

LINCOLNSHIRE COUNTY COUNCIL CODE OF PRACTICE FOR THE OPERATION OF PAVEMENT CAFÉS.

1. INTRODUCTION

- 1.1 Alfresco eating is becoming a more widespread aspect of urban life and the presence of tables and chairs on the pavement can make a positive contribution by adding vitality, colour, life and interest to an area.
- 1.2 There has been a steady rise in the interest from restaurants, cafés, and bars within the county to seek permission to place tables and chairs, associated with their operation, in the highway.
- 1.3 Lincolnshire County Council appreciates the general appeal of this concept, recognises the economic benefits and welcomes the potential visual and amenity rewards such schemes can give if they are developed and implemented sympathetically.
- 1.4 The County Council is mindful that uncontrolled and inconsiderately sited tables and chairs on the pavement can be unsightly, cause a nuisance, obstruct the passage of pedestrians, prams, and wheelchairs and create a danger to people with impaired vision or mobility difficulties.
- 1.5 In response to the growing trend to embrace the café culture the County Council will be working in partnership with the respective District Council Planning and Licensing departments to ensure joined up management of such public areas.
- 1.6 This document clearly sets out the County Council's requirements, the applicant's responsibilities, limitations for pavement cafes, licensing and other procedures and the legislation under which applications fall.

2.0 WHO DOES THIS CODE OF PRACTICE APPLY TO ?

- 2.1 This code of practice is aimed at owners and managers of restaurants, cafés, bars, tea rooms, coffee shops and snack bars, who may be considering placing tables and chairs outside their premises.
- 2.2 Should you wish to establish and operate a pavement café outside your premises please read this guide thoroughly to check that your proposal meets all the criteria.

3.0 LEGAL SITUATION

- 3.1 For the purposes of this code of practice pavement cafes are considered to be tables and chairs placed on the highway where food and drink is consumed by customers.

3.2 Before agreeing to grant permission for a pavement café on the highway, the County Council must ensure that the public's rights to use the highway are not detrimentally affected.

3.3 This power was written into the Highways Act 1980 sections 115A to 115K, and allows the County Council (as the Highway Authority) and District Councils to provide and operate facilities for recreation and refreshment within the boundaries of the highway. It also allows the County Council to grant permission to third parties to locate and operate such services in the highway.

4.0 **PERMISSIONS REQUIRED**

Highway Authorities

4.1.1 A permission to use the highway for pavement cafés is issued by the County Council under section 115E Highways Act 1980.

Tables and chairs placed on the highway without permission are an illegal obstruction and the County Council will take enforcement action in such cases.

Planning Permission

4.2 It has been agreed between the District Councils in Lincolnshire that planning permission is required for pavement cafes on the public highway, but in practice it is not expedient to pursue. It should be noted that relevant planning permission for your existing premises must be already in force before consent for a pavement café will be considered.

Premises Licence

4.3 If it is intended to serve alcohol at the table within the public highway, it will be necessary to apply separately for alcohol permission under the Licensing Act 2003. Early consultation with the appropriate District Council licensing section/department is recommended to ascertain the requirements for any particular proposal. See section 10 for contact details of the District Councils.

If you do not have a premises licence or your current licence expires or is revoked for any reason, you will not be able to serve any alcohol within the public highway.

Environmental Health registration

4.4 Food businesses are required by law to be registered with the local District Council. This is an entirely separate consideration to granting a pavement café licence. An application form can be obtained from the Environmental Services department of the local District Council.

- 4.5 As of 1st July 2007 England became Smoke Free in all **enclosed** public places. Lincolnshire County Council considers that it is the premises' duty to ensure that all outdoor public areas have provision for non-smoking, as well as smoking, clientele.
- 4.6 Where the premises are leasehold, always check the details of the lease before making any formal application, many leases include restrictive covenants, preventing certain types of activity. Most leases also require the landlord's consent before carrying out work and it is a mandatory requirement of this process that the landowner is given official notification of the proposal and an opportunity to object. In some instances, the local District or County Council may be the registered landowner.
- 4.7 There are other legislative requirements that may impact upon the ability of a business to legitimately locate pavement cafés within the highway such as the Health and Safety at Work Act 1974 and the Health Act 2006 which deals with the issues pertaining to smoking in public places.

5.0 **DESIGNING THE PAVEMENT CAFÉ**

- 5.1 The size and layout of your proposed pavement café will be dependant upon the characteristics of the site outside your premises, the space available, the street furniture and the type of premises. However, there are a few fundamental principles to follow with the design. It is suggested that preliminary discussions take place with both the County and District Council (see contacts in section 10)

SIZE AND LAYOUT

- 5.2 The pavement café should normally occupy an area directly in front of and be visible from your existing premises. It should not extend beyond the width of your frontage, but, in certain circumstances a delineated area will be permitted which is not directly adjacent to the property frontage therefore you will need to consult with your neighbours.
- 5.3 Emergency exits from your own premises or adjacent buildings must not be obstructed by the pavement café and emergency services vehicles must have access along all streets at all times, even in pedestrianised areas.
- 5.4 The needs of other users of the highway should be taken into account e.g. pedestrians, trades people, adjacent businesses etc.
- 5.5 On normal street pavements or narrow footways the tables and chairs should be placed against the building. The presence of tables and chairs should never discourage pedestrians from using the footway.
- 5.6 Where a café lies outside a pedestrianised area, a minimum width of footway of 1.8m is required between the boundary of the seating area and any space used by vehicles or the kerb face.
- 5.7 It is not appropriate to set a standard size for pavement cafés. Each application will be evaluated on its merits taking into account the site characteristics, the space available and the proposed layout.

- 5.8 The layout of the café's furniture, access points and means of enclosure must provide adequate access and circulation space for all customers including wheelchair users and those with pushchairs, buggies etc.
- 5.9 Tables and chairs should not be located where they will impede drivers' sight lines or obscure highways signs.
- 5.10 When designing the pavement café you should consider whether or not your existing toilet and washing facilities are adequate to accommodate increased customer numbers. If toilet facilities do not meet the requirements necessary for wheelchair access, a sign should be displayed to ensure people are aware of this.
- 5.11 The pavement café should not adversely affect the architecture or historic character of a Listed Building or its setting or the Conservation Area in which it is located.

BOUNDARIES

- 5.12 The County Council will not allow any fixtures to or any excavation of any kind to the surface of the highway.
- 5.13 Every effort should be made to avoid causing damage to the highway or adjacent property. The cost of rectifying any damage to the highway surface or to the street furniture caused by any activity connected with the pavement café operation may be recharged to the licensee.
- 5.14 Once the size and the layout of the pavement café are agreed it is important that it is adhered to at all times. All activities associated with the café must be contained within the agreed boundary including all tables, chairs, parasols, planters, barriers/fencing etc.
- 5.15 When the pavement café is in use, a form of enclosure will be required to demarcate and contain the area. Good quality and well-designed materials should be used. Waist-high post and ropes are suggested as one method and it is also advised that the enclosure includes solid elements near to ground level which are detectable by stick to give a clear warning to people with visual impairment.
- 5.16 The colour and materials of the enclosure should be considered carefully to ensure that in the longer view it is not too visually dominant, but at close range contains key elements which stand out against the background. In some circumstances a particular design may be required to retain some continuity of design in a particular area.
- 5.17 Planters with shrubs or floral displays will be welcomed as part of the enclosure.
- 5.18 Menu boards will not be accepted as part of the boundary or as a separate advertising opportunity.
- 5.19 When the designated area has been agreed a definitive plan of the area showing the boundaries and the dimensions will be attached to and form part of the Licence.

A copy of the permission and plan must be available on the premises at all times.

FURNITURE

- 5.20 Furniture should be of good quality and uniform style and must be approved by the County Council. The County Council reserves the right to reject applications where inappropriate furniture is proposed (i.e. garden style plastic).
- 5.21 When choosing your furniture you should have regard to the highway surface on which it will stand. Uneven or sloping surfaces may require more sturdy styles of furniture and tables and chairs with narrow or thin legs may cause damage to certain paving.
- 5.22 All tables and chairs should be manufactured from quality materials preferably metal or wood. It may be advisable to discuss this at an early stage and certainly before any furniture is purchased. Full details, including metric dimension, materials, colours, of proposed furniture, ideally accompanied by photographs, illustrations or drawings, will be required as part of the application. Tables should be of a design to permit wheelchair use (Picnic-type benches are not suitable for people with certain disabilities).
- 5.23 If you propose to use planters to make your seating area visually appealing, good quality plastic or glass fibre may be permitted as a means of reducing their weight to maintain portability. If you intend to use planters their metric dimensions and materials must be specified as part of the application and their proposed locations shown on the site layout plan

Please note. If planters are to be used within your permitted area, these MUST be well maintained with bedding plants/ flowers. If the planters are poorly maintained, without plants, or contain litter, cigarette stubs, glass products etc, the County Council will request their removal with immediate effect.

- 5.24 The colour of furniture should be attractive but not too bright, garish or overly reflective. The colours and design of the furniture should take into account the needs of people with a visual impairment and ideally provide a contrast with the background. It should compliment the character and ambience of the surrounding area.
- 5.25 If you intend to use parasols their metric dimensions materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan. Parasols when opened should be safely secured and contained entirely within the boundaries of the designated area to ensure that they do not cause an obstruction or present a danger to any user of the pavement café or any other users of the highway.
- 5.26 The design and colour of parasols will not be restricted to a particular type but they should be made of high quality materials and fabric and be of uniform design and colour. Garden style umbrellas are not acceptable and bright, garish or reflective colours should be avoided.

- 5.27 The only advertising permitted on parasols or the boundary is the name of the café or a brand. Such advertising must not be too dominant and should not detract from the appearance of the building and its setting, especially in conservation areas.
- 5.28 Canopies, awnings, blinds etc which are attached to the building may require advertisement consent or planning permission. Advice should be sought from the relevant District Council Planning Department, see section 10 for contact details.

6.0 **MANAGING THE CAFÉ**

HYGIENE

- 6.1 The pavement café is to be used only for the service and consumption of food and drink.
- 6.2 Food and drink must not be stored or prepared outside the normal premises. It is imperative that good food hygiene practices are followed at all times.
- 6.3 The use of barbeques, rotisseries, ice cream machines, drinks machines or any other equipment for the preparation and / sale of food and drink will not be allowed in the pavement café area.
- 6.4 **All tables must be cleared of all uneaten food, used crockery, cutlery etc and properly cleaned of any spillage immediately they are vacated by the customers.**
- 6.5 **All food spilt on the highway must be removed immediately and the area washed at the earliest opportunity.**

SITE CLEANLINESS

- 6.6 The permission holder will be responsible for the cleanliness of the designated area at all times. Care should also be taken to ensure that litter does not stray or get blown further afield.
- 6.7 The area should be swept when necessary to keep it clear of litter and refuse. Spillages and breakages, especially of glass and crockery, should be cleared up immediately. Care should be taken to avoid nuisance to customers and to ensure that hazards are not created during this work. The designated area should be thoroughly washed at the end of each trading day.
- 6.8 At least one suitable litterbin must be provided within the designated area at all times of operation, and should be emptied on a regular basis. Wheelie bins are not suitable for this purpose.
- 6.9 Where smoking is permitted in the pavement café, each table should be provided with an ashtray which should be emptied each time the table is cleared. If smoking is not permitted a “No Smoking” sign should be placed on each table. **At the end of the day all discarded cigarette stubs must be cleared.**
- 6.10 All tables and chairs and other equipment must be properly maintained and kept in a clean, tidy and safe condition at all times.

Failure to comply with the cleaning requirements will jeopardise the renewal of the licence. Failure to comply with them at the end of the day may result in the County Council carrying out the work for which the licensee will be charged.

SOCIAL RESPONSIBILITY

- 6.11 It will be the responsibility of the permission holder to ensure that the pavement café is operated in accordance with these guidelines and the conditions of the licence.
- 6.12 The pavement café must be operated in a safe and efficient manner ensuring that there is no safety risk or nuisance caused to other users of the highway or nearby premises.
- 6.13 The designated area should be kept under supervision at all times of its operation.
- 6.14 The permission holder is responsible for the satisfactory conduct of people within the pavement café and customers must be seated at all times.

Rowdy or unruly behaviour may lead to the suspension or termination of the licence.

- 6.15 So as not to cause offence to other members of the public, patrons/customers are requested that their upper torso remains clothed and that they are suitably attired, no person should be without a top.
- 6.16 Amplified music and non- amplified music will not be allowed within the designated area.
- 6.17 The permission holder will be required to indemnify the County Council against all actions, demands, costs, charges or expenses arising from using the highway under the permission granted. The County Council will require the licensee to take out Third Party Public Liability Insurance in the sum of at least £5,000,000 with an insurance company of repute to be approved by the County Council. Details of the third party liability insurance should be provided with the pavement café application.
- 6.18 Granting a permission to operate a pavement café does not imply an exclusive right to the area. The operator of the café should be aware that the County Council reserves the right to gain access to the designated area for cleaning, repairing and maintaining the highway or street furniture. Other organisations such as statutory undertakers may also require access for maintenance and repair of their equipment. The County Council therefore reserves the right to suspend the permission temporarily, if, for any reason, it becomes necessary.
- 6.19 The County Council will not permit any wheeled refuse container, beer kegs, bottle crates, A- boards or advertising signs or any other unsightly or unapproved items to be placed on or adjacent to the designated area.
- 6.20 The County Council will need to be satisfied that the applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business.

- 6.21 The County Council reserves the right to refuse granting permission to any applicant who has not made suitable arrangements for the internal storage of refuse and collection of refuse and to withdraw the permission if the approved arrangements are not adhered to.

HOURS OF OPERATION

- 6.22 The County Council does not wish to be too prescriptive on the hours of operation for the café. The proposed hours of operation will need to be included on your application.
- 6.23 In certain pedestrianised areas the highway remains open to vehicular traffic during part of the day and it may be necessary to restrict the opening hours of the café. The County Council reserve the right to stipulate the hours between which the café can operate.

All furniture etc is to be removed and stored off the highway within 30 minutes of closing. Furniture can not be placed upon the highway before any designated opening times. The designated area swept and washed within 30 minutes of closing.

7.0 HOW TO GAIN PERMISSION

YOUR NEIGHBOURS

- 7.1 If you propose to extend the pavement café beyond the width of your own frontage the County Council will need to be certain that agreement has been reached with any neighbour whose frontage is affected by the proposal before it can approve your application. Letters confirming these agreements should be forwarded with your application.

HIGHWAYS PERMISSION

- 7.2 It is recommended that you seek advice before you submit your application. County Council officers will be pleased to provide advice on specific cases before the formal application is made. This does not guarantee approval of permission being sought but it may help to minimise expenditure on preparing your application and save expenditure where an application would be turned down. We are here to help.
- 7.3 To apply for your permission you will need to complete a copy of the application form contained in the pack at the back of this guide. You will also need to supply two copies of the following plans;-

- Location plan (1:1250) showing the outline of the premises, the existing situation and the proposed location of the pavement café.
- Site layout plan (1:500) showing the proposed boundary, kerb and building lines, points of access, seating/ table layout,

parasols, planters, means of enclosure, and key metric dimensions etc

- 7.4 The application should be supported by written specification for the proposed pavement café furniture, parasols and the means of enclosure identifying, style, colours, materials etc and including any other relevant information, such as samples/ photographs.

The applicant will also be required to prove that the furniture etc is going to be stored off the highway outside the normal hours of operation.

- 7.5 A copy of a valid third party Insurance certificate must also be provided.

- 7.6 In certain locations you may also need Listed Building consent. If you think that this may be the case please check with the appropriate District Council detailed in section 10.

8. **HOW LONG AND HOW MUCH?**

- 8.1 When an application is received it is initially checked to see if all of the information required is complete, if not the applicant will be informed.

- 8.2 When a valid application is made the County Council will carry out consultations with the following organisations and persons as appropriate before granting a licence;-

1. Lincolnshire Police
2. Lincolnshire Fire and Rescue Service
3. Local County Councillor
4. The appropriate District Council
5. The appropriate Parish or Town Council
6. Local disabled groups
7. City/Town Centre Manager
8. Local Chamber of Trade and Commerce

- 8.3 The above listed persons will be requested to make their representations within 28 days of the submission of the application.

If objections are received from the Police or District Council that cannot be resolved then the application will not be approved.

- 8.4 If no representations are received, or if any are received and are resolvable by amending the proposal, then the application process will continue with formal consultation taking place.

- 8.5 Under the terms of the Highways Act 1980, the County Council cannot grant permission unless it obtains consent of interested frontagers who may be materially affected by the proposal i.e. those that may have a café extending onto their frontage.

- 8.6 The County Council must publish a public notice of the application and consult with nearby frontagers who may be affected. The notices are usually posted in the vicinity of the proposed pavement café, with frontagers being sent a copy of

the notice. The notices must be in place for a minimum of 28 days to allow for any representations.

- 8.7 County Council officers usually try to resolve any objections at an early stage. If however they cannot be resolved then the application may be considered by the Planning and Regulation Committee.
- 8.8 Each application will be different and may take a different time to determine. Some may provoke many objections; others may raise none at all. In general it is estimated that it will take approximately three months to process an application. Following the good practice procedures in this Guide will improve your chance of succeeding.

FEES

- 8.9 Fees are based upon the maximum number of people capable of being catered for at one time.

Number of People	Application Fee	Renewal Fee
1-9	£200	£50
10-25	£250	£100
25 -50	£500	£150
Over 50	£1000	£200

Fees are due on an annual basis.

Fees are not refundable if the application is unsuccessful.

The fee for a variation to an existing permission is £100

9. THE PAVEMENT CAFÉ IN OPERATION

- 9.1 Pavement cafes permissions issued by Lincolnshire County Council are not transferable and should not therefore be regarded as a transferable asset. If the business is transferred the new owners would have to apply for a new permission.
- 9.2 Permissions are granted for a maximum of one year and are renewable annually at the discretion of the County Council. Permissions for new sites will be subject to a three month probationary period.
- 9.3 The permission will include a number of terms and conditions based on these guidelines.
- 9.4 **The County Council will carry out periodic inspections to make sure that all the terms and conditions of the permission are being adhered to. These guidance notes must be kept on your premises at all times.**
- 9.5 The County Council may suspend or terminate permission if any of the conditions of the permission are breached.

- 9.6 A permission holder may terminate permission at 21 days notice by informing the County Council in writing.
- 9.7 The Licences will run from the date they are issued for one year only.
- 9.8 Applicants must allow sufficient time for the permission to be renewed if continuous operation is desired.

10 CONTACTS

South Holland District Council	Council Offices Priory Road Spalding PE11 2XE	01775 761161 info@sholland.gov.uk
Boston Borough Council	Municipal Buildings West Street Boston PE21 8QR	01205 314200 info@boston.go.uk
South Kesteven District Council	Council Offices St Peter's Hill Grantham NG31 6PZ	01476 406080 customerservices@southkesteven.gov.uk
West Lindsey District Council	Guildhall Marshall's Yard Gainsborough DN21 2NA	01427 676676 customer.services@west-lindsey.gov.uk
North Kesteven District Council	District Council Offices Kesteven Street Sleaford NG34 7EF	01529 414155 01529 69969 customer_services@n-kesteven.gov.uk
East Lindsey District Council	Tedder Hall Manby Park Manby Louth LN11 8UP	01507 601111 08446 601111 customerservices@e-lindsey.gov.uk
City of Lincoln Council	City Hall Beaumont Fee Lincoln LN1 1DB	01522 881188
<u>Lincolnshire County Council</u>		
Greater Lincoln and Gainsborough Division covers: Caistor, Gainsborough, Tealby,	4 th floor City Hall Lincoln LN1 1DN	01522 782070 Fax 01522 543258

Market Rasen, Saxilby, and Lincoln		Dev_HT_GLAG@lincolnshire.gov.uk
East Lindsey Division covers: Louth, Mablethorpe, Wragby, Sutton on Sea, Alford, Horncastle, Chapel St Leonards, Skegness, Spilsby, and Woodhall Spa	LCC Highways Depot, Manby Middlegate, Grimoldby, Louth, Lincolnshire LN11 8SU	01522 782070 Fax: 01507 328918 Email: Dev_HT_EL@lincolnshire.gov.uk
Sleaford and South Kesteven Division covers: Sleaford, Grantham, Bourne, Stamford, Market Deeping	County Offices, Annex C, Eastgate, Sleaford, Lincolnshire NG34 7EB	01522 782070 Fax: 01522 553171 Email: Dev_HT_SK_and_S@lincolnshire.gov.uk
Boston and South Holland Division covers: Boston, Kirton, Donington, Spalding, Holbeach and Crowland	Municipal Buildings, West Street, Boston, Lincolnshire PE21 8QR	Tel: 01522 782070 Boston Fax: 01205 314572 South Email: Dev_HT_BSH@lincolnshire.gov.uk