



Highways Act 1980

# Pavement Cafe Licensing Policy 2019 - 2024

[www.torbay.gov.uk](http://www.torbay.gov.uk)





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The 'Pavement Cafe Licensing Policy' 2019-2024' was ratified and adopted by the Licensing Committee on the xx July 2019

## Introduction

Torbay Council (hereinafter referred to as 'the Council') has developed this Policy with a view to promoting the use of Pavement Cafés in our area and to establish a benchmark of good practice.

Torbay is a popular well-established holiday destination situated on the South Devon Coast, on the South West peninsular of England. It has a population of over 130,000 which can increase to over 200,000 in the summer months. The area comprises of the three towns of Torquay, Paignton and Brixham, and is known for its mild climate, picturesque harbours, coves and beaches, and is home to numerous tourist attractions.

The Council is aware that Pavement Cafés are increasingly popular and wishes to regulate their operation so that they can add vitality to, and help maximise the use of our public spaces for people, boost the local economy and add to the complement of facilities available to those living, working and visiting our area.

Application forms, which include contact details for named consultees, are available to view and download from the Council's website.

# MAP of TORBAY



## 4. Guiding Principles

For the purposes of this Policy, Pavement Cafés consist of tables and chairs placed on the public highway where food and/or beverages are served by way of table service to the outside area. Applications for Pavement Café Licences will usually relate to an existing cafe, catering establishment and/or premises regulated under the Licensing Act 2003; however, it is possible for applications to be submitted in respect of premises which are to be built or are in the process of structural conversion. Applications that result in a significant increase in the overall size of the existing premises may require increased facilities. For example: adequate storage space for tables and chairs when not in use, a kitchen which is suitably equipped, increased toilet provision. Please note, these examples are not exhaustive and an application will be decided on its own merits.

Whilst wishing to encourage the provision of Pavement Cafés within Torbay, the Council recognises that public highways exist principally to allow the general public to pass along them without obstruction and therefore, before agreeing to place a Pavement Café on the public highway, the Council will ensure that the public's right to use the highway is not detrimentally affected. Applicants are asked to consider whether the area they wish to licence might impact negatively on the following, and if choosing to pursue an application, such matters must be addressed within the application, where relevant:

- Width restrictions (consideration must be made for customers and pedestrians with impaired vision, mobility difficulties and people pushing prams);
- Emergency vehicle access;
- Emergency exits access;
- Permitting easy and unrestricted access to the highway to Statutory Undertakers maintaining or repairing services (gas, electricity, telephone etc);
- Street cleaning machines access and ease of movement;
- Kerbside parking;
- Unloading areas;
- Bus stops;
- Heavy pedestrian flow; and
- Visual impact.

Please note that the above list is not exhaustive and may be subject to change.

## 5. Legislative Considerations

Highways Act 1980 - <http://www.legislation.gov.uk/ukpga/1980/66/contents>

The area for which a Pavement Café Licence is sought must be a highway, as defined by s115A of the Highways Act 1980, namely:

- A highway in relation to which a pedestrian planning order is in force;
- A restricted byway;
- A bridleway;
- A footpath (including a walkway as defined in section 35(2) of the Highways Act 1980);
- A footway;
- A subway constructed under section 69 of the Highways Act 1980;
- A footbridge constructed under section 70 of the Highways Act 1980;
- 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.

Under Part V11A s115E of the Highways Act 1980, the Council is not permitted to grant a licence unless it first obtains the consent of the frontages with an interest, the Highway Authority and if appropriate, obtained walkway consent. Consultation will therefore take place with relevant authorities, such as Highways, persons or business owners who are likely to be affected (frontages with an interest) and with the general public by publishing a Notice that is required to be clearly displayed in a prominent place at or on the premises applying for Pavement Café Licence for a period of not less than 28 consecutive days. The Notice shall summarise the application and provides contact details for relevant persons/bodies who may wish to make a Representation of objection or support.

### Planning Permission

Any application or subsequent grant of a Pavement Café Licence does not remove any potential requirement, or infer any permissions for planning consent.

Applicants are expected to have obtained the requisite planning permission, if required, in advance of making an application for a Pavement Café Licence. If permission is not already in place or where a change of use may be required, Applicants are encouraged to contact the Council's Planning Department before submitting an application.

If an application is granted where it later transpires that planning consent was required and that no such consent is in place, there will be a requirement that an application for the relevant consent is made and the premises may be subject to planning enforcement action. Where such consent is not applied for, is refused or in cases where there are ongoing planning enforcement issues the Licensing Authority may suspend or revoke any Pavement Café Licence that has been issued. If a licence is suspended or revoked there will be no refund of the fee paid for the licence or any part of it.

Permanent structures on the highway associated with a Pavement Café, for example decking, smoking shelters or awnings will not be permitted.

### Pavement Cafés for the Supply of Alcohol and/or late Night Refreshments

Applicants wishing to provide alcohol (at any time) or hot food/hot beverages (between the hours of 23:00 – 05:00) to their customers must obtain, if not already in place, a Licence or Certificate under the Licensing Act 2003. If the cafe's proposed area(s) is not within the scope of any existing licence/certificate, i.e. it must be included within the Premises Licence or Club Premises Certificate plan, issued under the Licensing Act 2003, then a full variation to the premises Licence will be required to be made in accordance with the provisions of the Licensing Act 2003.

Licensing Act 2003 - <http://www.legislation.gov.uk/ukpga/2003/17/contents>

Crime & Disorder Act 1998 - <http://www.legislation.gov.uk/ukpga/1998/37/section/17>

The Council will pay particular regard to any potential risk of crime and disorder arising directly or indirectly from the granting of a Pavement Café Licence and will consult with Devon and Cornwall Constabulary when considering such applications. Applicants are therefore expected to have considered measures that will prevent disorder and minimise the impact and consequences of any disorder.

### Environmental Impact

The Council expects Applicants to have taken into consideration their immediate neighbours and more generally the area in which their Pavement Café is located when preparing their application. Where Pavement Cafés are located in residential areas or where there are other noise sensitive premises nearby, Applicants and Licence Holder/s are expected to put in place suitable management controls to ensure the operation of their business does not cause a nuisance. All Applications will be subject to scrutiny by the Council's Public Protection Officers, with particular attention paid to noise, odour and refuse matters.

## **6. Pavement Café Licences – Application Standards**

When compiling an application, Applicants are encouraged to have regard to the list of suggested standards/operating controls set out in this Section. Applicants are expected to demonstrate that their proposals will make a positive contribution to the street scene; only well designed proposals which respond to the site and its surroundings and produce a high quality result will be considered.

The Council requires that Pavement Cafés are located, designed and managed in a way that protects the rights and safety of all users of the highway (particularly pedestrians) and recognises that people with impaired vision, wheelchair users, people relying on mobility aids or people using pushchairs can be particularly affected where businesses do not comply with these standards.



Applicants are advised that before approving a new licence or granting a variation of an existing permission for a Pavement Café Licence, the Council must obtain the consent of frontages with an interest. The Council recommends that where necessary, Applicants consider discussing their proposed applications with neighbouring businesses in advance of submitting an application in order to try and alleviate/remedy potential objections.

Upon receipt, the Council will notify neighbouring premises in the vicinity of the proposed Pavement Café area and submit the Application to the following named consultees for consideration:

- Devon & Cornwall Constabulary;
- Devon & Somerset Fire & Rescue Service;
- Torbay Council's Highways Department;
- Torbay Council's Public Protection Team;
- Torbay Council's Health & Safety Team;
- Torbay Council's Food Safety Team.

In addition, the applicant MUST display a notice in a prominent position either on their Premises or in the proposed Pavement Café area, so as it is visible to the general public, for a period of 28 consecutive days starting with the day following submission of the application to Torbay Council. An example notice is provided at Appendix A.

Any of those named consultees or any other person may make Representation during the 28-day consultation period. All such representations will be considered prior to determination of the application and in some cases may result in refusal to grant, or where granted, additional conditions and/or a reduction of the requested licensed area.

Where Applicants consider that their proposal to operate a Pavement Café may prove controversial in terms of its size, location or the activities provided, it is recommended that they contact those relevant consultees, listed above, in advance of making an application to seek their advice and input at this earlier stage to avoid where possible, potential objections.

### **(i) Design & Layout**

Whilst the Council does not intend to prescribe the design and layout of the Pavement Café licences, Applicants must have regard to the following key considerations that will be taken in account by the Council when assessing applications:

- Pavement Cafés should generally occupy an area directly in front of and be visible from your existing premises and should not extend beyond the width of your frontage. The layout and size of the Pavement Café will depend upon the characteristics of the location of your premises, the available space in which to place furniture and also the nature of your premises.

- The safe and easy passage of pedestrians, particularly those with a disability, along the highway is paramount when considering applications for Pavement Café and therefore, the Council will generally require that a minimum of 2.0m clear highway is left between the edge of the Pavement Café and the edge of any adjacent carriageway or vehicle route or to the nearest fixed obstacle e.g. Bollard, Bench, Tree etc.
- However, in areas of low pedestrian and/or traffic flow, the minimum clear highway requirement will be reduced to 1.8 metres between the edge of the Pavement café area and the edge of any adjacent carriageway or vehicle route or to the nearest fixed obstacle e.g. Bollard, Bench, Tree etc. This will be assessed by a licensing officer upon application and this may result in refusal of an application and/or a reduction in the area granted.
- The location and type of existing street furniture will be taken into account when assessing the size of the Pavement Café licensed areas as this may reduce the available space you may be able to use. However it may be possible to relocate street furniture to accommodate a Pavement Café licensed area. Where this is possible, please note that the cost of doing so shall be met by the Applicant and payable in advance of such movement.
- Sufficient space must be left between tables and chairs to allow unimpeded access and circulation space for all customers within the licensed area, including those with pushchairs, buggies, and members of the public relying on mobility aids, including wheelchairs.
- The positioning of table and chairs should never discourage pedestrians from using the highway outside the premises or cause pedestrians to walk on to or cross over vehicular carriageways.
- If the Pavement Café accommodates a pedestrian route passing through it, then this route should be obvious to pedestrians, be as straight as possible and be completely free of any obstructions.
- The needs of other users of the highway must be taken into account. Tables and chairs should not be placed so as to:
  - Obstruct highway signs or other official signage; and/or
  - Obstruct sightlines of road users.
- Emergency routes from the Pavement Café and also adjacent buildings must not be obstructed by the operation of the Pavement Café.
- Adequate access for emergency services and statutory undertakers should be available at all times.
- Given that Pavement Cafés may be sited in many different locations, each case will be determined on its own merits and applications that do not comply with the minimum standards (as above) may be permitted, if it is deemed that they do not have a detrimental effect on public safety.

## (ii) Boundary & Means of Enclosure

- Applicants must as part of their application, clearly define the proposed boundary of their Pavement Café by way of a site or location plan of the proposed cafe area and its relationship to the building.
- Where Pavement Cafés are to be located on a main pedestrian thoroughfare, and where public pedestrian access needs to be maintained, tables and chairs and all other furniture must be enclosed in order to allow for easy, unhampered pedestrian movement and to contain the Pavement Café area.
- The area forming the Pavement Café must be clearly demarcated by way of barriers or other street furniture and/or planters in order to identify the agreed location and size of the Pavement Café area and to help guide persons with visual impairment around its use. Any items used as demarcation of the licensed area must be no less than 800mm in height.
- If planters are being used as delineators, these should either be permanent highway street furniture, which are either pre-existing or for which full planning permission has been obtained or removable tub style ones. Non-permanent planters should not be left on the highway outside the permitted hours of the Pavement Café Licence. Planters used as demarcation of the licensed area must be no less than 800mm in height.
- The Council requires that Pavement Cafés in its Cumulative Impact Area, as defined in the Licensing Statement of Principles 2016-21, which consist of four or more tables, must use removable barriers of the design set out below.
- The Council's preference is that these removable barriers are utilised by all Pavement Café Licence Holder/s operating outside of the Cumulative Impact Area, however the use of permanent highway street furniture or removable planters will be permitted to define a licensed area.
- No removable structures should be used or left in the highway that may cause a trip or safety hazard to patrons or users of the highway.

**N.B The use of any removable item placed on the highway to show demarcation will be the sole responsibility of the Pavement Café Licence Holder/s and the Council will not accept any liability in the event that injury or damage is caused.**

### Barriers

- Where barriers are provided, they must be no less than 800mm in height and have a gap of no more than 150mm between the base (or tapping rail) and the ground. Barriers must be capable of being temporarily fixed and must be of a style, design and type to be agreed by the Council.
- A variety of means may be used to temporarily fix barriers in place, for example, lockable wheels.

- The Council considers the following to represent an appropriate barrier type:
  - Stable and sturdy – not flimsy or capable of being warped or easily blown over in inclement weather;
  - Close textured, fence-like in appearance, with a tapping rail (i.e. a length of wood positioned at the base of the barrier, designed to assist those with visual impairments) – see sketch below;
  - Lightweight for ease of movement/storage, as barriers will need to be taken down at the end of each day, but sufficiently robust that they don't get easily blown over;
  - Of an appearance which will complement the environment and the setting of the Pavement Café.
- The Council will not usually permit the following barrier types to be used to delineate Pavement Café areas:
  - Post and chain barriers – as are potentially hazardous to pedestrians; and/or
  - Hoop top garden fencing – as is too flimsy and not very tall therefore posing a potential trip hazard.
- The requirement for barrier types and/or other means of delineating Pavement Café areas may differ from one Pavement Café to another and so it is recommended that Applicants contact the Council to discuss their proposals in advance of making an application or purchase.

### **(iii) Furniture**

- The Council encourages the creation and maintenance of high quality Pavement Cafés and whilst choosing not to define a particular style of furniture or colour to be used by Licence Holder/s, it reserves the right to reject an application or suspend/revoke a licence where the operator uses furniture that is inappropriate or not fit for purpose. Applicants are encouraged to consider the following guidelines when deciding which type of furniture to procure for their Pavement Café:

#### **Furniture Standards**

- All tables, benches and chairs etc should be constructed from quality materials.
- Furniture colours should ideally be uniform and not be overly reflective where this may pose a risk to road or highway users.
- Parasols should not be made of reflective material and should complement the furniture colour/s chosen and positioned to avoid endangering users of the Pavement Café or passing pedestrians and road users.
- Parasols must be removed at all times when the Pavement Café is not in operation.
- The furniture should enhance the street environment, and Applicants should ensure that various styles of seating and tables are available, depending on the location of the Pavement Café, to complement both a commercial and a more historic conservation area setting.

- Regard must be paid to the surface on which your furniture will stand. An uneven surface, for e.g. cobbles, may require a more sturdy style of furniture than would be necessary on a more even or paved surface.

The positioning of tables and chairs will be dictated by the availability of space outside the premises concerned. Applicants are encouraged to consult the following guidelines, depending on whether furniture will be placed directly in front the premises or at a distance:

#### Pavement Café Furniture Positioned Directly Fronting the Shop/Restaurant:

- The extent of the area of tables and chairs must be such that a minimum of 1.8m width highway is still available to passing pedestrians (taking into account telephone boxes, litter bins/receptacles, light columns etc).

#### Pavement Café Furniture Positioned Away From the Shop/Restaurant Front:

- Applicants will need to ensure that they leave no less than 2.0m width of unobstructed highway between the front of the premises in which the Pavement Café is located and the outermost boundary of the Pavement Café (where relevant, this calculation must also factor in tables and chairs immediately fronting the premises).
- All furniture (to include menu boards 'A' Boards and outdoor heaters) must be contained within the approved Pavement Café area and all such items must be removed at the terminal hour, and stored securely inside the premises or in an alternative position off of the public Highway e.g. an enclosed outdoor area of the premises such as a garden.

#### **(iv) Advertising**

- You may wish to incorporate an element of advertising within the area of your Pavement Cafe. For example, in any decoration included in the design of the means of enclosure or on parasols. You are strongly advised to contact the Council's Planning Department to ensure that you obtain the requisite consent, where needed. Failure to obtain consent may result in the use or placing of any advertising object or furniture being prohibited.

#### **(v) Management of Pavement Cafe**

- Where there is an existing requirement that the premises must operate a table service inside the premises, the transfer of food and beverages to customers seated outside in the defined Pavement Café area must also be made by way of table service.
- Where the premises sells alcohol by way of a Premises Licence granted under the Licensing Act 2003 and that permission requires that waiter/waitress service must be in operation at all times, that this same requirement will be applied to the Pavement Café area.

- Where the premises sells alcohol by way of a Premises Licence granted under the Licensing Act 2003 a premises is prohibited from serving alcoholic and non-alcoholic drinks in glass bottles to persons using the Pavement Café areas at all times. The management must ensure bottled drinks are de-cantered into suitable drinking vessels at point of sale.
- Where the premises sells alcohol by way of a Premises Licence granted under the Licensing Act 2003 and this permission requires alcohol to be served in polycarbonate or shatterproof glasses, or similar, that requirement must be adhered to when serving customers in the Pavement Café Area.
- Where the Pavement Café does not abut the frontage of the Applicants premises, the Applicant must demonstrate in their application the operational controls in place to ensure appropriate management of its customers, staff training and use of equipment – this must be shown by way of a Health & Safety Risk Assessment.
- The Pavement Café must be suitably managed by staff employed at the premises i.e. to control the use of the area, to tidy away trays, crockery and other tableware as well as refuse, and to maintain the area to as high a standard as is required inside the premises.

#### (vi) Environmental Considerations

- The Council will not generally permit music to be provided over the level of 'background music' within the Pavement Café area. However, in certain circumstances, **non-amplified** live music may be permitted within the Pavement Café area. Applications requesting the use of **non-amplified** live music will attract increased scrutiny and as a direct result of such scrutiny, incur a higher fee (please refer to the Council's Discretionary Fees and Charges). It is also likely that additional, tailored conditions will be applied to licences which permit **non-amplified** live music. Such conditions may include;
  - Limits in the number of occasions on which **non-amplified** live music is permitted
  - A requirement that a noise management plan must be agreed with the Council's Public Protection Team
  - A requirement that a minimum of 14 days advance notification of the date and time of the planned use of **non-amplified** live music is given to the named consultees
  - A restriction on the hours during which **non-amplified** live music may be made available

This list is not exhaustive, although conditions will only be attached that are considered appropriate in the individual circumstances of the application.

- Where Applicants/Licence Holder/s wish to provide **amplified** live or recorded music within the Pavement Café area, a separate application for a Temporary Amplified Music Permission is required to cover the period during which **amplified** live or recorded music is intended. This separate and distinct permission will attract a fee (please refer to the Council's Discretionary Fees and Charges). This will require a 10 working day consultation period in order to fully consider such applications and to allow for the consultation and therefore, a minimum of 21 days advance notice is required.

- Applications for **amplified** live or recorded music will be managed in a similar way to notifications under the Temporary Event Notice regime (Licensing Act 2003). The Council will limit the number of Temporary Amplified Music Permission granted to any one premises during a 12 month calendar year to five. Where a named consultee objects to the granting of this application, the Council will have careful regard to the reasons of this objection and where it deems it appropriate to do so; will refuse the application **without** refund of the fee paid.
- Adequate and unobtrusive lighting must be made available in the Pavement Café area unless there is adequate lighting reflecting from the premises or from any existing external source.
- There shall be no preparation or storage of food or drink outside the main premises. This condition can only be varied through written consent of the Council. Applicants are therefore strongly advised to contact the Council's Food & Safety Team for advice in advance of submitting an application.
- Where food is to be served, Applicants should consider providing parasols to protect food from risk of contamination from birds etc.
- Once customers have finished and left the premises, tables should be immediately cleared of uneaten food and waste to minimise attraction from birds, flies etc.
- The Pavement Café area should be kept clean and litter/food waste free, including the floor area and Applicants are advised that they must provide suitable litter/refuse bins at all times during the hours of operation or ensure that tables are regularly cleared and must also ensure that they maintain suitable staff numbers to meet this requirement.

#### **(vii) Smoke free**

- Whilst encouraging holders of Pavement Café Licences to offer exclusively smoke free spaces, the Council's minimal acceptable standard is that Licence Holders who have Pavement Café areas with more than 5 tables, must make provision for 50% of the Pavement Café area to be smoke free at all times. As Pavement Cafés are family-friendly spaces, the Council's principal reasons for adopting this stance are to reduce adult and children's exposure to smoking and to promote healthy behaviours.
- All tables designated as smoke free, must have designated no smoking signs on them.

#### **(viii) Hours of Operation**

- Applicants are asked to consider the surrounding environment, neighbouring business and residential properties when setting out their proposed operating times. In order to minimise associated crime and disorder and noise nuisance, the Council requires in general that Pavement Cafés operate on Monday to Sunday within the period of 10:00 to 23:00. Applicants wishing to apply for operating hours outside of these timings are advised to seek guidance from the Council's Public Protection Team and Devon & Cornwall Constabulary before submitting an application.

- Applications for opening hours beyond midnight will not be considered in any circumstances and will be automatically be rejected.

**Businesses are strongly encouraged to contact the Council’s Public Protection Team and Police Licensing Officers in advance for guidance in advance of making an application.**

## 7. Grant of a Pavement Café Licence & Licence Conditions

If your application is successful, you will receive a “Pavement Café Licence” which will remain in force indefinitely subject to payment of an annual fee or until the licence is surrendered, revoked or falls due to change of premises ownership.

The Licence may be subject to a number of conditions, with which licence holders **must** fully comply with, at all times. Conditions may be standard (applied to all premises), which are attached at Appendix B to this Policy, or Specific, which may be applied upon grant of Licence if considered appropriate following consideration of the application. Specific conditions may limit the months/weeks/days of operation or may permit/restrict certain types of equipment and/or activity.

Where conditions are applied to your Licence, the Council reserves the right to change or add to these and where this is the case, you will be notified in writing giving reasons as to why it is considered necessary, in advance of the revised or new conditions having effect. The Standard conditions, which may be varied from time to time, are attached at **Appendix B**.

Where an application does not attract a Representation(s), the Council will endeavour to process that application within a week from the end date of the consultation period.

The grant of a Pavement Café Licence does not provide the holder/s of that licence with an exclusive right to use the said area. Access must be provided for those times when cleaning, maintenance and repairs to the public highway, traffic signals, and electric, gas and telephone equipment etc is required, and also where access by emergency services is required. During times when special events are taking place within the Bay, access to and/or use of the cafe area may be also required.

Where Licence Holder/s are requested to move any tables, chairs or other items within their Pavement Café area by Officers of the Council, Emergency Services or Statutory Undertakers, they shall immediately comply with that request. Failure or delay to do so will place the holder/s in breach of that licence.

Applicants and Licence Holder/s are asked to note-that the Council will **not** be held liable for any loss of trade and/or income from the Pavement Café area, as a direct result of such activity mentioned in the preceding two paragraphs or refund any of the licence fee paid.

Whilst all Pavement Café Licences are granted in perpetuity, there is an annual fee that falls due on 1<sup>st</sup> April each year. Invoices will be sent out at least 4 weeks in advance of the due date.



## Temporary Suspension for Event's or 'one off' situations

From time to time due to either a specific event e.g. Street Carnival, procession etc or for specific unavoidable and/or necessary situations such as water/Gas works, whether pre-planned or emergency or other Street repairs, it may be necessary to suspend permissions for use of the Highway. In such cases as much advance warning as is practicably possible shall be given and any permissions will be suspended or amended as appropriate. The Licensing Authority cannot refund any part of the fee paid or provide any compensation payment in respect of such closures.

## **8. Appeals**

There is no legal automatic right of appeal against a refusal to grant, vary or renew a Pavement Café Licence, or to appeal against conditions imposed on a Licence under the Highways Act 1980. Notwithstanding this, the Council does offer an appeal process, where an Applicant or Licence Holder is aggrieved by a decision of an Authorised Officer. This process does attract a fee which is non-refundable, (please refer to the Council's Discretionary Fees and Charges) and this must be accompanied with the appeal. All appeals must be made in writing and addressed to the Council's Environmental Health Manager (Commercial). An Applicant or Licence Holder who has been refused a licence, variation or renewal in accordance with the Council's Policy or is unhappy with a condition attached to his/her licence will be expected to demonstrate why there should be an exception to the Council's Policy in his/her particular case.

## **9. Enforcement**

Periodic inspections of Pavement Café Licences may be conducted from time to time by authorised officers of the Council or Police officers, to ensure that all terms and conditions of the permission and various Acts of Parliament (i.e. Highways Act 1980, Environmental Protection Act, Town & Country Planning Act and Licensing Act 2003 etc) are being adhered to.

Where minor breaches are found, the Council and/or the Police will aim to work with the Licence Holder/s to find an agreed solution, where possible. If major or persistent breaches occur, then a licence may be suspended or revoked.

Access to all areas of the Pavement Café area shall be granted to authorised representatives of the Council for the purpose of inspection in accordance with the relevant licence condition. Refusal to grant a reasonable request for access may result in the Pavement Café Licensing being revoked with immediate effect, where the Council deems it appropriate to do so.

Where a Pavement Café Licence is revoked, the Council will not refund the fee paid for that licence or any part of it.

## Non Payment of Annual Fee

In cases where the annual fee remains unpaid for a period of more than 14 days from the date that payment fell due, all such licences will be revoked in writing by the Licensing Authority.

If at any time a licence becomes revoked, suspended, surrendered or for any reason lapsed, all equipment, fixtures and furniture must be removed from the highway immediately. Any such items not removed will be regarded as an unauthorised obstruction of the highway and dealt with in line with the Council's Policy on unauthorised Pavement Cafes.

### Unauthorised Pavement Cafes

In cases where an unlicensed Pavement Café is detected, the occupier of the premises will be written to in the first instance and required to remove furniture from the highway and to make application for a Pavement Café Licence. Furniture is not permitted on the highway unless or until application is made and subsequently granted.

If, after 7 days of the date of the above letter, an application has not been made and/or furniture remains on the highway, a notice will be issued under section 143 of the Highways Act 1980 which will require removal of any item(s) as may be listed in such Notice. Failure to comply with the Notice will result in removal of such item(s) following a period of one month, by authorised officers of the Council. Costs of such action will be outlined in the Notice and will be payable by the offender.

## **10. Contacts**

If you would like to discuss your proposal for a Pavement Café with a member of the Licensing Team, please contact us at the address below or by phone.

**Address:** Torbay Council, Town Hall, Castle Circus, Torquay, TQ1 3DR

**Tel:** 01803 208025

# HIGHWAYS ACT 1980 (As Amended) PART VIIA

**NOTICE IS HEREBY GIVEN** that Torbay Councils Licensing Authority has received an application to grant permission for the placing of tables and chairs on the following footpaths or footways and areas of public highway for the purpose of providing and operating facilities for refreshment etc.

**AREA OF PAVING OUTSIDE (name & address of premises):**

**PROPOSED SIZE OF PAVEMENT CAFÉ AREA:**

Details of the application can be inspected on the Torbay Councils Website at [www.torbay.gov.uk](http://www.torbay.gov.uk)

and at the Office of the Executive Head Community Safety, Torbay Council, Torquay Town Hall, Castle Circus, Torquay, TQ1 3DR between the hours of 9:30 am and 4:00 pm, Monday to Friday

Any interested party or responsible authority wishing to make a representation in respect of this application should do so in writing to the above address before the date specified below.

All representations submitted after the specified date cannot be considered

**Date by which representatives must be received:-**

## Appendix B – Standard Conditions

Please note that these conditions are not an exhaustive list, and each Application will be considered on its own merits and bespoke conditions may be attached where deemed appropriate.

### PAVEMENT CAFÉ LICENCE – STANDARD CONDITIONS

This Pavement Café Licence is granted under Section 115E of the Highways Act 1980

This licence is issued to the individual(s) or Company named on it and is non transferrable. Granting of the licence permits the placing of tables and chairs and associated furniture (as permitted) only and does not absolve the holder(s) from any requirements under any other legislation e.g. A Premises Licence in respect of the sale or supply of alcohol and/or late night refreshments, or planning consent where this may be required.

#### Use and Maintenance of the Highway

1. The Licence Holder/s shall not make any excavations or indentations of any descriptions whatsoever in the surface of the highway or place or fix any equipment of any description in the said surface.
2. The Licence Holder/s retains responsibility for carrying out the reinstatement of the highway in the event of any damage to the highway occurring as a result of the Pavement Café activity. The permanent surface reinstatement shall be carried out to the satisfaction of Torbay Council, at the applicant's expense and guaranteed for a minimum period of two years.
3. The Licence Holder/s shall indemnify Torbay Council against all actions, proceedings, claims, demands and liability which may at any time be taken, made or incurred in consequence of the use or presence of the chairs and tables and other objects and for this purpose must take out at the Licence Holder's expense a policy of insurance approved by the Council in the sum of at least £2,000,000 in respect of any one event (£5,000,000 total cover) and must produce to the Council on request the current receipts for the premium payment and confirmation of the renewals of the policy.
4. The Licence Holder/s shall not place on the highway any furniture or equipment or advertisement other than as permitted by Torbay Council and must maintain the same in a clean and tidy condition and not place them so as to obstruct the entrance to or exit from any premises.
5. Notwithstanding the specific requirements in Condition 4 above, the Licence Holder/s shall not do or suffer anything to be done in or on the highway which in the opinion of Torbay Council may be or become a danger, nuisance or annoyance to or cause damage or inconvenience to the said Council or the owners or occupiers of any adjacent or neighbouring premises or to members of the public.
6. The Licence Holder/s shall suspend the operation of the Pavement Café at the request of an Authorised Officer of the Council to enable any street works to be carried out on or near the permitted location. Such works (unless due to an emergency or unforeseen circumstance) shall be notified to the licence holder(s) in advance.
7. Where repair or maintenance of the pavement/highway is to be undertaken, Torbay Council will not be liable for any loss of trade and/or income whilst repair/maintenance is carried out and cannot reimburse the fee paid or any part of it. The Licence Holder/s must allow the Council reasonable access for such works.

8. The Licence Holder/s recognise that Torbay Council shall be entitled to suspend the licence on a temporary basis on the occurrence of a special event, as a result of police intelligence to avoid instances of disorder or the potential for disorder, or for any other circumstance which the Council deems necessary. Torbay Council shall not in any circumstances whatsoever be liable for any loss of trade and/or income or refund any fees (or part thereof) to the Licence Holder/s in respect of such a suspension.

#### Delineation of Pavement Café Area & Use of Furniture

9. Where there are a total of more than 4 tables in use or, in any case when a Pavement Café falls within the Council's Cumulative Impact Area, the Licence Holder/s shall, place removable physical barriers within the perimeter of the licensed area which must be in accordance with the type or design as indicated in Paragraph 7 of the Pavement Café Licensing Policy. Such barriers must remain in place during all times that the Pavement Café is in use the licence holder(s) shall ensure that such barriers are removed at the end of each daily period of use and at the expiry, surrender or revocation of this Licence.
10. Tables and chairs shall not be affixed to the highway and should not be stored on the highway when they are not in use, e.g. before or after the Pavement Café is open. When not in use, tables and chairs must be stored in the premises, or in a private outdoor area, such as a garden.
11. Furniture should be safely stored away from public areas at the end of each daily period of use in such a location where it is safe, secure and unable to be accessed by members of the public.
12. If planters are being used as delineators, these should either be permanent highway street furniture, which are either pre-existing or for which full planning permission has been obtained or removable tub style ones. Unless permanent and benefitting from the appropriate planning consent, these must not be left on the highway outside of permitted hours.
13. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis and not be exposed in such a way that they are a trip hazard. In cases where such heaters (or similar) are used, it will be expected that there will be an adequate risk assessment to cover such use, including (but not limited to) fire and public safety matters. The risk assessment must be produced to an authorised officer of the Council or any Police/Fire officer upon request.

#### Management of the Pavement Café

(not necessary as this forms part of the licence)

14. The Licence Holder/s shall ensure that customers who purchase alcohol for consumption on the premises shall not consume such items outside of the permitted area
15. All customers using the Pavement Café will be required to be seated. Vertical drinking is not permitted within the licensed area at any time. Removal of tables and chairs and/or the submission of a Temporary Event Notice under provision of the Licensing Act 2003 does not constitute suspension of permissions granted under this licence.
16. Where a Pavement Café Licensed Premises also holds a Premises Licence under the Licensing Act 2003, all conditions of the Premises Licence will apply to the Pavement Café area in addition to the Pavement Café Standard Conditions.
17. The licence holder/(s) shall ensure that all drinking glasses in which drinks are served shall be of strengthened glass and no drink shall be served in a glass bottle from which it is intended or likely that a customer shall drink.
18. The Licence Holder/s shall ensure that adequate supervision by means of a waiter/waitress service is provided over the permitted area during the times of operation.

19. The Licence Holder/s shall ensure that where menu boards, 'A' boards or similar are provided that these are sympathetic in both size and design to the building/premises and its setting and not situated outside of the designated Pavement Café area.
20. The Licence Holder/s shall maintain the area shown on the plan attached to this Licence and the immediately adjacent area in a clean and tidy condition during the permitted hours and shall leave the same area/s in a clean and tidy condition and unobstructed at the end of each daily period of use and on revocation or surrender of this permission.
21. The Licence Holder/s shall provide litter bins or similar receptacles for the deposit of cartons, wrappers, containers and similar discarded items and ensure that bins/other receptacles are emptied daily or shall ensure that staff members regularly clear tables within the licensed area.
22. The Licence Holder/s shall remove all furniture or equipment, litter bins or other articles placed on the highway in accordance with this Permission at the end of each daily period of use and at the expiry, surrender or revocation of this Permission.
23. The Licence Holder/s shall ensure adequate and unobtrusive lighting is made available in the Pavement Café area.
24. The Licence Holder/s shall not prepare or store food or beverages outside the main business premises (i.e. not in the Pavement Café area). This Condition may be varied only with the written consent of an Authorised Officer of Torbay Council.
25. The Licence Holder/s shall ensure that where there are more than 5 tables, 50% or more of the Pavement Café area is designated as smoke free at all times and that non-smoking signs are placed upon each table.
26. Live and recorded music (both amplified and non-amplified) is not authorised in the Pavement Café area unless specifically authorised under separate application. In cases where application is made and subsequently granted, additional conditions will be attached to the licence as considered appropriate for the prevention of public nuisance. Any breach of this condition will be considered under the Council's Enforcement Policy and may result in suspension or revocation of this licence in addition to any other penalties as may be appropriate.

#### Duty to Display & Produce Licence

27. The Licence Holder/s shall ensure that a copy of the Pavement Café Licence and accompanying Conditions is at all times on prominent display within the Pavement Café premises.
28. The Licence Holder/s shall produce this Permission on demand when so required by an Authorised Officer of Torbay Council a Police Officer or a Police Licensing Officer.

#### Duty to Notify Council of Changes to Licence or Holder/s Information

29. If the named Licence Holder changes his/her/their personal details (e.g. name or address), the Licence Holder is obliged to notify Torbay Council in writing of the specifics of those changes within 5 working days of that change.
30. The Licence Holder/s must notify Torbay Council's Licensing & Public Protection Team in writing of any changes to any part of the Pavement Cafe operation, including furniture, other items, and area or operating hours, prior to making any such change. Such changes may necessitate the Licence Holder/s to apply for a new or revised licence.

## Non Payment of Annual Fees

31. This licence is granted in perpetuity and is subject to an annual fee. The annual fee becomes due and payable in full on 1<sup>st</sup> April annually.
32. Licences will be revoked in writing by the Licensing Authority if the annually fee has not been paid following the expiration of a period of 14 days, from the date that the original payment fell due.
33. If at any time a Licence becomes revoked, surrendered, suspended or for any reason lapsed, all equipment, fixtures and furniture must be removed from the highway immediately.
34. If following revocation, surrender, suspension or lapse of a licence, any equipment, fixtures or furniture remains on the highway, this will be regarded as unauthorised obstruction of the highway and will be dealt in line with the Council's Policy on unauthorised Pavement Café areas.
35. There is no provision for renewal of a Pavement Café Licence. In cases where a Pavement Café Licence is revoked, surrendered or lapsed, permissions may only be reinstated following an application and subsequent granting of a new licence. Where a Pavement Café Licence is revoked, the Council will not refund the fee paid for that licence or any part of it.

**NON-COMPLIANCE with any Condition of this Licence may render the Licence Holder/s' liable to a formal written Notice under section 115K of the Highways Act 1980, and failure to comply with such a Notice may cause this Licence to be revoked.**

**Unauthorised Pavement Cafes may render offenders liable to a formal written Notice under section 143 of the Highways Act 1980, failure to comply with such a notice may result in the forced removal of any obstruction of the Highway by authorised officers of the Council and offenders will be liable for the costs associated with removal and storage.**

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### **Notes:**

Section 115K of the Highways Act, 1980 provides as follows:

115K – Failure to comply with terms of permission

- (1) *If it appears to a Council that a person to whom they have granted a Permission under Section 115E of this Act has committed any breach of the terms of that permission, they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.*
- (2) *If a person whom a notice is served under sub-section (1) above fails to comply with the notice, the Council may take the steps themselves.*
- (3) *Where a Council have incurred expenses in the exercise of the power conferred on them by sub-section (2) above, those expenses, together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses, may be recovered by the Council from the person on whom the notice under sub-section (1) above was served.*

## Appendix C

### Flow chart to understand what applications you may need for providing amplified music in Pavement Café Licensed Area

