideration has given to consultation responses and if any adverse impacts on individuals and businesses are identified, these should be reported to committee for further consideration together with any steps available to the Council to mitigate any impacts.

Feizal Hajat, Legal Services, ext 6881

6 Background Papers – Local Government Act 1972

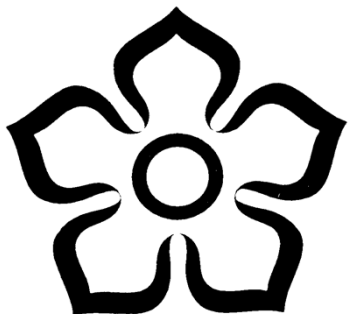
None

7 Consultations

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Head of Finance

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Leicester
City Council

HIGHWAYS AMENITIES (STREET CAFÉ) LICENSING

Guidance, Policy, Application Process and

www.leicester.gov.uk



Policy and Guidance Introduction

Leicester City Council permits tables and chairs to be placed on the Highway outside restaurants, cafes and public houses. This is to support and encourage the use of amenities on the highway and recognises that their provision can make a positive contribution with an ambience that makes the City Centre more attractive by:

Providing facilities for people, who visit, work or live in Leicester and aiding the local economy and by maximising the use of public space

This policy and guidance is intended to help businesses understand where the placing of objects or structures on the highway might be permitted. **The granting of a Highways Amenities (also known as a Street or Pavement Café) Licence is therefore necessary before you can set up a street café.** Any amenity permissions are required to be maintained to a high standard and enforcement action will be taken to ensure that obstruction to the highway is kept to a minimum.

The provision of highway amenities must be carefully managed to ensure that the public are not put in danger of injury or worse. Amenities need to be sited where they do not impede rights of access, block vehicular sight lines, obstruct fire paths, emergency access routes, must not be permanent structures and must be removed during periods outside the scope of the permission.

Amenities (particularly tables, chairs and parasols) MUST be of good quality and design and positively enhance the street scene and public space.

The Licensing Service of the Council will administer the amenity scheme in consultation with the agencies of the authority as well as local residents and businesses and will arrange for any contested applications to be referred to a panel of the Licensing Committee for final adjudication.

Any application that might require planning permission will ordinarily need to be approved by the Planning Authority prior to the submission of an amenity application.

Each application will be considered on its own merit. Any unauthorised highway use, constituting an unreasonable obstruction will be investigated and enforcement action taken where necessary.

Legal Guidance

The area for any amenity permission must be a highway as defined by Section 115A of the Highways Act 1980 (“the Act), namely:-

- A highway in relation to which a pedestrian planning order is in force;
- A bridleway;
- A footpath (including a walkway as defined in Section 35(2) of the Act);
- A footway;
- A subway constructed under Section 69 of the Act;
- A footbridge constructed under Section 70 of the Act;
- A highway whose use by vehicular traffic is prohibited by a traffic order but whose use by other traffic is not prohibited or restricted or regulated by such an order; and
- To a local Act walkway.

The council **may** grant permission to place objects or structures on the highway in accordance with Section 115E of the Act.

The objects or structures are termed “amenities” and although no strict statutory definition is given, could include such things as, but not limited to:

- Tables, chairs and parasols;
- Planters;
- Barriers, screens or enclosures to contain tables, chairs and/or outside designated smoking areas etc.
- “A” Boards or other advertising boards;

It is important to note that any person who, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway commits offence(s) contrary to section 137 of the Act.

In cases where there is any doubt about the ownership or responsibility in relation to a “highway” please contact the Licensing Service/Highways Department or seek your own legal advice prior to making any amenity application.

Design Guidance

The overall objectives of a Street Café will be:

- **To make the city centre attractive to visitors and residents.**
- **To protect the safety of users of the highway and users of the café.**
- **To ensure that access for emergency services is maintained.**

Consideration should be given by the applicant to the following issues prior to applying:

- Space – is there enough room for the proposed street café
- Environment – Is the area suitable and fit for purpose? Is it a conservation area?
- Other Considerations – How will other highway users and usage be affected? Will neighbours be affected? Is the area within a Pedestrian Preference Zone (PPZ)? – Details can be found here: [ParkingEnforcementPDF](#) (www.leicester.gov.uk)
- Planning Consent – Is planning required for any furniture e.g. fixed canopy. Check with the planning department.

Space

The size of any area will depend on the type of usage and the available space. Public safety will be paramount as a principle; however each application will be determined on its own merits. There must always be sufficient room for pedestrians and others to use the footpath taking into account street light columns, waste bins and any other street furniture. Access to fire hydrants must also be maintained.

A minimum of 2 metres must be maintained between the outer edge of the amenity and the edge of any street furniture or defined carriageway such as Bike Lanes. This is to allow safe movement of persons and any aids such as wheelchairs or prams that are required. Additional width may be required in areas with high pedestrian or vehicular traffic.

The area should take into account other needs of the area such as kerbside parking, pedestrian routes and crossing points. These must all be identified within any plan.

An example of how to draw a plan is attached as an Appendix. This should be followed as a minimum standard.

Means of Enclosure

The council requires the tables and chairs placed on a highway to be contained by means of a 'barrier'. This is to:

- Contain the tables and chairs so that the area is distinguishable to pavement users;
- Prevent "drifting" of the furniture or barriers outside of the authorised area; and
- To assist blind and visually impaired pedestrians.

Barriers (or similar structures) must:

1. Have a solid horizontal bar/element at appropriate height(s) above ground level so as to be detectable by a stick ("tapping rail")
2. Not be plastic in material
3. Have a minimum of two distinct contrasting colours in order to meet the needs of partially sighted people. This will need to be authorised by the Council.
4. Not exceed 1.5 metres in height unless otherwise authorised by the Council
5. Be removed entirely from the highway when outside of the times authorised by the licence. It must be therefore lightweight in construction or portable but robust enough to withstand winds or being pushed over
6. Compliment the surrounding area and the Council may require a specific design in order to maintain the street frontage. Any designs must be authorised by the Council
7. Be supported by suitable 'feet' that do not cause a trip hazard to pedestrians particularly partially sighted people

Any emergency exits must be kept clear.

Furniture Design

Tables and Chairs – These must be robust and of good quality. They should also be separate and of a design to allow use by disabled or wheelchair users. The design should compliment the area they are used in. White plastic garden furniture or picnic style tables (with fixed benches) will not be acceptable.

Care must be taken that any feet or resting points of any furniture do not cause damage to the highway or footpath surface (any repairs to such surfaces will be at the permit holder's expense).

Planters – These must be lightweight enough to be removed daily, however stable enough to resist weather conditions. These must also comply with the colour and tapping rail requirements detailed above. They should be well maintained with a vibrant array of bedding plants or flowers.

Parasols – They must not extend beyond the amenity area and at their lowest point should be at least 2 metres from the ground. They must be suitably secure at the base, robust and of high quality.

Any umbrellas must be non – reflective.

Planning consent may also be required for canopies, awnings or blinds which are attached to the building.

It will not normally be necessary to obtain planning permission for amenities on the highway provided that the main existing premises have the appropriate planning consent for the use of the premises. For more details on planning issues:

[PlanningGuidance](#)

(www.leicester.gov.uk)

Patio Heaters – If any are proposed, the application must be accompanied by a full description, detailed risk assessment to include an energy efficiency and environmental impact statement. It will be the responsibility of the applicant to notify their insurers of the use of such equipment and approved in accordance with the terms of the policy of public liability insurance.

Compliance / Enforcement

Environmental Implications

The amenity area must be kept clear of litter and clean at all times. Evidence of a scheduled cleaning record shall be provided on request. Ashtrays or similar receptacles must be provided in areas where smoking takes place.

Serious consideration should be given to division of amenity areas, where space permits, into smoking and non-smoking sections and to be clearly marked.

External public address systems are not permitted. The playing of live or recorded music may also be subject to statutory control and you should make your own enquiries accordingly.

Applicants should fully address and control and potential nuisance(s) caused by their patrons. Inappropriate behaviour may lead to enforcement action.

It is imperative that the needs of neighbours, nearby residents or businesses including all agencies are fully considered including companies that require access to the highway for maintenance repair.

All A-Boards must be contained within any Street Café Amenity Area. For more guidance on A-Boards: [ABoardsGuidance](http://www.leicester.gov.uk) (www.leicester.gov.uk)

Smokefree Legislation

The smokefree Regulations apply to all enclosed public places and workplaces. These regulations are aimed at protecting people using these places (or working in them) from the effects of second-hand smoke.

The layout of the street café should ensure that smoke does not enter into the main 'enclosed' premises by virtue of people smoking within the street café. This may be achieved by:

- Providing pedestrian routes between the main 'enclosed' building and

the street café;

- Restricting smoking in the areas of the street café that are close to the main 'enclosed' building;
- Keeping all opening windows (facing onto the street café) closed;
- Providing any doors facing onto the street café are fitted with self-closing devices;
- Any other equivalent or equally effective measures(s)

For further information on the Smokefree Regulations please contact the Public Safety Team on:

Telephone: (0116) 454 3220 (during office hours)
Website: [SmokefreeGuidance](#)
Email: healthandsafetyteam@leicester.gov.uk

Alcohol Guidance

The Licensing Act 2003 provides a regime for the control of the sale or supply of alcohol, regulated entertainment and late night refreshment.

The purpose of setting up street cafes is to attract people to Leicester, to enjoy a relaxed and continental style of eating/drinking. Not merely to extend licensed premises and this will be borne in mind when applications are considered.

Whilst consumption is not a licensable activity, licensees may need to seek advice and apply for variations to incorporate "additional" areas where a licensable activity is likely to take place.

Although licensing law is not the primary mechanism for dealing with the control of persons away from licensed premises; licensees do have a duty of care for the behaviour of persons immediately outside or adjacent to their premises.

If you wish to apply for a premises licence application, guidance/information for this can be found at:

Telephone: (0116) 454 3040 (during office hours)

Website: [AlcoholLicensingGuidance](http://www.leicester.gov.uk/AlcoholLicensingGuidance)
(www.leicester.gov.uk)
Email: licensing@leicester.gov.uk

Safety

It is the responsibility of the applicant/licence holder to ensure that all equipment and services complies with all relevant legislation and statutory requirements.

Licence holders will be responsible for securing **public** liability insurance (minimum £5 million) and for indemnifying the Council against public liability claims from members of the public arising from the provision of any amenity on the highway.

Any damage to the Council property caused as a result of the provision of the amenity, will be repaired by the Council with all costs recharged to the business in question.

Table service is highly recommended and customers should be seated.

Only the licensed number of furniture must be out within the licensed area.

General Information

- A Street Café Licence, if granted, applies only to the applicant/agent specified, not the premises. Any change to this would require a new application.
- A Street Café Licence, if granted, is not transferable to other land held, or to activities other than those specified.
- If any additional variations are required, this would require a new application.
- **All licenses granted will expire on the 31st May each year, irrespective of when granted.** All licenses will need to be renewed via the application form online prior to this date.

- All licenses granted will be subject to the standard conditions held with the licence. These can be found with any granted licence as well as in the Appendix.
- All amenities must comply with the licensed plan.
- Any Street Café licence can be revoked/suspended at any time for breach of conditions or in conjunction with the Highways Act 1980.

Fees and Charges

The fees for a Street Café Licence are reviewed by the Council on a regular basis. The fee MUST accompany the online application. The link to the current fees is shown below:

<https://www.leicester.gov.uk/media/179150/licensing-fees-2017-18.pdf>

Application Process - Guidance

Procedure for applying for a Highways Amenity (Street Café) Licence under Section 115 (E-K) of the Highways Act 1980

The application process involves both statutory and non-statutory procedures and requirements. Applicants **must** have regard to the guidance contained in this policy document as failure to supply the relevant information may mean that your application will be rejected.

- An application can be submitted for a Street café Licence at any time (however **all** licenses expire on the 31st May each year irrespective)
- You are advised to read through this guidance fully and take regard of all the notes prior to applying.
- Complete the **online application** in full submitting all the required information and ensuring there is enough detail to support your application.
- Detail clearly **each** day and times that you are applying for. This must fall within any planning permissions relating to operating times.
- Attach a detailed **plan**. There is an example in the Appendix. You must use this as a **minimum** standard, detailing measurements, all street furniture and details of the proposed street café dimensions.
- Submit a valid **public liability insurance** certificate detailing a minimum cover of £5 million cover on application and renewal.
- On receipt of your application, the proposals will be checked against the policy guidelines. Further details may be needed and obtained from you at this stage.
- You will be required to display a **public notice** on blue paper which must be displayed on the proposed premises for 28 consecutive days. This must be clearly visible to members of the public 24/7. This outlines your proposals and gives details of any representations from interested parties. If this notice is not displayed or displayed incorrectly, the representation period will be restarted upon correction.

- The Council will consult with bodies which may include, but not limited to:-
 - Ward Councillors
 - Highway and Traffic Department
 - Noise Pollution Team
 - Police
 - Fire and Rescue Service
 - Public Safety Team
 - Planning
 - Local Residents/Businesses

A period of 28 days will be allowed for consultation with the above bodies.

- You will be advised if there are any objections to your application. It may be possible to revise your application through an agreement process between the parties in order to negate any objections. Special conditions can be added.
- If objections are not withdrawn in respect of the application and/or the amendments are not appropriate then the application will be **referred** to the Licensing Enforcement Sub-Committee (panel of councillors) for a final determination.
- You and any objectors will receive a case bundle with all details for the application as well as any objections. You will have the right of attendance at the committee hearing as well as any objectors. The committee will normally make their decision at the end of the hearing which will be confirmed in writing. They may adjourn the hearing to make their decision after a day or two in order to obtain further technical advice.
- There is no right of appeal against the decision of the Council to refuse to grant an application. There is also no right of appeal if there is a refusal to renew, suspend or revoke an existing licence. Likewise there is no appeal against any conditions imposed.

Further Applications Processes - Guidance

Once you have been granted a licence there are several other applications that must be completed for different circumstances/changes that may occur.

RENEWAL APPLICATION

Every licence expires on 31st May each year (irrespective of when granted) and the online renewal application must be submitted prior to the expiry.

You must submit:

- A current PUBLIC LIABILITY Insurance Certificate/Schedule.
- Current photo of the street café with the street furniture out
- Upload photo ID
- Pay fee

Once submitted, your licence will be sent out to the premises around the time that your current licence is due to expire. If you do not renew in time, your licence will expire and a new application will have to be applied for.

MINOR VARIATION

If you would like make any of the below changes to an existing licence then a Minor Variation application needs to be applied for:

- Change of licence holder's address
- Reduction of licensed hours
- Reduction in size of licensed area
- Decrease in number of tables/seating capacity
- Change to authorised furniture/barrier design or type
- Change of premises name

You must submit:

- A current PUBLIC LIABILITY Insurance Certificate/Schedule.
- Upload photo ID
- Pay fee

If:

- **Change of licence holder's address** – proof of current address
- **Reduction of licensed hours** – state clearly proposed days and hours
- **Reduction in size of licensed area** – proposed plan using the example plan
- **Decrease in number of tables/seating capacity** - state clearly proposed number of tables or seats

- Change to authorised furniture/barrier design or type – provide pictures/brief of new furniture or barrier designs
- Change of premises name – Detail name

Once submitted, if granted, your licence will be sent out to the premises. This will normally be decided within 14 working days of submission however will vary.

MAJOR VARIATION

If you would like make any of the below changes to an existing licence then a Major Variation application needs to be applied for:

- Extension of licensed hours
- Enlargement of the licensed area
- Increase in number of tables/seating capacity

Please refer to the processes required for a new application.

TRANSFER APPLICATION

Each licence is issued to the licence holder/agent. If you require to transfer the licence to another person, you must complete the Transfer application form.

You must submit:

- A current PUBLIC LIABILITY Insurance Certificate/Schedule.
- Upload photo ID
- Attach a file or photo of a document that proves you legal entitlement to transfer
- Pay fee

Once the application has been submitted, it will be scrutinised by a Licensing Enforcement Officer. Once this has been reviewed, you may be requested to provide further evidence of entitlement.

If granted, the transferred licence will be issued.

SURRENDER/CANCEL LICENCE APPLICATION

If you wish to surrender or cancel your licence, you can either let it expire (31st May each year) and not renew it or complete a surrender/cancel licence application.

You must submit:

- Upload photo ID

Once the application has been submitted, it will be scrutinised by a Licensing Enforcement Officer. Once this has been reviewed, you may be requested to provide further evidence if required.

Surrendered licenses cannot be reinstated.

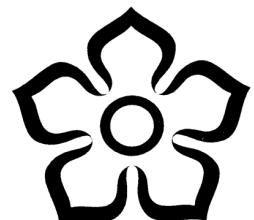
PLEASE NOTE:

- All of the above forms are to be completed online
- Applications will only be processed once all required information/documents are received.
- There is no right of appeal against the council's decision regarding determining applications or decisions on renewing/suspending or revoking licenses.

Contact Details

Licensing Authority
Leicester City Council
York House
91 Granby Street
Leicester
LE1 6FB

Telephone: (0116) 454 3040
Email: licensing@leicester.gov.uk
Website: www.leicester.gov.uk



Standard Conditions

RESPONSIBILITY OF LICENCE HOLDER

1. The Licence holder shall be at all times responsible for the compliance with the terms and conditions of the licence.

DISPLAY OF LICENCE

2. The Licence holder shall ensure that a copy of the licence is displayed in a prominent public position in the premises.

PUBLIC LIABILITY

3. The Licence holder shall ensure that Public Liability insurance cover is in effect to cover the Highways Amenities Licence (Street Café).
4. Good order and decent behaviour shall be maintained at all times the Street Café is open.

CONTINUITY OF CONDITIONS

5. On expiry of the licence, where there has been an application to renew the licence prior to its expiry, these conditions shall be deemed to remain in force whilst the premises lawfully continue to operate as if a licence was in force.

GIVING OF NOTICE

6. Any change of Licence holder shall be notified in writing to the Leicester City Council.

GENERAL

7. The licence is personal to the Licence holder.
8. The Licence holder shall provide a waiter / waitress service, where hot drinks are served in open containers.

9. The Licence holder shall ensure that the Street Café is kept clean and free from litter at all times.
10. Waste from the Licence holder's operation must not be disposed of in the permanent litter bins provided by the Leicester City Council.
11. The Licence holder shall at all times ensure that the Street Furniture and other items are not placed outside the area of highway shown on the plan ("the Licensed Area").
12. The Licence holder shall remove the Street Furniture from the Licensed Area outside the Permitted Hours and:-
 - (a) Immediately if required by reasonable request at any time from a Police Officer.
 - (b) as necessary to permit works in or the use of the highway by
 - 12.1 the City Council, Police, Fire Brigade, Ambulances and any service undertakers
 - (c) specifically where permitted by the City Council as Highway Authority
 - 12.2 vehicles accessing premises for the purpose of loading/unloading of goods;
 - 12.3 builders' vehicles, hearses and furniture removal vans
13. The Licence holder shall make no claims or charge against the City Council in the event of the street furniture being lost, stolen or damaged in any way from whatever cause except where the same is attributable to negligence of the part of the Council or any of its officers.
14. If for whatever period or reason a public liability insurance policy is not in force, the City Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and

the Licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.

15. The Licensed Area must be used solely for the purpose of consuming refreshments such as food and/or drink.
16. The barriers, table and chairs and layout shall be as agreed by the Council and conforms to the plan at all times.
17. No alcohol shall be consumed within the Licensed Area except in compliance with the appropriate licensing laws.
18. The Licence holder's attention is drawn to Section 115K of the Act which refers to failure to comply with the terms of permission:
 - 18.1 If it appears to the City Council that the Licence holder to whom the City Council have granted permission under Section 115E of the Act has committed any breach of the terms of that permission, they may serve a notice on the Licence holder requiring the Licence holder to take such steps to remedy the breach as are specified in the notice within such time as is so specified;
 - 18.2 If the Licence holder on whom a notice is served under Clause 18.1 fails to comply with the notice, the City Council may take steps themselves to remedy the breach;
 - 18.3 Where the City Council have incurred expenses in the exercise of the power conferred on the City Council by Clause 18.2, those expenses, together with interest at such reasonable rate as the City Council may determine from the date of service of a notice of demand for the expenses, may be recovered by the City Council from the Licence holder.
 - 18.4 If during any six month period of the term of the licence the Licence holder receives two or more notices in accordance with the provisions of section 115K of the Act, the Council may revoke this licence with immediate effect upon giving written notice of revocation to the Licence holder.

19. The issuing of this licence does not in any way permit the playing of live or recorded music for the entertainment of customers using the external area, in order to prevent public nuisance to nearby residents.

APPENDIX B

Pavement café licensing – consultation questions

1. The existing policy provides that all pavement café licences expire on 31 May each year, regardless of the date they were granted. The council proposes to remove this requirement, and replace it with a statement that all licences will last for 12 months from the date they are granted. Do you agree with this proposal?
2. If you think changes are needed in "Policy and guidance introduction", please explain here
3. If you think changes are needed in "Design guidance", please explain here
4. If you think changes are needed in "Compliance and enforcement", please explain here
5. If you think changes are needed in "Applications process guidance", please explain here
6. If you think changes are needed in "Further applications processes guidance", please explain here
7. If you think changes are needed in "Standard conditions", please explain here
8. Do you think changes are needed to other parts of the policy?
9. Please use the space below to add any further comments to make about the council's pavement café licensing policy