

Permission to use the highway for pavement cafes
(S115e Highways Act 1980)

Policy, Information Pack and Guidelines

General Enquiries:

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Please keep this booklet for your reference

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1. Introduction: Pavement Cafés

1.1 On pedestrianised areas/footways and weather permitting, the addition of good quality pavement cafés contributes to a relaxed and sociable style of eating and drinking indicative of any continental city or town.

1.2 Permission is required for a pavement café on public highway. This is to ensure that it is properly set up and operated so that it benefits the business, enhances the town centre and district centres and does not cause a problem for other users of the highway.

1.3 Permission is granted by the Council under Section 115E of the Highways Act 1980, on an annual basis.

The purpose of this guide is twofold:

- To highlight the requirements and standards expected for the siting of facilities for pavement café operations in the town.
- To guide those wishing to establish and/or operate pavement cafes through the application process

1.4 In addition to the requirement for permission under the Highways Act, any proposal for a pavement café may also require planning permission for a change of use of land, and for operational development where a permanent structure is proposed.

If you require any clarification on whether planning permission is required for your proposal please seek guidance from the planning department who can be contacted on 0118 937 3787.

You should also be aware that the issuing of a Highways Act permission does not prejudice the Local Planning Authority's right to undertake planning enforcement action against unauthorised pavement cafes where there is a breach of planning control and it is considered expedient to take action.

1.5 The application process for Highways Act permission involves both legal and administrative procedures, hence the need to follow the guidance in this brochure and on the application forms which need to be completed by all applicants.

1.6 There is a minimum 28 day consultation period before a permission can be granted, subject to no objections being received. Please allow this period before making further enquiries.

Information and Guidance:

1.7 The following information is intended to assist applicants in considering whether the proposed use of the highway for a pavement café is likely to be acceptable.

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

- Size and layout.
- Means of enclosure.
- Furniture type.
- Environmental and Other Requirements.

Please note that applications which do not meet the Policy criteria are likely to be refused unless the applicant can clearly demonstrate that there are particular circumstances which might support an exception being made.

Who to Contact

1.8 For general advice and information on fees and charges please call 0118 937 3762.

2. Policy

2.1 Permission will be granted for use of the highway for a pavement café only where it is ancillary to premises immediately adjacent to the area of highway concerned.

2.2 There must be a minimum clear footway width in accordance with Appendix 1 as detailed on page 14.

2.3 The pavement café must not interfere with vision lines for traffic and/or pedestrians.

2.4 The applicant must hold public liability insurance of not less than £5,000,000; evidence of this will be required before a Permission is granted.

2.5 The area must be clearly defined and used solely for the purpose of consumption of refreshments.

2.6 All food, drink, crockery, glasses and cutlery etc. left on tables must be cleared as soon as possible after customers have left to avoid any litter on the highway.

2.7 All items of furniture associated with any pavement café, including parasols, must be securely fastened to ensure that they are not liable to be moved by external forces, such as the effects of wind or from being lightly knocked.

2.8 All furniture must be of a type which will not cause damage to the highway surface.

2.9 The Council reserves the right to remove from the highway any items for which permission has not been granted. Where such items are considered by the Council to be dangerous they will be removed without notice.

2.10 Any table and chairs which are removed from the highway by the Council will be stored at the Council's depot. Removed items will be held by the Council for a limited period and will be returned to the owner only after

payment of the expenses incurred by the Council in removing them. Any items not reclaimed will be disposed of after a reasonable period.

3. General Considerations

Size and Layout

3.1 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

3.2 If an area is pedestrianised, there is potentially more scope to site a pavement café and each application for such areas will be considered on its individual merits.

3.3 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 width between the edge of the carriageway and the boundary of the café or between the premises frontage and the pavement café. This is to ensure pedestrians, particularly the visually impaired, are not obstructed. Clear footway width must be in accordance with the requirements detailed in Appendix 1, and is measured between the boundary of the café and the edge of the footway or any adjacent street furniture (e.g. street light, pole, bollard) whichever is the lesser.
- Reading Borough Council reserves the right to vary the terms of the permission for the pavement café or require its relocation on renewal of the permission if pedestrian or vehicle flows have changed.
- Reading Borough Council may withdraw permission for a pavement café or require its relocation on any given day if unusual circumstances make this necessary, although every endeavour will be made to give notice. Applicants should also note that utility providers may need access to any area under the New Roads and Street Works Act.

3.4 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.

3.5 Prior consent of the owners/occupiers of premises in the near vicinity will be required and the application is therefore subject to a standard consultation

process.

It will normally be necessary to arrange a site meeting to determine the exact layout of the Street Furniture and assist applicants in developing a site plan. Applicants will be contacted on receipt of the application to arrange the site meeting, but should contact the Transport Development Control Team on 0118 937 2612 if any assistance or guidance is required at an earlier stage.

Means of Enclosure

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

3.7 The means of enclosure must be removed outside the permitted period or when it is not intended to operate the pavement café within the permitted period. The materials should therefore be relatively lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked/stumbled into.

3.8 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.

3.9 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 permitted period.

3.10 Proposed means of permanent enclosure may need planning permission, in addition to other approvals; please seek guidance from the planning department who can be contacted on 0118 937 3787. Highways Act permission for permanent structures will not be issued until planning permission has been obtained, if required.

Furniture

3.11 The furniture should be of a high quality and uniform style within the permitted area and to the satisfaction of the Council. Plastic patio type furniture will not be permitted. Details of furniture should be submitted to the Highway Authority with every application.

3.12 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.

3.13 Non furniture items, e.g. menu boards, signs and portable gas heaters also need to be approved as part of the enclosed permitted area, and any

unacceptable clutter or intrusion into sight lines will need to be removed if it is deemed to be causing a problem or creating a hazard.

3.14 It is the responsibility of the operator of the cafe to ensure:

- that all chairs and tables are in good repair and are stable.
- that any parasols and umbrellas are weighted to prevent them being dislodged by the wind.
- all equipment is stable and positioned to the satisfaction of the Council.

Environmental and Other Requirements

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

3.16 It will be the responsibility of the pavement café operator to keep the area clean and free of litter, during permitted/operational hours. Tables must be cleaned as soon as possible after customers have left to avoid any litter on the highway.

3.17 The holder of the permission must as soon as possible wash down or remove any stains from spills of food or liquid.

3.18 All food premises are to be registered with Reading Borough Council, Environmental Health and Trading Standards. All pavement café operations must comply with the relevant food safety requirements. (see useful contacts page 14).

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

3.20 Table service should be available if required and the use of unbreakable glasses and crockery is recommended where appropriate.

3.21 The Highways Act Permission will normally operate between the hours of 8.00 am to 10.30 pm. Times of use will vary from permission to permission depending on individual circumstances and location. Each case will be judged on its merits.

Pre Application Procedure

3.22 All applicants should in the first instance refer to these Guidelines and the Pre-Application self assessment checklist prior to making any enquiries or a formal application.

3.23 It should be noted that, although applications are processed by the Council's Licensing Section, no Highways Act permission can be granted without the Highway Authority's consent. In view of this and in order to avoid loss of application fees, any fees associated with engaging a licensing solicitor and associated time and effort, prospective applicants

are requested to informally consult the Highway Authority prior to a formal application being made, in order to seek an opinion. You can do this by contacting the Highways Development Control Team on 0118 937 2612.

4. Applying for a Highways Act permission

4.1 Should you have any queries concerning the application process, please contact the Licensing Section on telephone number 0118 937 3762 or e mail Licensing@reading.gov.uk.

4.2 Applicants are advised to consider the guidelines in this document before making an application.

4.3 Your application will be considered by Officers from Highways, Licensing, Planning, Trading Standards and Environmental Health.

4.4 The local ward councillors 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 Reading UK CIC's BID Committee.

4.5 Prior to granting the permission, there are two legal consultative requirements set out in the Highways Act 1980.

4.6 The consent of interested frontagers (owners and occupiers of premises adjoining the relevant part of the highway) must be obtained.

4.7 The Council is required to place a public notice on or near the premises for a period of 28 days.

4.8 A permission may not be granted until all representations have been considered.

4.9 You will be notified of the fee if your application is approved as this is dependent on the number of tables and chairs involved.

Timescales for dealing with applications

4.10 Please note that tacit authorisation under the Provision of Services Regulations 2009 does not apply to applications under Section 115E of the Highways Act 1980. Timescales for dealing with applications are detailed below.

4.11 Applications received will be reviewed and applicants will be informed of the Council's decision within 40 working days provided all documentation is received and subject to no objections being received (there is a 28 day consultation period within the above timescales).

4.12 Where an application is incomplete the applicant will be informed of this within 5 working days.

Refusal of Applications/Variations.

4.13 There is no statutory right of appeal against the decision of the Council to refuse a Highways Act permission, or against the conditions imposed on a permission. Notwithstanding this, Reading Borough Council does offer an informal review process (cost of £150 payable by the applicant regardless of outcome), for persons aggrieved by any refusal to grant a new Permission (or renew/vary any existing Permission) or by the conditions imposed on a Permission. Reviews will be carried out by the Discretionary Parking Permits and Highways Permissions Panel. An applicant whose application has been refused because it does not comply with the criteria in this Policy will be expected to demonstrate why there should be an exception to the Policy in his/her particular case.

4.14 Please contact Transport Development Control should you require further details regarding this on 0118 937 2612.

5. Terms and Conditions of Highways Act permission

5.1 In making an application for permission, you are deemed to have read and accepted the following standard Conditions. Additional conditions may be imposed where appropriate.

5.2 No changes may be made to any part of the pavement café operations, including change or addition of furniture or other items, or changes to the permitted area or operating times, without obtaining a new or revised Permission. The Permission Holder must contact the Council if any changes are proposed.

5.3 No alcohol may be sold or consumed within the designated pavement café area unless the premises are already licensed to do so.

5.4 No items may be left on the highway outside the hours specified in the Permission, unless the Permission expressly allows use of the highway outside the specified hours.

5.5 The permission is subject to the payment of the fee required by the Council; it will cease to have effect if payment is dishonoured.

5.6 The Permission Holder must hold Public Liability Insurance cover to at least £5m for the permitted area and such cover must be maintained throughout the duration of the Permission.

5.7 The Permission Holder may not provide any refreshments other than food and drink normally served within the Permission Holder's premises.

5.8 Tables and chairs must be sited so that they are clearly visible from inside the premises. Permission Holders must 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 Permission is kept clean and tidy and free from litter. A suitable waste/litter bin must be provided.

5.9 No omission from, addition to, or variation of the Permission will be valid unless it is agreed in writing and signed by an authorised officer of the Council.

5.10 The Permission Holder is required to ensure that any equipment used for the purposes of providing these facilities is safe and presents no risk to members of the public and in particular that:

- all chairs are in good repair and are stable.
- any parasols and umbrellas are adequately weighted to prevent them being dislodged by the wind.
- the area to be used is protected and separated from the rest of the highway in such a way that a blind or partially sighted person runs no risk of injury from their use.
- all furniture used must be of a type which will not cause damage to the highway surface.
- no amplified music shall be played in relation to any pavement café.
- under no circumstances should any pavement café interfere with required vision lines for traffic and pedestrians.

5.11 The Permission Holder shall indemnify the Council against any claim in respect of injury, damage or loss arising out of the grant of the Permission except where any such injury, damage or loss is attributable to the negligence of the Council.

5.12 The Permission Holder shall ensure that a clear pedestrian route is retained for those walking past the premises. Emergency exits from adjacent buildings must not be obstructed by any seating area.

5.13 The Permission Holder will be required to reimburse the Council for the costs of repairs where any damage to Council property or to the public highway is caused as a result of street furniture placed on the highway, .

6. Data Protection Act:

6.11 The information on the application form is required to process your application and to administer this service. It contains personal data about you (name, address and telephone number). As the data controller of that information, Reading Borough Council will process that personal data in accordance with the provisions of the Data Protection Act 1998.

6.2 This information will be shared with the following departments within Reading Borough Council to assess your application - Highways, Licensing, Planning, Audit, Trading Standards and Environmental Health.

6.3 The information will be securely stored electronically and in paper form for the duration of the permission (normally 3 years).

6.4 Where necessary we may share information provided to us with other bodies responsible for auditing or administering public funds, or in order to

prevent and detect fraud.

6.5 If you have any concerns as to the use of your personal data please contact the Council's Data Controller, Head of Legal and Democratic Services, Reading Borough Council, Civic Offices, Bridge Street Reading, Reading RG1 2LU.

6.6 If you wish to obtain access to the information that we hold about you, please complete our Subject Access Request form (available from our website).

7. FEES AND CHARGES

7.1 There is an annual fee for a permission, the amount of which is reviewed annually by the Council.

7.2 The current fees (2018/19) are outlined below:

Pavement Café

Annual Permission fee - £260

Plus payment per table - £75

8. Useful Contacts

Appendix 1

Sensitive Town Centre Streets / Roads	Clear Pedestrian Passageway Required*	Emergency Vehicle / Delivery Route
St Marys Butts	3.0 metres	N/A
West Street	3.5 metres	N/A
Friar Street	3.5 metres	N/A
Station Road	3.5 metres	N/A
Blagrove Street	3.0 metres	N/A
Market Place	3.5 metres	N/A
Broad Street	3.5 metres	4.0 metres
Queen Victoria Street	2.0 metres	4.0 metres
Cross Street	N/A	4.0 metres
Butter Market	N/A	4.0 metres
All other Streets / Roads within the	2.0 metres	N/A

* Clear footway width is measured between the boundary of the pavement café or trade display and the edge of the footway or any adjacent street furniture (e.g. street light, pole, bollard) whichever is the lesser.

PRE APPLICATION SELF ASSESSMENT CHECKLIST

Before applying for a permission you must satisfy all the following criteria by answering YES to questions 1, 3, 4, 5, 6, 7 and NO to question 2.

Pavement Cafés

Q1. Will there be a minimum clear footway width in accordance with Appendix 1 of the Guidance Note?

Q2. Will the pavement café interfere with vision lines for traffic and/or pedestrians?

Q3. Do you hold public liability insurance of not less than £5,000,000?

Q4. Will the area be clearly defined and used solely for the purpose of consumption of refreshments?

Q5. Will tables be cleared of food, drink, crockery, glasses and cutlery etc. as soon as possible after customers have left, to avoid any litter on the highway?

Q6. Will all furniture associated with any pavement café, including parasols, be securely fastened to ensure that they are not liable to be moved by external forces, such as the effects of wind or from being lightly knocked?

Q7. Will all furniture be of a type as not to cause damage to the highway surface?



STREET PAVEMENT CAFÉ (S.115E Highways Act 1980)

DO NOT COMPLETE THIS FORM PRIOR TO CONTACTING THE HIGHWAYS DEVELOPMENT CONTROL SECTION FOR AN OPINION AS TO THE LIKELIHOOD OF A PERMISSION BEING GRANTED

1. Address and type of premises

.....
.....
..... Telephone
.....

2. Name and address of applicant

.....
.....
.....

3. Number of tables/chairs applied for

.....

4. Available width of footway

.....

5. Class of planning permission applicable to premises

.....

6. Number of staff available to supervise pavement area

.....

7. I/we agree to conform to the conditions applicable to the grant of a street pavement café permission

8. I/we understand that breach of or non-compliance with these conditions may lead to revocation of this permission.

9. I/we undertake to pay the fee required as a condition of the grant of permission.

10. I enclose a copy of the Public Liability Insurance in the sum of £5 million.

11. Sketch plan of site attached overleaf.
12. Please indicate the required days and hours of expected use
..... I undertake to comply with any conditions imposed
by the Council on any Permission
granted on this application
.....

Signed: Date:
.....

Please note that tacit authorisation under the Provision of Services Regulations 2009 does not apply to applications under Section 115E of the Highways Act 1980. Timescales for dealing with applications are detailed on page 9 of the Guidelines.

Please note that applications which do not meet the Policy criteria are likely to be refused unless the applicant can clearly demonstrate that there are particular circumstances which might support an exception being made.

Your attention is drawn to the fact that this information is required by the Council to enable us to provide you with one or more of the Council's services. However, the information may be used for other purposes and may be given to other organisations, although, in either case, this will only be done in accordance with the provisions of the Data Protection Act 1998.