

# Public Document Pack



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Monday, 17 January 2022

## Notice of Reports Received following Publication of Agenda.

### Strong Communities Select Committee

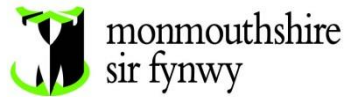
Tuesday, 25th January, 2022 at 10.00 am,  
County Hall, Usk - Remote Attendance

Attached are reports that the committee will consider as part of the original agenda but were submitted to democratic services following publication of the agenda.

Item No	Item	Pages
5.	Café Pavement Policy - Pre-decision Scrutiny of this revised policy.	1 - 28

**Paul Matthews**  
Chief Executive

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<b>SUBJECT:</b>	<b>INTERIM PAVEMENT CAFÉ POLICY</b>
<b>MEETING:</b>	<b>STRONG COMMUNITIES SELECT COMMITTEE</b>
<b>DATE:</b>	<b>25<sup>th</sup> January 2022</b>
<b>DIVISION/WARDS AFFECTED:</b>	<b>ALL WARDS</b>

## 1. PURPOSE:

- 1.1 To consider the proposed interim pavement café policy which aims to support and make a positive contribution to the appearance and vibrancy of Monmouthshire towns as well as setting out the legal framework to assist with the consideration of applications as part of the licencing process.

## 2. RECOMMENDATIONS:

- 2.1 To scrutinise the interim café policy shown in appendix 1 up until the end of 2022.
- 2.2 To scrutinise the application fee at a minimum cost of £10 to support businesses in complying with the requirements and objectives of the interim policy.
- 2.3 To scrutinise the proposal to review the policy including application fee during 2022 to reflect changes in legislation and best practice, with an amended policy and fee structure reported to the Cabinet Member for approval. This will include consultation with business forums and other interested parties whose suggestions will be considered as part of the updated policy.

## 3. KEY ISSUES:

- 3.1 Alfresco eating has become a 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. The provision of pavement cafés and the use of public spaces is also seen to aid the local economy and adds to the facilities offered to people who visit, live, and work in Monmouthshire.
- 3.2 At the start of the pandemic, outside eating became more important and Monmouthshire County Council supported businesses by making it easy to apply for pavement café licences and at a minimal cost. In addition, businesses were offered grants to purchase outside dining furniture and high streets were reconfigured to help with maintaining social distancing and to accommodate additional space for outside seating and trading.
- 3.3 The previous regulations regarding licencing such as time and noise level restrictions were removed during the pandemic and the main requirement focused on highway safety. This resulted in the setting up of a simpler process to deal with the demand for pavement café applications however despite these actions there has been a number of unauthorised

seating areas appearing on the high street which has led to concerns about obstructions to other users of the highway and in particular to less able persons.

- 3.4 The legal position is that any items placed on the public highway requires the consent of the Highway Authority and for pavement cafés this can be arranged by businesses applying for a licence under Section 115E of the Highways Act 1980. The licence process helps to ensure that proposed pavement cafés meet highway and other safety standards as well as to ensure compliance with conditions to allow for the protection of amenity areas and maintaining access for all users of the public highway as well as for the carrying out of maintenance works.
- 3.5 The proposed policy will also allow Highways to control the layout of the pavement café area including the requirements to define the approved boundary with barriers and ensure that all furniture should be neutral in colour and in keeping with the wider street scene.
- 3.6 The policy along with the online application process via MyMon will help officers and businesses to process applications effectively and support the wider objectives of the council and town councils for creating vibrant and sustainable town centres.
- 3.7 The policy will be updated during the 2022 calendar year, incorporating feedback from licence applicants and other stakeholders on the interim policy.

**4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):**

- 4.1 The proposal aims to standardise the provision of pavement café licences by creating safe areas for outside seating which is in line with the the council’s wider objectives of supporting the business community and creating vibrant environments within our town centres. The application process aims to protect the interest of groups such as those with limited mobility, learning disabilities, dementia and visual impairment.

**5. OPTIONS APPRAISAL**

5.1 Table One below therefore provides an options appraisal of the proposal:

Options	Benefits	Risks	Comments/Mitigation
Do Nothing	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>Failure to protect the interest of vulnerable groups such as those in wheelchairs or visually impaired.</li> <li>Unsafely and safety hazards of street furniture and other structures placed on the public highway.</li> </ul>	This is not a sensible option
Re-issue existing licences unchanged until the end of December 2022, using the intervening period to develop and consult on a new pavement café policy to inform	<ul style="list-style-type: none"> <li>Maintains the status quo while a new permanent policy is developed, minimising disruption to businesses.</li> </ul>	<ul style="list-style-type: none"> <li>Absence of a policy framework against which to assess renewed licences or new licence applications.</li> <li>Fails to address concerns raised by disability groups</li> </ul>	This is not the preferred option.

future licence applications.		regarding some existing arrangements.	
Do minimum (assess applications on road safety requirements only)	<ul style="list-style-type: none"> <li>• Increase the number of pavement café areas</li> <li>• Reduce the burden and cost to applicants</li> <li>• Simplify the application process and reduce regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• Failure to protect the interest of vulnerable groups such as those in wheelchairs or visually impaired.</li> <li>• Unsightly and safety hazards of street furniture and other structures placed on the public highway.</li> </ul>	This is not the preferred option.
Adopt the proposed interim policy.	<ul style="list-style-type: none"> <li>• Maintain safe pavement café areas within the highway</li> <li>• Ensure that all furniture and structures meet safety standards</li> <li>• Enhance the street scape and create vibrant places for recreational use.</li> <li>• Support the local economy and tourism.</li> </ul>	<ul style="list-style-type: none"> <li>• Potential disruption to some businesses where licences need to be amended to ensure the pavement cafés operate safely.</li> </ul>	This is the preferred option. Feedback from licence applicants and other stakeholders will be used to inform the revised permanent policy.

## 6. REASONS:

- 6.1 The preferred option is to adopt the proposed interim pavement café policy as described within the report. This will ensure that a safe and vibrant environment is provided which meets highway and other safety requirements plus also protects the interest of disabled people and other minority groups.

## 7. RESOURCE IMPLICATIONS:

- 7.1 The processing of applications requires both a tabletop and on-site assessment of the proposed pavement café by a technical officer. Due to the current limited resources, it will be necessary in the short term to seek the assistance from an employment agent or consultant however the recent changes to the Highway & Flood Management Team include new positions within the Street Works Team to assist the Street Works and Asset Manager with assessing and approving pavement café licences. Enforcement of licences will be undertaken using in-house resource.
- 7.2 The proposed £10 charge is a nominal amount and will not cover the actual cost of processing pavement café licences. The actual cost will be assessed as part of the review of the policy and be based upon size of application and set alongside other fees and charges as part of the annual budget process.

## 8. CONSULTEES:

- Chief Officer People and Governance – Legal Services
- Chief Officer, Enterprise – including licencing, tourism, and regeneration officers
- Cabinet Member for Infrastructure and Neighbourhood Services
- Enterprise DMT
- SLT
- Strong Communities Select Committee
- Consultation with the business community and other interested groups will be undertaken during the review period of the interim policy.

**9. BACKGROUND PAPERS:**

None

**10. AUTHORS:**

Paul Keeble, Group Engineer Highways

**11. CONTACT DETAILS:**

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**Appendix 1: Wellbeing of Future Generations Equalities Impact Assessment**

**Appendix 2: Interim Pavement Café Policy**

# Appendices

## Appendix 1: Wellbeing of Future Generations Equalities Impact Assessment



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sir fynwy

### Equality and Future Generations Evaluation

<p><b>Name of the Officer</b> completing the evaluation</p> <p><b>Paul Keeble</b> <b>Phone no: 01633 644773</b> <b>E-mail: <a href="mailto:paulkeeble@monmouthshire.gov.uk">paulkeeble@monmouthshire.gov.uk</a></b></p>	<p><b>Please give a brief description of the aims of the proposal</b></p> <p>To consider the proposed interim pavement café policy which aims to support and make a positive contribution to the appearance and vibrancy of Monmouthshire towns as well as setting out the legal framework to assist with the consideration of applications as part of the licencing process.</p>
<p><b>Name of Service area</b></p> <p>Place-making, Regeneration, Highways and Flooding</p>	<p><b>Date 12<sup>th</sup> December 2021</b></p>

1. Are your proposals going to affect any people or groups of people with protected characteristics? Please explain the impact, the evidence you have used and any action you are taking below.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	This proposal will benefit older groups such as those with limited mobility, dementia and visual impairment which are more prevalent among older people by maintaining a safe environment within town centres with areas that are free from obstruction as well as improved access to cafés and other facilities. In addition, younger people will benefit from being able to meet up with friends in a safe environment especially during high levels of Covid cases.	None	N/A
Disability	This proposal will benefit disabled groups such as those with limited mobility, learning difficulties and visual impairment by maintaining a safe environment within town centres with areas that are free from obstruction as well as improved access to cafés and other facilities	None	N/A
Gender reassignment	.None	None	N/A
Marriage or civil partnership	None	None	N/A
Pregnancy or maternity	This proposal will benefit expectant mums and new parents with prams and pushchairs by maintaining a safe environment within town centres with areas that are free from obstruction as well as improved access to cafés and other facilities where they can rest and get refreshments if needed.	None	N/A



Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Race	None	None	N/A
Religion or Belief	None	None	N/A
Sex	None	None	N/A
Sexual Orientation	None	None	N/A

### The Socio-economic Duty and Social Justice

The Socio-economic Duty requires public bodies to **have due regard to the need to reduce inequalities of outcome which result from socio-economic disadvantage when taking key decisions** This duty aligns with **our commitment as an authority to Social Justice.**

Page 7	Describe any positive impacts your proposal has in respect of people suffering socio economic disadvantage	Describe any negative impacts your proposal has in respect of people suffering socio economic disadvantage.	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
<b>Socio-economic Duty and Social Justice</b>	The proposals aim to support local businesses and job opportunities which will offer a positive benefit to the community from a social-economic perspective.	None	N/A

## Policy making and the Welsh language.


How does your proposal impact on the following aspects of the Council's Welsh Language Standards:	Describe the positive impacts of this proposal	Describe the negative impacts of this proposal	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts
<p><b>Policy Making</b></p> <p>Effects on the use of the Welsh language, Promoting Welsh language Treating the Welsh language no less favourably</p>	<ul style="list-style-type: none"> <li>To align our policy with those of our neighbouring councils</li> <li>To ensure a consistent approach to the requirements of pavement café licences within Wales.</li> </ul>	None	N/A
<p><b>Operational</b></p> <p>Recruitment &amp; Training of Workforce</p>	None	None	N/A
<p><b>Service delivery</b></p> <p>Use of Welsh language in service delivery Promoting use of the language</p>	Both the policy and application forms will be available in Welsh and English languages on our website.	None	N/A




**4. Does your proposal deliver any of the well-being goals below?** Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal. There's no need to put something in every box if it is not relevant!


<b>Well Being Goal</b>	<b>Does the proposal contribute to this goal? Describe the positive and negative impacts.</b>	<b>What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?</b>
<p><b>A prosperous Wales</b> Efficient use of resources, skilled, educated people, generates wealth, provides jobs</p>	<p>Positive: The proposal will offer businesses increased opportunity for trade and improve the vibrancy of our towns supporting the local community and economy by creating job opportunities and encouraging tourism.</p>	<p>Positive: The proposals will ensure that the appearance of pavement cafés are in keeping with the local environment as well as keeping the highway safe for all users.</p>
<p><b>A resilient Wales</b> Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)</p>	<p>N/A</p>	<p>N/A</p>
<p><b>A healthier Wales</b> People's physical and mental wellbeing is maximized and health impacts are understood</p>	<p>Positive: The proposals will support safe outside seating areas encouraging offering people an environment where they can meet up with family and friends to enjoy food and drink.</p>	<p>Positive: The proposals will ensure that approval of licences is conditioned on maintaining a safe environment for all users of the highway.</p>
<p><b>A Wales of cohesive communities</b> Communities are attractive, viable, safe and well connected</p>	<p>Positive: The proposals will help to create better town centre environments for the local community and visitors to enjoy. The proposals also offer a wider opportunity to regenerate our towns and make them safe and appealing places to visit thereby supporting not only the hospitality industry but also other shops and other services which operate within the town centres.</p>	<p>Positive: The proposals will ensure that the appearance of pavement cafes is in keeping with the local environment as well as keeping the highway safe for all users.</p>
<p><b>A globally responsible Wales</b> Taking account of impact on global well-being when considering local social, economic and environmental wellbeing</p>	<p>N/A</p>	<p>N/A</p>

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<p><b>A Wales of vibrant culture and thriving Welsh language</b> Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation</p>	<p>Positive: the policy is supportive of street cafés and outdoor trading in appropriate locations and will allow communities to meet and socialise and enjoy our historic market towns, increasing dwell time for both residents and visitors which assists the local economy. This will assist with a thriving culture and successful businesses keep historic buildings in use and maintained, supporting our built heritage.</p>	<p>N/A</p>
<p><b>A more equal Wales</b> People can fulfil their potential no matter what their background or circumstances</p>	<p>Positive: the policy will ensure that pavement cafés operate within defined areas with sufficient highway remaining clear of obstruction for people with mobility difficulties or visual impairments or with pushchairs.</p>	<p>N/A</p>

**3) How has your proposal embedded and prioritised the sustainable governance principles in its development?**

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Balancing short term need with long term and planning for the future</p>	<p>The policy aims to set out a longer-term objective in supporting economic development of town centres whilst in the short-term ensuring that the safety of all users of the highway are properly considered as part of the annual application process.</p>	<p>The policy will support future enforcement action required to remove illegal and dangerous café areas. The highway has a duty to protect all users of the highway and the application process ensures that every pavement café area does not restrict or present a danger to the public. The criteria take in to account the needs of all users</p>

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Working together with other partners to deliver objectives</p> <p><b>Collaboration</b></p>	<p>This policy is for the wider local and business community and in line with Monmouthshire Community Partnership objectives.</p>	<p>None</p>
 <p>Involving those with an interest and seeking their views</p> <p><b>Involvement</b></p>	<p>A number of organisations and individuals have been consulted:</p> <ul style="list-style-type: none"> <li>• Licencing Team;</li> <li>• Legal Services Team</li> <li>• Alan Burkitt, Welsh Language and Equality Officer, Monmouthshire County Council</li> </ul> <p>As well as responding to feedback from local elected representatives and business representatives, especially via the Business Resilience Forum.</p>	<p>None</p>
 <p>Putting resources into preventing problems occurring or getting worse</p> <p><b>Prevention</b></p>	<p>This proposal will both save resources and prevent potential problems with unsafe and unsightly pavement cafés within our towns.</p>	<p>None</p>

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Considering impact on all wellbeing goals together and on other</p>	<p>As the Highway Authority, we are responsible for ensuring that our streets are safe for all users and also maintain access for all users as well as the emergency services. The policy aims to balance the need to support food and drink premises whilst at the same time keeping the highway safe and free from obstruction for all users and those with restricted mobility or minority groups.</p>	<p>None</p>

**4. Council has agreed the need to consider the impact its decisions has on the following important responsibilities: Corporate Parenting and Safeguarding. Are your proposals going to affect any of these responsibilities?**

	<b>Describe any positive impacts your proposal has</b>	<b>Describe any negative impacts your proposal has</b>	<b>What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?</b>
Safeguarding	Not applicable	Not applicable	n/a
Corporate Parenting	Not applicable	Not applicable	n/a

**5. What evidence and data has informed the development of your proposal?**

The approach taken by other Welsh councils (particularly those which neighbour our own) to mitigate issues of obstruction on the public highway and to protect the interests of all users.

We have:

- Researched the policies of other Welsh Councils
- Consulted with a wide range of other internal services who are impacted by the provision of pavement cafés within our towns.

**6. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?**

**Positive impacts:** to reduce / eliminate obstruction of the public highway whilst supporting the wider objectives of creating safe, vibrant and healthy environments to support our town centres.

**7. ACTIONS:** As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.

What are you going to do	When are you going to do it?	Who is responsible
Review the policy including the consideration of the views and suggestions of businesses and other interested parties.	September 2022	Asset & Street Works Team

**8. VERSION CONTROL:** The Equality and Future Generations Evaluation should be used at the earliest stage, such as informally within your service, and then further developed throughout the decision making process. It is important to keep a record of this process to demonstrate how you have considered and built in equality and future generations considerations wherever possible.

Version No.	Decision making stage	Date considered	Brief description of any amendments made following consideration
1	Initial draft	22 <sup>nd</sup> October 2021	
2	Final version	20 <sup>th</sup> December 2021	Addition of local pictures and update with comments from other internal teams.

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# Monmouthshire County Council's Pavement Café Licensing Policy.

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## 1.0 Introduction

- 1.1 Alfresco eating is becoming a more widespread aspect of 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 as well as supporting local businesses. Monmouthshire County Council supports and encourages the provision of pavement cafés in Monmouthshire as they can help maximise the use of public spaces, aid the local economy and add to the facilities offered to people who visit, live and work in Monmouthshire.
- 1.2 Tables and chairs placed on the highway without permission can be illegal as they could amount to an obstruction. However, permission to use the highway for pavement cafés may be granted the Council under Section 115E of the Highways Act 1980.
- 1.3 Accordingly, whilst the Council wishes to encourage pavement cafes, it is important that they are properly located and managed. This is to ensure that they meet the standards we expected by Monmouthshire County Council and that they do not obstruct the highway or create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.
- 1.4 The area to be used must consider other needs in the immediate vicinity e.g. kerbside parking, bus stops and pedestrian crossings. Pedestrians' needs must be paramount. The expanse of the pavement café must not conflict with any access or dropped kerb crossings that are required for free passage. Barriers and tapping rails should be positioned and maintained to the satisfaction of Monmouthshire County Council and unless explicitly agreed otherwise in the approved licence, shall be totally removed outside the permitted hours of operation of the pavement café.
- 1.5 The pavement café is normally expected to be in an area directly in front of and visible from the existing premises. Emergency exit routes, including those of adjacent buildings, should not be obstructed by the pavement café and emergency service vehicles must always have access along all streets, even in pedestrianised streets.
- 1.6 In general, all parts of the highway may be used for pavement cafés, assuming all safety and non-obstruction requirements are met. The exceptions are:
  - Any live carriageway or 'shared use surface' used by vehicles;
  - Any highway verges;
  - Where width of the pavement makes it impractical;
  - Where authorised street furniture makes it impossible.
- 1.7 **Licences will not normally be granted where:**
  - A significant effect on road safety would arise either from the siting of the tables and chairs, or from customers visiting or leaving the licensed area; or
  - Where there are concerns over the recorded level of personal injury accidents in the locality where the tables and chairs will be sited; or
  - There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour, or fumes; or
  - There is a conflict with Traffic Orders, such as waiting restrictions; or
  - The site obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use; or
  - The tables and chairs obstruct the safe passage of users of the footway or carriageway; or

- The area to be licensed interferes with sight lines for any road users such as at road junctions, or pedestrian crossing facilities; or
  - The site does not allow the licence holder, staff, and customers to park in a safe manner; or
  - The trading activity is carried out after dusk and the site is not lit to allow safe access and egress from the site for both customers and staff; or
  - The Council is not satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business; or
  - The Council is not satisfied that applicants have made satisfactory arrangements for the storage of all tables and chairs off the highway without impeding any access or egress from the premises.
- 1.8 In considering the above matters, the standard guidance will be that a licence will only be issued if an adequate unimpeded pedestrian route can be maintained at all times, having particular regard to those with a disability. All applications will be considered on their own merits.
- 1.9 Pavement café licences will only be issued to cafés, restaurants, public houses, or other catering establishments that serve food and drink within the premises.
- 1.10 The Council will carry out periodic inspections to make sure that all the terms and conditions of the licence are being observed.
- 1.11 A pre-licensing visit will be made to each premise upon receipt of an application for the renewal, or variation of a pavement café licence, to discuss the application process, the proposed operation of the café etc. to provide advice and information to the applicant.
- 1.12 Once the pavement café licence has been issued, a further visit will be made to the premises to review the practical day-to-day operation of the café. An additional visit may also be undertaken to ensure the premises is meeting licence conditions.

## **2.0 Legal Framework and Controls**

- 2.1 Permissions to use the highway for pavement cafés are granted by the issue of licences by the Council as the Highway Authority under Section 115E of the Highways Act 1980. Tables and chairs placed on the highway without permission are an illegal obstruction and the Council will take enforcement action in such cases. A fine of up to £1,000 can be levied by a Magistrates' Court for committing an offence of obstructing the highway.
- 2.2 Granting a licence to operate a pavement café does not imply an exclusive right to the area. The operator of the café should be aware that the Council reserves the right to gain access to the café area for cleaning, repairing, and maintaining the highway or street furniture. Other statutory organisations may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the licence temporarily if, for any reason, it becomes necessary.
- 2.3 If it appears to a Council that a person to whom they have granted a permission under Section 115E above, has committed any breach of the terms of that permission, they may serve a notice requiring such steps to be taken to remedy the breach as are specified in the notice within such time as is so specified.
- 2.4 If a person who is served a notice and fails to comply with the notice, the Council has the power to take whatever steps are necessary themselves.
- 2.5 Where the Council has incurred expenses in the exercise of the power, then those expenses, together with interest at a reasonable rate, may be recovered by the Council from the Licence holder.
- 2.6 Under the terms of the Highways Act 1980, the Council cannot grant permission unless it obtains the express consent of interested frontages that may be materially affected by the proposal.
- 2.7 (Section 115A (7) of the 1980 Act states that "frontages" means: "the owners and occupiers of any premises adjoining the part of the highway on, in or over which facilities for recreation or refreshment or both, have been, are being or would be provided.)
- 2.8 For express consent of a consultee to be required, the proposed pavement café would need to directly affect that consultee's frontage.
- 2.9 The pavement café must operate in accordance with the conditions of the licence. Any breach of the conditions may lead to action by the Highways Section to revoke or refuse a licence in the future.
- 2.10 The Council will not permit any wheeled refuse containers, beer kegs, bottle crates to be stored on or adjacent to the pavement café area.
- 2.11 The barriers, table, chairs, and layout shall be as agreed by the Council and shall always conform to the approved plan.
- 2.12 The premises shall not use any boards or advertising signs or any other unsightly or unapproved items placed adjacent to the area.
- 2.13 The Licence holder shall make no claims or charge against the Council in the event of the street furniture being lost, stolen, or damaged in any way from whatever cause except where the same is attributable to negligence of the part of the Council or any of its officers.
- 2.14 If for whatever period or reason a public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.

- 2.15 The licence holder shall not cause or undertake any alterations to the highway surface.
- 2.16 The licence holder shall not assign, sub-let, or part with his interest or possession of a licence.
- 2.17 The Council may suspend or terminate a licence if any of the conditions of the licence are breached.
- 2.18 The licence does not take precedence over Police powers to preserve public order.

### **3.0 Private Land**

- 3.1 This policy relates only to pavement cafés on a public highway. Cafés on private land are not covered by this policy. However, although a pavement café on private land may not need a licence, it may require planning permission if the structures and fittings are not of a temporary nature or if there is a material change of use of the land. Before proceeding, it would be wise to check with Council Planning Services to establish if planning permission is necessary.
- 3.2 Land that might to be private may in fact have become part of the highway if the public have enjoyed access over it for at least twenty years or if the Council has formally adopted the land.

### **4.0 Right of Access**

- 4.1 Authorised Officers of the Council and Police Officers shall have access to a pavement café at all reasonable times.

### **5.0 Advertising**

- 5.1 Advertising of alcoholic or smoking products or their manufacturers will not be permitted on the barriers or furniture within the pavement café area. Advertising may only relate to the premises or business and will require the approval of Monmouthshire County Council as part of the pavement café licence.

### **6.0 Designing the Pavement Café**

- 6.1 The size and layout of the proposed pavement café will be dependent upon the characteristics of the site outside of the premises particularly the space available considering the needs of other users and it is not appropriate for this Policy to set a standard size for the pavement café.
- 6.2 Plans will need to be submitted with an application and shall be drawn to scale and with written metric dimensions and must include:
  - An up-to-date location plan (1:1250 scale) showing the outline of the premises and the proposed location of the street café
  - Site layout plan (1:100 or 1:50 scale) showing the proposed boundary, kerb and building lines, enclosure barriers, points of access, table and seating layout, location of parasols, heaters etc, dimensions of the remaining pavement for pedestrian use, location of any street furniture such as bollards or streetlights within or adjacent to the pavement café area.
  - Photographs or drawings of the proposed furniture and barriers and details of where they will be stored outside of the licencing hours.

- 6.3 The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.
- 6.4 The pavement café should:
- occupy an area directly in front of the Applicant's premises.
  - be visible from these premises; and
  - Not extend beyond the width of its frontage (unless in exceptional circumstances and granted by Highway Authority).
- 6.5 Emergency routes from adjacent buildings and the Applicant's premises should not be obstructed by the pavement café. If the emergency services object to the proposal on safety grounds, it is highly likely that the Council will refuse it.

## **7.0 Minimum Unobstructed Space Criteria**

- 7.1 On a normal street, there must remain at least 1.8 metres of unobstructed pavement space to allow pedestrians to pass by safely. Each case will be judged on its merits. This requirement may be waived by the Council in exceptional circumstances: any such decision will be made on safety grounds and in no circumstances may the clear pavement width be reduced below 1.2 metres.

## **8.0 Lighting**

- 8.1 The Applicant for a pavement café licence should, if intending to open beyond dusk, carefully consider the level of lighting in the proposed pavement café area. Whilst street lighting may be perfectly adequate for a public highway, it may need supplementing to allow the pavement café to operate safely. Any additional lighting equipment and supply must be specified in the application to enable its impact upon the highway to be considered.

## **9.0 Tables and Chairs shall be:**

- 9.1 Of a neutral colour scheme e.g., chrome, brushed aluminium, black, brown, beige, grey or white, with natural or neutral stained timber or wicker detailing; all must be fitted with rubber feet to reduce noise when moving and damage to paved surfaces.
- 9.2 The Council reserves the right to reject applications where inappropriate furniture is proposed. So, it is advisable to discuss furniture proposals with the Highways Section before any furniture is purchased. Full details of proposed furniture will be required upon submission of the application, including metric dimensions and material and a photo or drawing. When choosing furniture regard needs to be had of 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.

## **10 Parasols**

- 10.1 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.
- 10.2 Parasols, when opened, should be safely secured, and contained entirely within the boundaries of the pavement café to ensure they do not cause an obstruction or present a danger to any user of the street café or any other users of the highway.

- 10.3 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 a uniform design and colour. Garden style umbrellas are not acceptable. The base of the parasol must not cause a trip hazard in the pavement café area.
- 10.4 The only advertising permitted on parasols is the name of the café/ business. Such advertising must not be too dominant and should not detract from the appearance of the building and its setting, especially in conservation areas. Parasols advertising alcohol or tobacco will not be allowed.
- 10.5 Canopies, awnings, blinds etc. which are to be attached to the building may require advertisement consent or planning permission. Advice should be sought from Planning Services. See the contacts section at the end of this guide.

## **11 Space Heaters**

- 11.1 If you intend to use space heaters, their metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout.
- 11.2 In considering an application, Monmouthshire County Council will have regard to the inherent safety of the equipment, its location, storage of fuel cylinders, maintenance, and training arrangements.
- 11.3 Applicants will be required to submit a formal risk assessment as required by the Management of Health and Safety at Work Regulations 1999 in support of your application. This should be carried out by a competent person (someone who has knowledge of the law, British Standards, and Health and Safety Executive Codes of Practice and Guidance).
- 11.4 Monmouthshire County Council will consider the adequacy of the risk assessment which must:
  - Identify the hazards e.g., fire, explosion, burns, impact from falling equipment / cylinders;
  - Decide who may be harmed and how;
  - Evaluate the risks and decide whether proposed precautions will be adequate or whether more could be done;
  - Record findings;

## **12 Barriers**

- 12.1 Barriers or other means of enclosure are required to ease/ guide pedestrian movement, guide the visually impaired, protect users of the facility and mark the boundary of the licensed area.
- 12.2 The agreed pavement café boundaries shown on the plan that will be attached to the licence if successful must be always adhered to. The boundaries are required to be enclosed by either barriers or planters. Unless explicitly agreed otherwise in the approved licence, barriers and all furniture shall be totally removed outside the permitted hours of operation of the pavement café.



12.3 It is essential that the means of enclosure is fit for purpose and suitable for the terrain in which that the pavement café operates. Should the Council deem barriers unsafe, we may ask that the tables and chairs be removed until suitable barriers are provided. The means of enclosure must:

- Be stable and sturdy for all weather conditions the pavement café will operate in, including windy conditions: additional weights may be necessary to ensure barriers remain stable and secure;
- Not contain protruding parts;
- Have a tapping rail along the bottom of the barrier that visually impaired pedestrians can use to navigate around the street café using a stick;
- Only display the name of the café/ business. They must not be used to advertise products or services. No alcohol advertising or tobacco advertising is permitted. Proposed details of means of enclosure must be provided with the application;
- Hoops or post and chain type barriers and low-level objects that are a trip hazard will not be acceptable.

**Barriers must not be permanently fixed to the ground where this is public highway**

### 13 Example of Good Practice

(add photos here)



### 14 Examples of furniture not permitted



### 15 Managing the street café & Insurance.

15.1 The licensee will be required to indemnify the Council against all actions, demands, costs, charges, or expenses arising from using the highway under the permission granted. The

Council will, therefore, require the licensee to take out third party public liability insurance in the sum of at least £5,000,000.

## **16 Operation**

- 16.1 Hours of operation will be determined on the application's merits, although the following maximum hours will apply: 9:30hrs to 23:00hrs. Shorter hours may be required in some locations, for example due to part time road closures. Unless explicitly otherwise agreed in the approved licence, posts, barriers, tables and chairs shall not be placed upon the highway before the commencement of the pavement café approved hours and shall be removed entirely before the end of the pavement café approved hours. The area shall be left clean and tidy and free of any rubbish.
- 16.2 All furniture should be removed outside of the licenced hours unless the premises is licensed under the Licensing Act 2003 (for sale of alcohol). In this case, barriers can remain in place until either when premises close, or no later than 04:00hrs to create a "smoking area". No furniture other than space heaters, parasols should be present in the "smoking area" and no alcoholic drinks or glassware shall be present in this area after 22:30hrs.
- 16.3 Licences are granted for a maximum of one year and are renewable annually. Licences for new sites will be subject to a three-month probationary period.
- 16.4 A copy of the Licence and plan must be always kept on the premises and be available for inspection. When the area of a pavement café 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.

## **17 Fees**

- 17.1 The administration fee for processing a street café licence application is £10.00\* and contributes towards the administrative and legal costs incurred in the preparation and issuing of the licence.
- 17.2 Upon approval of the licence, the balance of the fee will be required which covers the monitoring and enforcement and is based upon the number of chairs and tables and hours of use.

\*This fee will be subject to an annual review and is likely to increase to recover the Council's costs of issuing the licences.

## **18 Granting of a licence**

- 18.1 Under the terms of the Highways Act 1980, the Council is required to advertise applications for pavement café licences for not less than 28 days by posting a notice in the vicinity of the proposed street cafe. These notices set out details of the proposals and invite representations to be made by people who may be affected. If no objections are raised, the Licence will be granted within 5 working days of the expiration of the publicity period. If an objection is raised, the Service Manager will be required to determine the application within 20 working days or refer the matter to an external arbitrator as required by the Highways Act 1980 if no determination can be made.

## 19 CONDITIONS FOR PAVEMENT CAFÉ LICENCES.

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

1. The maximum permitted hours of operation as stated on the attached licence shall not be exceeded without prior permission from the Council.
2. Unless explicitly otherwise agreed in the approved licence, posts, barriers, tables and chairs shall not be placed upon the highway before the commencement of the pavement café approved hours and shall be removed entirely before the end of the pavement café approved hours. The area shall be left clean and tidy and free of any rubbish.
3. A copy of the licence and pavement café layout must remain at the premises and must be produced to any authorised officer on request.
4. Food or non-alcoholic drinks must be always available when the pavement café is open.
5. Furniture stored within the premises should not at any time block a fire exit.
6. The use of advertisement boards is prohibited
7. The advertising of alcohol or cigarettes is prohibited
8. Barriers and parasols can advertise the name of the business only.
9. The café area must be always supervised whilst it is operational.
10. No live or recorded music shall be played within any part of the Pavement Café.
11. Emergency routes from adjacent buildings and the applicant's premises shall not be obstructed by the pavement café.
12. The licence holder shall not cause or permit any alterations to the highway surface.
13. The licence holder shall not assign, sub-let, or part with his interest or possession of a licence.
14. Authorised Officers of the Council and Police Officers shall have access to a pavement café at all reasonable times.
15. If requested by a Police Officer or an Authorised Officer of the Council, all items shall be removed from the highway. These items shall remain off the highway for as long as is required.
16. The licence holder shall be responsible for the conduct of people, both patrons and employees, within the pavement café area.
17. Patrons shall not be permitted to remove food, drinks, crockery, or any cutlery from the pavement café.
18. All tables must be cleared of all uneaten food, used crockery, cutlery etc. and thoroughly cleaned of any spillage immediately they are vacated by customers.
19. Food and drink must not be stored or prepared outside the normal premises
20. All the food and drink that is consumed within the pavement café area must be ordered and purchased there.
21. All furniture shall be of high quality constructed of wood or metal and approved by the Council.
22. Parasols, when opened must not overhang the boundary of the pavement café and must remain closed in periods of high winds.
23. Permitted receptacles to be used within the pavement café are: - Glasses made of toughened or tempered safety glass Glasses made of polycarbonate or plastic Paper Cups China cups, saucers, and plates

24. The use of barbecues, rotisseries, ice cream machines, drinks machines or any other equipment for the preparation and / or sale of food and drink for consumption on or off the premises will not be permitted within the pavement café area.
25. The entire pavement café (apart from entrances) shall be enclosed in its entirety with a suitable barrier, the design, and dimensions of which must be agreed, in writing, by the Council. Space will be required for circulation and access within the enclosed area in addition to that for tables and equipment.
26. All activity associated with the pavement café shall be contained within the boundary including tables, chairs, and other permitted equipment.
27. The agreed boundary and layout of the pavement café as defined by the plan attached to the Licence shall not be altered without the express permission of the Council.
28. Barriers must not be permanently fixed to the ground on a public highway.
29. On a normal street, there must remain at least 1.8 metres of unobstructed pavement space to allow pedestrians to pass by safely. Each case will be judged on its merits. This requirement may be waived by the Council in exceptional circumstances: any such decision will be made on safety grounds and in no circumstances may the clear pavement width be reduced below 1.2 metres.
30. The licence holder shall always keep the area within the boundaries clean and litter free. Any litter that escapes from the inside of the licensed area to the outside of the area shall be collected by the licence holder.
31. Suitable litter/refuse bin(s) shall be provided within the pavement café area at all times of operation and taken inside at close of trading. The licence holder shall be responsible for disposing of all waste produced at the pavement café.
32. The licence holder shall provide Public Liability insurance cover for the pavement café and shall indemnify the Council against all claims in respect of injury, damage or loss arising out of the granting of permission, (e.g., damage to the highway or highway furniture) to a minimum value of £5,000,000 unless such claims arise out of the Council's own negligence.
33. If for whatever period or reason a public liability insurance policy is not in force, the Council shall be deemed to have withdrawn this Licence for the period during which the said policy is not in force and the licence holder may be held liable for obstruction of the highway and prosecution under Section 137 of the Act.
34. Where repair or maintenance of the pavement/highway is to be undertaken, Monmouthshire County Council will not be liable for any loss of trade and/or income. Whilst repair/maintenance is carried out. The Licence Holder/s must allow the Council reasonable access for such works.
35. Where gas heaters are used, the connections, including the regulator, hose & clips must be fit for purpose and checked on a regular basis and not be exposed in such a way that they are a trip hazard.
36. All customers using the pavement café will be required to be seated.
37. If the area is going to be used after 21:00hrs, CCTV will be installed to cover all the area. The date and time settings on the system must be correct and the CCTV system must be capable of recording images to a suitable medium that allows reply. Recordings must be retained for a minimum of 31 days. Staff shall be trained in the maintenance and operation of the CCTV system with a record kept of the date and name of person trained. A trained member of staff should be on duty to operate the system whenever the premises are open.
38. If 6 or more tables are used, 50% of the area should be also a non-smoking area until 23:00hrs

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