

## HIGHWAYS AMENITY LICENCES FOR PAVEMENT CAFES

### Information Pack and Guidelines



contact

Herefordshire Council

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Please keep this booklet for your reference

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## Introduction

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Hereford City and Herefordshire Market Town Centre's of Bromyard, Kington, Ledbury, Leominster and Ross on Wye have much to offer by way of creating an ambience that makes the area attractive to visitors and residents alike. On pedestrianised areas and weather permitting, the addition of good quality pavement cafes contributes a relaxed and sociable style of eating and drinking indicative of any continental city or town.

### **The purpose of this guide is twofold**

- *To highlight the requirements and standards expected of the siting of facilities for pavement café operations in the City Centre and Herefordshire Market Towns*
- *To guide those wishing to establish pavement cafes through the licensing process*

Pavement cafes on council highway, using in excess of a total of 6 standard sized tables and chairs (e.g 2 tables and 4 chairs) are required to be licensed by the Herefordshire Council, by the granting of a Highways Amenities Licence. The Licence is renewable annually and is governed by **Section 115E of the 1980 Highways Act**.

It will not normally be necessary to obtain planning permission for outdoor street cafes on the public highway, provided that the main existing premises have A3 permission (Food and Drink permission). However, planning permission may be necessary in advance if there is either an area of permanent development associated with the pavement café, or if permanent barriers are proposed. If in doubt, please seek guidance from the people listed under useful contacts on page 13.

The licence application process involves both legal and non-legal procedures, hence the need to follow the guidance in this brochure and on the application form which needs to be completed by all applicants.

It can take up to 3 months for a new licence to be granted, upon receipt of an application but always at least 6 weeks.

## Information and Guidance

A licence is required to ensure that the pavement café is properly set up and operated so that it benefits the business, enhances the town/city centre and does not cause a problem for other users of the street.

- Please consider the criteria below – details for each follow overleaf:

- Size and layout.
- Means of enclosure.
- Furniture type.
- Environmental and other requirements.
- Applying for a new licence.

All licences are valid from 1<sup>st</sup> April to 31<sup>st</sup> March. Licences irrespective of date of issue will be renewed from 1<sup>st</sup> April each year.

## Who to Contact

For general advice and information, in the first instance please contact Kevin Price – Licensing Officer, Tel: 01432 260805.

### **DATA PROTECTION ACT:**

Herefordshire Council is the Data Controller under data protection law and will use the information you provide on this form in order to process your application.. The legal basis for processing this data is our legal obligations for regulating the highways amenity licensing scheme. We will keep your data for up to 6 years or as long as the licensable area exists. Where necessary we may share this personal data with partner organisations for the protection of public funds administered which may include the prevention or detection of fraud and auditing purposes. Individuals have a number of rights under data protection law, including the right to request their information. You also have a right to make a complaint about our handling of your personal data to the Information Commissioner's Office <https://ico.org.uk/>

# General Considerations

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## Size and Layout

The following factors are some of those that should be taken into account:

- Available space
- Type of premises
- Street width
- Street character
- Number of passers by
- Existing street furniture e.g. bins, benches, planters etc.
- Proximity to residential properties

If an area is pedestrianised, there is potentially more scope to site a pavement café. Each application for such areas will be taken on individual merits and may be the subject of additional conditions, if a licence is offered/granted.

If the proposed location is adjacent to a vehicle carriageway then there are inevitably more limitations applicable, namely:

- People walking past the premises must have sufficient clear footway (min of 1.8m) between the edge of a vehicle carriageway and the boundary of the café or between the premises frontage and the pavement café. This is to ensure the safety of pedestrians, particularly the visually impaired.
- Herefordshire Council will reserve the right to request downsizing of the pavement café or relocation on any given day due to extenuating circumstances – we will endeavour to give notice. Also utility providers may need access to any area under the New Roads and Street Works Act.

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities. Emergency vehicle access will also need to be maintained at all times.

Prior consent of these owners/occupiers of premises/residences in the near vicinity will be required and obtained through a standard consultation process.

*It may be necessary to arrange a site meeting to determine the exact layout of the pavement café and a site plan may be required. You may be contacted on receipt of your application to arrange a site meeting but please also contact 01432 260805 if you require any assistance or guidance at an earlier stage.*

### **Means of Enclosure**

When in use the pavement café area will normally need to be at least partially enclosed, to demarcate the licensed area and to contain the tables and chairs, thus making it distinguishable to other pavement users, and particularly to assist visually impaired pedestrians.

The enclosure shall be removed outside the licensed period or when the pavement café is not intending to operate within the licensed period. The materials should therefore be relatively lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked/stumbled into.

The design of the barrier should complement the character of the surrounding area and in any event ideally have solid bars/elements at around 100mm and 1000mm above ground level. Rope barriers are not usually considered suitable.

Planters can be particularly attractive and can be used as part of the means of enclosure, but must be removed from the highway outside of the licensed period.

Any proposed means of permanent enclosure will require planning consent in addition to other approvals.

## **Furniture**

The furniture should be of a high quality and uniform style within the licensed area and to the satisfaction of the Street Trading Panel or delegated officer(s). Plastic patio type furniture will not be permitted.

Where umbrellas are used these must be fabric type (i.e. non-reflective) and display only limited pre approved advertising/logos. Umbrellas are to be positioned so as to avoid overhanging outside the enclosure or impairing vehicle sight lines.

Non furniture items, e.g. menu boards, signs and portable gas heaters also need to be approved as part of the enclosed licensed area, and any unacceptable clutter or intrusion into sight lines will need to be removed if it is deemed to be causing a problem in the opinion of the Council.

It is the responsibility of the licence holder to ensure:

- (i) that all chairs, tables and barriers are in good repair and are stable.
- (ii) that any parasols and umbrellas are fully secured through ground fixings or weights to prevent them being dislodged by the wind.

## **Environmental and Other Requirements**

In certain areas of the city and town centre's the quality of air from traffic fumes makes it inappropriate to site pavement café operations. Please consider proximity to bus stops and taxi ranks from the customer's point of view and avoid locating near to known traffic congestion hotspots.

It will be the responsibility of the pavement café operator to keep the area clean and free of litter, during licensed/operational hours.

All food premises are to be registered with Herefordshire Council, Environmental Health and Trading Standards. All pavement café operations must comply with the relevant food safety requirements. (see useful contacts page 13).

Additional/adequate toilet provision relating to occupancy numbers may also need to be borne in mind.

## **Applying for a New Licence**

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In the first instance contact the Street Trading Department on telephone number 01432 260805 or visit [www.herefordshire.gov.uk/streettrading](http://www.herefordshire.gov.uk/streettrading) to find out more and even apply online.

The guidelines and considerations contained within this document need to have been considered.

The application form for the highway amenities licence needs to be completed and signed before the process of assessing the application can begin.

Applications for new licences will be considered by the Street Trading Panel, made up of Senior Council Representatives from Legal, Environmental Health, Highways, Markets and Fairs and Economic Development amongst others.

Please note that application forms or submissions to go before the Street Trading Licensing Panel must be with the Markets, Fairs and Street Trading Department at least 30 calendar days before the Panel meet in order that they can be considered at that meeting.

The local council elected member will also be consulted and also some external bodies such as the police, fire brigade, etc. may be asked to give their views on the application. Shops and residential properties in close proximity to the proposed pavement café will also form part of the consultation process, as well as the appropriate Town Council.

For all new Highways Amenity Licence applications, consultation will also be carried out the following organisations:

1. Herefordshire Vision Links
2. Disability United

These organisations will also be informed in advance of any proposed changes to existing licences that could affect users of the street. Principally, this will be a potential change to the size or layout of an existing pavement café.

### Conditions of Licence

***The granting of Highways Amenities Licence applies only to the applicant in respect of the premises concerned and is outside of and in addition to a licence to sell liquor. Separate permission is required from the relevant liquor licensing authority and we reserve the right to request proof of such permissions before the Street Trading Panel will consider licensing an outdoor café on the Highway which intends to serve alcohol.***

The Highways Amenities Licence will normally operate somewhere within the hours of 8.00 am to 10.30 pm. Times of use will vary from application to application depending on individual circumstances and location. Each case will be judged on its merits.

**Public Liability Insurance cover to £5m will be required for the licensed area and evidence of this will be required in advance before any licence is issued.**

Prior to granting a new highways amenity licence, there are two legal consultative requirements as detailed in **the Highways Act 1980**.

- 1) The consent of interested frontages in close proximity must be obtained.
- 2) A public notice shall be posted on or near the premises for a period of 28 days for the receipt of any representations on the proposals.

A new licence shall not be granted until all representations have been considered.

You will be notified of the fee if your application is approved. Each and every application and licence is uniquely assessed so an equitable licence fee is achieved. Factors taken into account include:

- Potential customers,
- Location,
- Amount of competition in proximity,
- Number of tables and chairs involved.

## **Applying for a Variation to an Existing Licence**

Variations for existing licences e.g changes to size/location of pavement café, change of style of furniture/barrier type, operating days/times etc will be initially be considered by officers within the Markets, Fairs and Street Trading division. If deemed appropriate (e.g an increase in pavement café size), the variation request will be put before the Street Trading Panel. It will not be necessary to complete a full application form for a variation to an existing licence. The Council will though require all relevant submissions in writing.

It may be necessary, depending on the nature of the variation for consultation to be carried out with any of the previously mentioned consultees.

## Terms and Conditions

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### Terms and Conditions of the Licence for your information

The Council has the power to grant a person consent to provide and operate facilities for refreshment on a highway under **Section 115E of the Highways Act 1980**. Subject to the following criteria a person to whom consent has been granted must be aware of, and comply with, the requirements.

### I hereby consent to the following conditions:

1. The conditions attached to the highways amenity licence may be varied and added to by the Council at any time.
2. The Licence holder must always have a valid insurance policy for public liability for at least £5,000,000, and the licence holder must notify the insurance company of their application and receive confirmation they are covered as required by the application form.
3. The holder of the Licence shall not provide any refreshments other than food and non-alcoholic drink normally obtainable within the licence holders premises, unless a premise licence has also been obtained.
4. Tables and chairs should be sited so that they are clearly visible from inside the premises. Licence holders shall ensure that during the period of use and at the conclusion of any period of use the area of the highway that is the subject of this consent shall be kept clean and tidy and free from litter. A suitable waste/litter bin must be provided. All street furniture must be removed from the Highway at the end of the permitted time of opening according to the individual licence.
5. No omission from, or addition to, or variation of, the licence shall be valid of any effect unless it is agreed in writing and signed by the supervising officer of the Council and by the consent holder.
6. The Licence holder shall ensure that any equipment used for the purposes of providing these facilities are safe and present no risk to members of the public and in particular:
  - (i) that all chairs are in good repair and are stable.
  - (ii) any parasols and umbrellas are fully secured to the ground and weighted to prevent them being dislodged by the wind.
  - (iii) the area to be used is protected and separated from the rest of the highway in such a way that a blind or visually sighted person runs no risk of injury from their use.

8. The licence holder shall indemnify the Council against any claim in respect of injury, damage or loss arising out of the grant of the licence except where any claim in respect of such injury, damage or loss is attributable to the negligence of the Council.
9. A clear pedestrian route will be required for those walking past the premises. Emergency exits from adjacent buildings must not be obstructed by a seating area.
10. It is essential that the layout of a pavement café area does not provide any obstructions, inconvenience or danger to those customers with disabilities, including ensuring adequate space is left between tables for wheelchair access.
11. Any damage to local authority property caused as a result of street furniture placed on the highway will be repaired by the Authority with all costs recharges to the business in question.

It must be emphasised that the Council in giving consent cannot, and does not, seek to absolve anyone from any statutory risk which they may incur in placing or depositing any thing on the highway.

### **Refusal of New Applications / Variations of existing Applications.**

There is no legal automatic right of appeal against the decision of the Council in relation to the refusal of new applications / variations for Highways Amenity Licences.

## **USEFUL CONTACTS**

### **Markets, Fairs and Street Trading Section**

Ask for the Licensing Officer for Street Trading

**E-mail:** [markets@herefordshire.gov.uk](mailto:markets@herefordshire.gov.uk)

**Tel:** 01432 260805

### **Food and Health and Safety (Commercial) Section**

Food Safety and General Health and Safety

Ask for the Duty Officer (Commercial)

**E-mail:** [ethelpline@herefordshire.gov.uk](mailto:ethelpline@herefordshire.gov.uk)

**Tel:** 01432 261761

### **Planning Services**

Tel: 01432 260342

**E-mail:** [planning\\_enquiries@herefordshire.gov.uk](mailto:planning_enquiries@herefordshire.gov.uk)

### **Highways and Transportation**

Ask for a member of the Streetscene team

**E-mail:** [streets@herefordshire.gov.uk](mailto:streets@herefordshire.gov.uk)

### **Other Licensing Enquiries:**

**E-mail:** [licensing@herefordshire.gov.uk](mailto:licensing@herefordshire.gov.uk)