

Pavement Cafés

Guidance for applicants

How to get permission to use the area outside
your premises as a café area

October 2016



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SECTION 1

Definitions

Licensed area	a public area as defined on a plan approved by the Council as a pavement café.
Licensed period	the hours and days approved by Council when the licensed area can be used as a pavement café.
Operational Committee	the committee set up by the Council to determine licensing and regulatory matters including pavement cafe licensing
pavement café licence	the permission given by Council to allow you to place temporary furniture on a public area for customers to consume food or drink supplied from the licence holder's premises
Public area	a place in the open air, to which the public has access, without payment, as of right, and which is not a market area
public nuisance	noise disturbance or other nuisance caused to residents or neighbouring businesses
temporary furniture	includes tables, chairs, parasol type structures, barriers, heaters, planters, 'A' boards and similar that can be removed with 20 minutes
we /us	Mid and East Antrim Borough Council, usually acting through its officers
You	the licence holder granted the permission for the tables and chairs

Introduction

Pavement cafes are becoming a familiar sight across the UK and Ireland. They can help develop a local café culture, which in turn can have a positive effect on urban environments, promote town and city centres, contribute to the general well-being of communities and appeal to tourists.

Tourism is a key driver for economic growth in Northern Ireland offering business opportunities to create jobs and generate wealth. Visitor attitude surveys undertaken by the Northern Ireland Tourist Board have highlighted the attractiveness of a vibrant café culture, especially for short breaks where shopping, good food and evening entertainment are high on the agenda. Well-regulated pavement cafes can contribute to an excellent visitor experience, enhance the attractiveness of a local area and encourage visitors to stay longer and spend more.

Our duties

Council's duty to regulate pavement licencing in the Borough is contained within the Licencing of Pavement Cafés Act (NI) 2014, coming into operation on 1 October 2016.

Council will administer this new licensing system and enforce the legislation regarding any issues of non-compliance.

Guidance for application

This guidance document has been provided by Mid and East Antrim Borough Council to help you prepare an application for a Pavement Café Licence within the Borough. It also details the factors we consider when making our decision to grant or refuse a pavement café licence.

Further advice or guidance in relation to the legislation can be found on the Department for Communities website www.communities-ni.gov.uk or by contacting the Council.

Please note that this document is for guidance only and is not intended to be a legal interpretation of the legislation.

What is a Pavement Café Licence?

A Pavement Café Licence authorises a person who carries on a business involving the supply of food or drink (in or from premises) to place temporary furniture (tables, chairs etc) on a public area for use by customers.

This includes cafes, restaurants, pubs, retail outlets providing refreshments, takeaways, etc.

Note: A licensed pavement café area will remain a public place for the purpose of public order, environmental or other legislation.

When is a pavement café licence required?

A pavement cafe licence is required when you site temporary furniture in a public place for the use by your customers.

A public place is a place in the open air to which the public has access, without payment, 'as of right'. The Council consider that all pavements and associated land which have been adopted by Transport NI (Roads Service) as part of public road network are a public place.

Are there situations when a licence is not required?

Yes, the following exemptions apply:

- Market area

A pavement café licence will NOT be required if the tables, chairs, etc are placed in a market area on market day.

- Private land

Outdoor cafe areas that are sited on privately owned land do not require a licence. It is considered that land owned by NI Housing Executive and Council is private land.

This exception will also apply to private land which the public have an implied right of access to such as shopping centres and retail parks. That said, Council will encourage businesses to ensure that such cafes on privately owned land do not cause interference or inconvenience, make a positive contribution to the street scene and are in keeping with the attractiveness of the local area.

Who may apply?

Persons who carry on a business (in or from a premises) involving the supply of food or drink to the public, may apply for a licence.

Is the area you want to use suitable for a pavement café?

This guidance document (section 2, Suitability Criteria) offers advice on what the Council will consider appropriate for a pavement café licence including:

- Pedestrian and vehicular access;
- Size and layout;
- Likely disturbance to other businesses or residents
- Furniture design
- Safety issues

In general, the pavement café area will need to be set-up immediately adjacent to the premises. However, a licence for a remote café may be considered where:

- The proposed café does not interfere with both vehicular and pedestrian traffic flow; and
- The licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the pavement café area.

Hours of operation

The Council will confirm the hours and days of use for the pavement café area having regard to the location, likely disturbance to local residents or other businesses and representations from interested parties.

Normally the Council will consider that licences will be granted, as a maximum, between the hours of 8am and 9pm

How we decide about your application

Council encourages the provision of pavement cafes, and will grant an application unless any of the grounds for refusal, as set out in the Act, apply, or we receive objections and decide there are reasons not to grant your application.

In order to ensure that pavement cafés make a positive contribution to the local area, and that pavement cafes avoid disorder and undue interference or inconvenience to persons or vehicles in the vicinity, Council has determined **Suitability Criteria** that must be met by any licence applicant, and these are contained within this guide.

Local consultation forms an important part of the application process (see below)

The Application Process

Before you submit your application you should read this guide thoroughly to check whether your proposal meet all the criteria. You are advised to contact the Council to discuss your proposals PRIOR to submitting your application. This may help to minimise time wasted on applications which may later be refused.

Appendix A contains a summary of the procedure for grant of a licence.

A pavement café licence can be applied for on the application form (Appendix C) at any time and will last for a period of 3 years from the date of approval.

Renewal of a pavement café licence will be subject to an assessment of previous compliance with licence conditions and continued suitability for the purpose.

All applications for a Pavement Café Licence should be accompanied by the following:

- Appropriate **Fee** (payable to Mid and East Antrim Borough Council)

Application for Grant of Pavement Café Licence	£0 to be reviewed Oct 2019
Application for Renewal of Pavement Café Licence	to be determined 2019
Application for a variation of Pavement Café Licence	£0 to be reviewed Oct 2019

- **Location plan**

Applicants must supply a 1:500 scale plan clearly outlining the premises and the location of the proposed outdoor seating area. This should outline the application site in red and land in the applicant's ownership in blue. This can be obtained as an ACEmap which can be purchased online <https://mapshop.nidirect.gov.uk/> and choosing your location under the Create a map section.

- **Site plan and pavement café details**

Applicants should also provide a site plan showing the proposed layout of the payment café area. This should be an accurate measured drawing showing the overall size of the café area and how it relates to your premises, the rest of footpath and the remaining of streetscape. The plan should for example include the proposed pedestrian corridor, entrance to your premises and existing street furniture in the immediate vicinity (such as lampposts and litterbins etc) see Appendix E for example plan.

- **Details of the temporary furniture**, chairs, tables, to be used including type, numbers, dimensions and details of type of enclosure/barriers you intend to use etc. (Photographs/manufacturer's detailed brochures would be an advantage)

- A copy of your **Public liability Insurance** cover (minimum indemnity of £5million) which shows that your cover includes the provision of a pavement café on public footpath

- A copy of your alcohol licence – if alcohol is to be served for consumption within the pavement café area
- If the café is to be located away from the main premise, or patrons/staff need to cross a public pavement to reach the café area, then you must provide a management control plan

Public notice

Applicants are required to fix a public notice (Appendix D) to the premises that they have made an application to council. The notice must be positioned so as to be visible and legible to the public for 28 days. In addition the council will make the application available to be viewed by the public on the Council's website until the end of the period allowed for representations.

You must complete the declaration on the application form stating that you have erected the required notice and that you will maintain it in place for 28 days from the date of application.

Consultation Process

It is recommended that businesses discuss their proposals with adjacent property occupiers to inform them of the application.

We will also consult with the following:

- the Transport NI to ensure that any implications for vehicular traffic, pedestrians and public safety impacts are properly taken into account; and
- the Police Service for Northern Ireland where the premises is licensed to sell alcohol;
- the Planning Service; and
- any other Council Department, organisations or individuals as appropriate.

How long will it take to process my application?

Council aims to provide you with a determination within 12 weeks from date of receipt of a completed application including all the required plans and licence proposals. This is to allow full and proper consultation in line with statutory guidance, site visits, consideration of any objections or other input from consultees and final determination and ratification by Committee and Council at their monthly meetings.

What if there are concerns with my application?

Applications are considered on a case-by-case basis, and any objections received by Council will form part of the considerations by Council to grant, renew or vary a licence.

If your proposal fails to meet the suitability criteria, you will be notified, and may be advised on any amendments which could enable a better fit with the criteria.

Can my licence application be refused?

Yes. Due to factors such as visual impact, width restrictions, obstructions or very heavy pedestrian flows it may not be possible to accommodate pavement cafes in all locations. However we will consider each application on its own merits, taking account of the Council's agreed guidance, and comments following consultation.

Council is committed to developing a café culture wherever possible, and as an alternative to refusing an application Council may agree amendments to your proposal to meet the licencing criteria.

If Council is minded to refuse your application, or where terms, conditions or restrictions are imposed, or where a licence is revoked, you will be notified in writing with the reasons.

You will have the opportunity to present your case, by way of a written submission, to a Council panel before a final decision is reached.

Appeals against any formal refusal by Council must be lodged with the Magistrate's Court within 21 days of you being informed of Council's decision. Their decision is final.

Appendix B contains a summary of the procedure for appeals.

Insurance

You will be required to hold Public Liability Insurance to a value of £5 million cover. This cover will need to include the operation of a pavement café on the public footpath. You must provide proof with your application.

How long will I be able to operate under my licence?

We will issue the licence to you for three years, in the first instance. You can apply for a licence renewal which will be granted providing we are satisfied there are no reasons not to renew it. We will not renew if you have failed to comply with licence conditions, or if there are pavement works planned that will affect your licensed area.

Additional information

- **Changes to the Licence (variation)**

Any proposed changes to the licence such as size of licenced area or proposed operating times must be notified and agreed in writing with the Council.

- **Transfer**

It is not permitted to transfer a pavement café licence to another licence holder.

What powers do Council have when things go wrong?

Failure to obtain an appropriate licence or failure to comply with the conditions attached to a licence may result in enforcement action being instigated.

- **Unlicensed pavement cafes**

It is an offence to place temporary furniture (for consumption of food and drink) on a public area without a pavement café licence. The offence is liable to a fine of up to £1,000 on summary conviction.

The Council may seize and remove any furniture that has been set out if a licence is not in place.

- **Suspension/Compulsory variation of a licence**

Council may suspend a licence when maintenance of street utilities is required or road works are scheduled. The licence can also be suspended for breach of licence conditions, making false statement or failure to pay any fee to Council without good reason.

During any period of suspension, the pavement café licence is invalid and Council may remove any furniture placed in the public area during a period of suspension.

Council may also compulsorily vary a licence where part of an area has become unsuitable or its continued use is likely to result in interference or inconvenience to persons or vehicles in the vicinity or public order concerns.

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

- **Revocation of licence**

A pavement café licence may be revoked following breaches of licence conditions, where the licenced area is no longer suitable for temporary furniture, or where there is undue interference or inconvenience to persons or vehicles in the vicinity or public order concerns.

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

Notice of revocation, suspension or compulsory variation

You can make representations to persuade us not to revoke, vary or suspend the licence, within a specified period of 21 days of receipt of notification of council's intention to do this.

Enforcement protocol for breach of conditions

The following enforcement protocol will apply to pavement licences:

1. on the first breach of a licence condition, we may issue a written warning.
2. on the second breach we may issue a final written warning.
3. a third breach of conditions may result in the licence being revoked or suspended.

We will consider any breach on the facts.

SECTION 2

Suitability Criteria

1. Design

The applicant will be expected to demonstrate that the café will make a positive contribution to the street scene and is in keeping with the surrounding street scene and other buildings and public realm. Simple robust designs will be preferred and excessive or elaborate detail or signage should be avoided unless clearly justified by the particular context. Applicants should also demonstrate commitment to the care and/or refurbishment of the external appearance of the building in which the business is housed, to ensure that the appearance of the street scene will be maintained and, where necessary, enhanced.

Street café proposals should not hinder reasonable use of the footpath, cause nuisance to adjacent frontages, or interfere with apparatus or access to apparatus within the footpath.

To this end the applicant shall comply with all statutory requirements and obtain all necessary permissions before making a licence application.

2. Size and layout

The extent of the area to be licensed will depend on the site characteristics, safety considerations and the criteria set by the Council to maintain adequate space for both pedestrian and vehicle movement.

The outdoor seating area should:

- Avoid conflict with the principal lines of pedestrian movement.
- Avoid conflict between customers going in and out of the café, passing pedestrians and neighbouring premises.
- Ideally confined to the frontage of its own premises with close integration of internal and external activities however this does not preclude a remote location.

In order to safeguard the interests of pedestrians, particularly disabled people, older people and those with mobility needs including pram and wheelchair users, a minimum clearance width must be left on the pavement. It is currently expected that this minimum width will be 1.5 m. This minimum width figure may be increased in areas with high pedestrian activity, and in areas around bus stops and pedestrian crossings

Where the seating area is adjacent to a road junction or vehicular access, in certain circumstances a prescribed safe distance should be left to allow for junction visibility.

The Council will consult with TransportNI on these issues and there will be more detailed guidance on these matters from TransportNI and we will forward it on to you as soon as we receive it.

The area to be used must take into account other needs in the immediate vicinity (eg kerbside parking, loading bays, bus stops, emergency vehicle access, emergency exits, street cleansing machines and pedestrian crossings).

Where an application contains a proposal to establish a pavement café abutting neighbouring premises, the council would advise that the applicant discuss their proposal with the owners or occupiers of the adjoining premises before an application is made.

The limits of the approved café area will be agreed as part of the application process and no obstructions such as tables, chairs, portable advertising boards, planters or barriers should be placed outside this approved area or left on the pavement or any part of the licensed area outside approved hours.

For examples of pavement cafes please refer to Appendix E

3. Boundaries

When in use, the pavement café area must be enclosed, to demarcate the licensed area and contain the tables and chairs, in order to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians. Barriers of the 'post and chain' type are not permitted as they are potentially hazardous to pedestrians. Portable, sturdy barriers with a top rail are recommended. Bases should not cause an obstruction or tripping hazard to pedestrians.

Transport NI advise that screening should not however be placed in areas where it is likely to block visibility splays eg at junctions.

The enclosure shall be removed both outside the licensed period and when the pavement café is not operating within the licensed period. The materials should, therefore, be lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked into or overturned by a sudden gust of wind.

The design of the barrier should complement the character of the surrounding area and may be required to be of a specific design in order to maintain continuity along the street frontage. The colours and materials used for the enclosure should ensure that it is not visually dominant in longer views but will allow key elements to stand out against the background in close up.

Well maintained planters can be attractive and can be appropriately used as part of the means of enclosure, but must be positioned within the licensed area. In certain circumstances, it may be possible to utilise existing street railings, planters, bins or similar as a suitable means of enclosure.

4. Furniture

The temporary furniture must be of a high quality design and suitable for outdoor commercial use. Poor quality furniture will not be permitted.

The use of parasols, along with their locations, materials and colours must be specified as part of the design and must be positioned so that their extent is contained within the boundary to ensure they do not present a danger to any user of the pavement café or any other pedestrians. Parasols made of wood and canvas are recommended, garden style domestic umbrellas and parasols are not acceptable.

Limited advertising is permitted on both the enclosure and parasols only. Proposed details should be provided with the application.

Other items, eg menu boards, signs and portable gas heaters also need to be approved as part of the enclosed licensed area. Where heating is to be provided, this must be of a type suitable for outdoor use and placed within the pavement café boundary. If patio style liquid petroleum gas (LPG) heaters are to be used, they need to be adequately secured upright, be fitted with a flame failure device and to be maintained in an efficient working order.

All furniture must be of a temporary nature that can be removed within 20 minutes at the end of the licenced period or when access to the area is required by any statutory body or in the event of an emergency.

If the main premises operate for longer than the licensed period the applicant should give consideration to where furniture is to be stored and this should be made clear within the application.

5. Environmental implications and other requirements

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

The conduct of customers using the outdoor seating area will also be the responsibility of the operator. Inappropriate behaviour, such as unruly or rowdy behaviour, may lead to the withdrawal of a licence.

All food premises must be registered with Mid and East Antrim Borough Council.

The licence does not imply an exclusive right to the area and others have rights over it for events, maintenance, repairs etc.

No amplified music or loudspeaker equipment shall be played in the licenced pavement café area.

Proprietors should promote a safe, clean and generally welcoming environment in the pavement café area. Councils may make it a requirement that patrons using the area are seated at the furniture provided.

6. Safety and Control

It is the responsibility of the applicant to ensure that all operations and equipment comply with all appropriate legislation in relation to food safety, health and safety and alcohol sales requirements.

Applicants are reminded of their duty to carry out a risk assessment under the Health and Safety at Work (NI) Order 1978 as they relate to the area and activities covered by the pavement café.

Applicants proposing to licence a café which is separate from their main premises or where you need to cross a public pavement to reach the café area must provide a management plan for the café and a proposal as to how the café will be controlled and supervised.

Individual pavement café operators with the required Pavement Café Licence will be responsible for securing full and proper insurance cover

7. Permissions from other Statutory Bodies

Planning Permission

It will not normally be necessary to obtain planning permission as well as a pavement café licence. However, where the existing business/premises does not have the benefit of planning permission, a planning application may be required. Planning permission may also be required for the use of awnings, canopies, blinds etc. Other consents such as a Consent to Display an Advertisement and Listed Building consent may be required.

Rates liability

The Department for Finance and Personnel has advised that for the vast majority of cases a marginal, seasonal increase in seating of a temporary nature under the terms of the licence would be regarded as de-minimus in rating terms and would not warrant a change in Net Annual Value (NAV). Where the type of arrangement goes beyond the marginal, seasonal or temporary arrangement and it is assessed or evidenced that it adds to the rental value of the premises, an adjustment to the NAV may be warranted. Each case will be judged on its merits and will be the decision of the District Valuer, Land and Property Services.

8. Premises Licensed to Sell Alcohol

If you currently have an alcohol licence, Council may decide to grant a condition allowing the consumption of alcohol in your pavement cafe area, however will be subject to full and thorough consultation with PSNI.

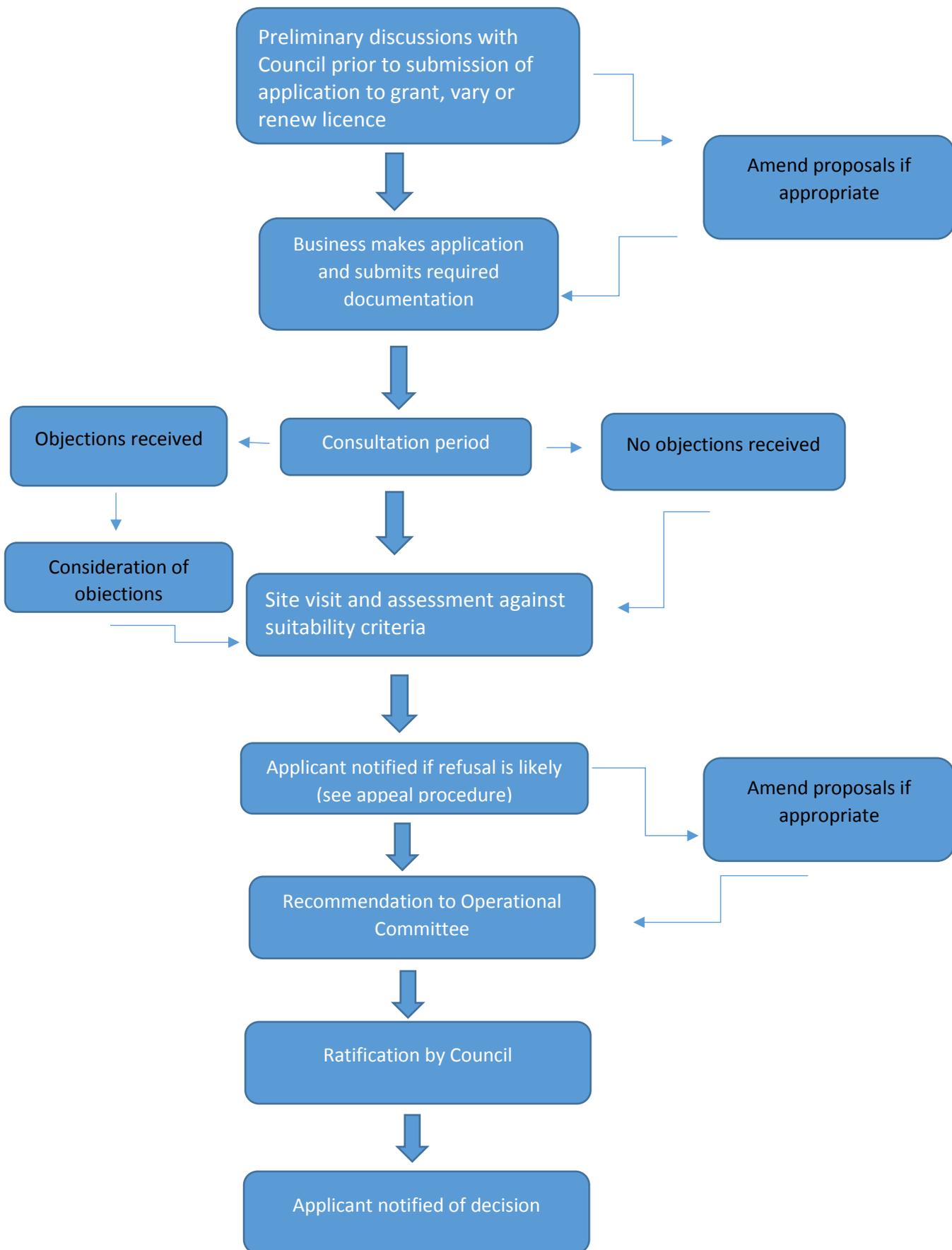
However if you have an 'off licence only' business the consumption of alcohol will NOT be permitted in your pavement cafe area.

Council may, at any time, place "an alcohol condition" on a pavement café licence requiring the licence holder not to permit persons to consume intoxicating liquor when using furniture in the area covered by the licence.

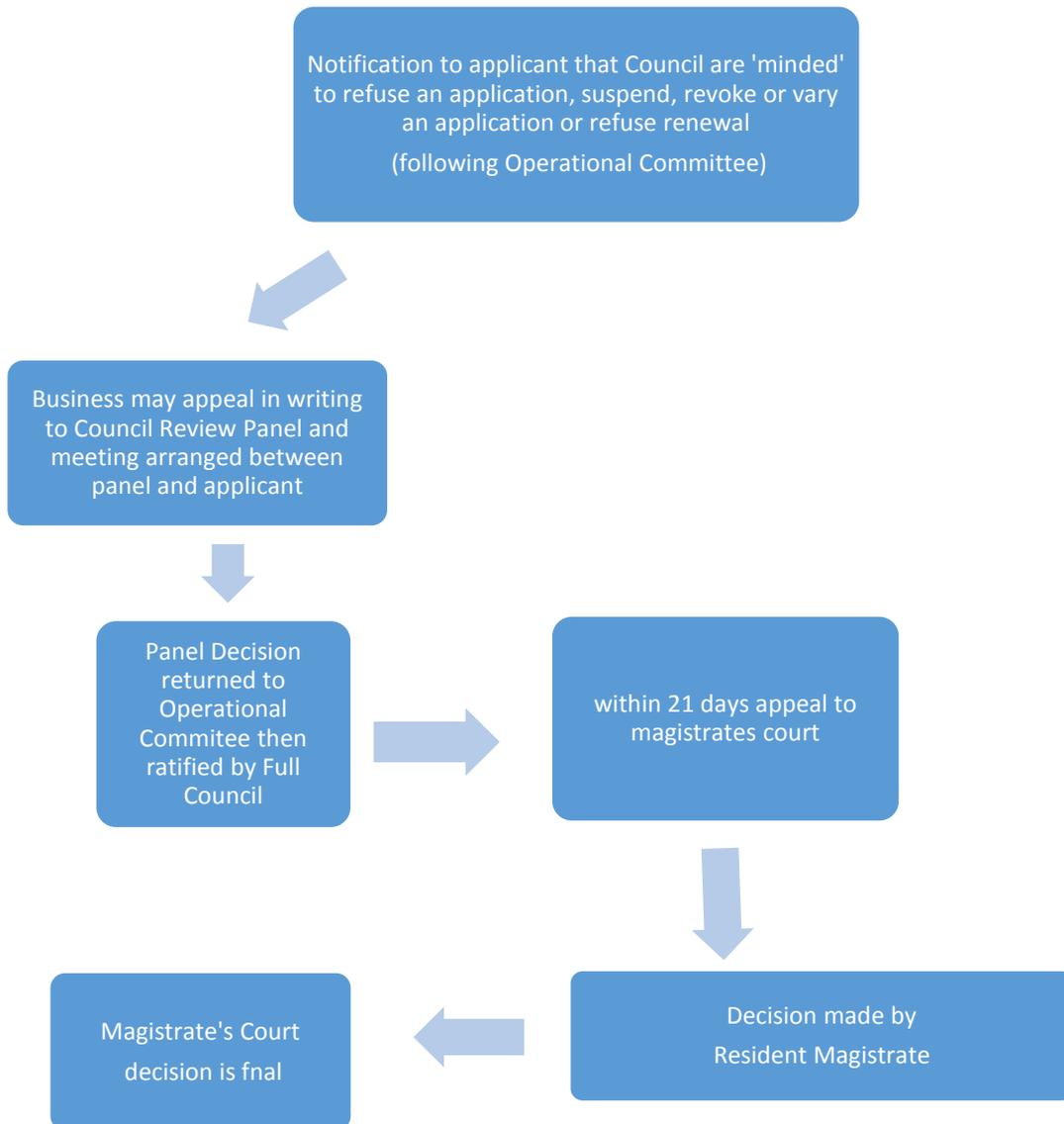
Note : Only premises licensed under the Licensing Order as a public house, a hotel, a restaurant or a guest house with a restaurant will have their licensed area for the consumption of alcohol extended to include the pavement café area.

Appendices

Appendix A: Application Process flow chart



Appendix B Appeals Process



Appendix C: Application form

Mid and East Antrim Borough Council

APPLICATION FOR A PAVEMENT CAFÉ LICENCE

I / We hereby make application to Mid and East Antrim Borough Council under the provisions of the Pavement Cafes Act (Northern Ireland) 2014 for the:

Application type - tick as appropriate

Grant of a Pavement Café Licence	<input type="checkbox"/>	Variation of a Pavement Café Licence	<input type="checkbox"/>
Renewal of a Pavement Café Licence	<input type="checkbox"/>		

Applicant details - Name : _____

Address: _____

_____ BT _____ Tel : _____

Email : _____ D o B : _____

Designation : Owner / Director / Manager - or otherwise state _____

Premises details - Type : _____

Name : _____

Address : _____

_____ BT : _____ Tel : _____

Operating details

Proposed days and hours of operation of the Pavement Cafe

Liquor Licensing details

Is alcohol to be consumed in the curtilage of the Pavement Café ?							YES	NO
Are the premises licensed under the Licensing (N I) Order 1996 ?							YES	NO
Public House		Off Sales		Restaurant		Hotel		Guest house with restaurant

Proposal details:

Total width of footpath _____ m

Is the area within 10metres of a road junction: Yes No

Dimensions of café area: _____ Number of tables & chairs _____

Type of Barrier to be used: _____

Barrier Height: _____

Site details – (see guidance document)

Provide a proposed Site Plan - depicting street space occupied, size and type of barriers, number and type of tables and chairs, and any other pavement café furniture.	Here enclosed	To follow
Where will the Pavement Café furniture be stored when the premises is closed for business ?	State	

I confirm that I wish to apply for a Pavement Café Licence for the development as described within this application.	Tick
I confirm that that the information provided in this application is correct.	Tick
I confirm that I have placed the appropriate notice in a prominent place at or near the premises that it can easily be read by the public, and that the notice shall be displayed for 28 days from the date of this application.	Tick
<p>Applicant signature : _____ Date : _____</p>	

CHECKLIST

	Application form , signed and dated.
	Location plan 1:500 such as ACE map
	Site plan showing access points, building lines, boundaries, kerbs, table and chair arrangement, bins, lighting, trees, other items.
	Details of the furniture including photographs/manufacturers details.
	Public liability insurance
	Public Notification Notice

Appendix D: Public Notice

MID AND EAST ANTRIM BOROUGH COUNCIL

Licensing of Pavement Cafes Act (Northern Ireland) 2014

PUBLIC NOTICE

APPLICATION FOR A PAVEMENT CAFÉ LICENCE

NOTICE IS HEREBY GIVEN THAT

(Name of applicant) _____

(Address of applicant) _____

has applied to Mid and East Antrim Borough Council for a Pavement Café Licence at

(Name and address of premises) _____

Any objection relating to the application should be made within 28 days of the date of this Notice. The objection should be addressed to

Any objection must be in writing and must specify the grounds of the objection, the name and address of the person making it and must be signed by them or their agent.

It should be noted that where an objection is made after the 28 day time period referred to, but before a final decision is taken on the application, it is appropriate for the Council to consider it, if there is sufficient reason why the objection was not made within the stated time period.

(Applicant's Signature) _____ *(Date)* _____

This site notice must be displayed for the whole of the period of 28 days in a prominent place at or near the premises so that it can be conveniently read by the public.

I _____ *(applicant)* hereby certify that for a period of at least

28 days ending on _____, I displayed this site notice in a prominent place at or

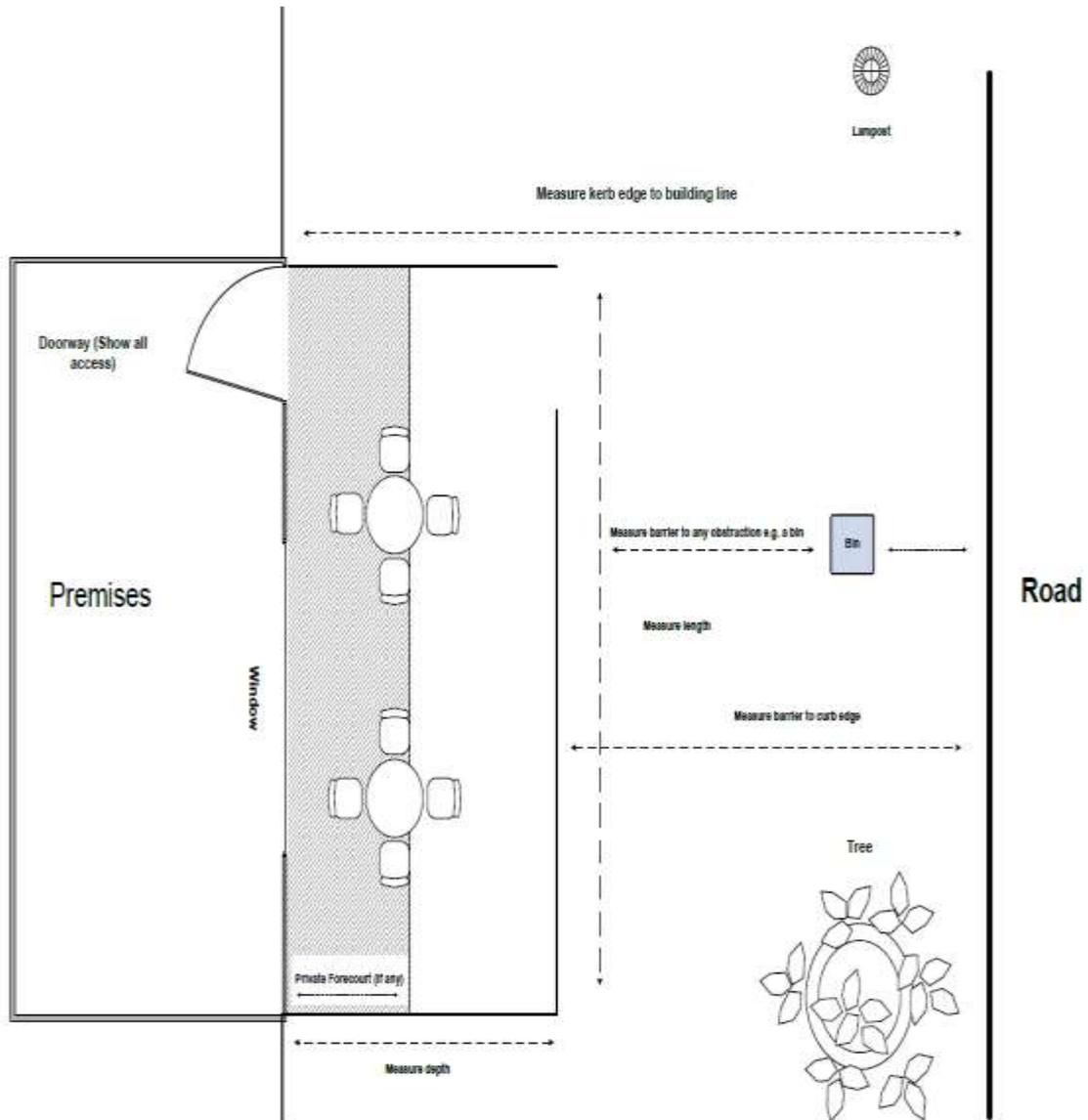
near the premises so that it could conveniently be read by the public.

(Applicant's Signature) _____ *(Date)* _____

On completion of 28 days notice please return this form to the Regulatory Services Department of Mid and East Antrim Borough Council

Appendix E

Examples of pavement cafes



The plan should show the position of the barriers and the approximate position of the tables and chairs. Any other street furniture in the area should be indicated (such as lamp posts or bins).

All dimensions should be shown in metres and must show:-

- The distance from building to kerb.
- The width of the street cafe.
- The depth of the street cafe.
- The distance to any other street furniture

The exact size and layout of any proposed pavement café will depend on local circumstances, relating to pavement width, street furniture and access requirements, and all these elements will need to be taken into account in designing the enclosure.