

**MEMBERS OF THE GENERAL
LICENSING COMMITTEE
16 OCTOBER 2018**

ITEM FOR DECISION

APPLICATION FOR A PAVEMENT CAFE LICENCE

APPLICANTS:	VERUSCHKA JASMIN JANE ROBSON PHILLIP ALAN ROBSON
ADDRESS:	46 WOODLAND TERRACE DARLINGTON
PURPOSE OF REPORT:	GRANT OF PAVEMENT CAFÉ LICENCE
DATE OF APPLICATION:	17 AUGUST 2018
NAME OF PREMISE:	HATCH LUNCHEONETTE
ADDRESS OF PREMISE:	32 BLACKWELLGATE DARLINGTON

APPLICATION FOR GRANT OF PAVEMENT CAFÉ LICENCE

PURPOSE OF REPORT

- 1) To invite Members to consider an application for the grant of a licence to operate a pavement café in light of objections from Darlington on Disability (DAD) and Highways due to the proposed location of the café.

LEGISLATION

- 2) The licensing of pavement cafes is regulated by the Highways Act 1980 (the 1980 Act). Section 115E of the 1980 Act permits the Council to issue Pavement Café Licences for areas of the public highway.
- 3) Section 115A(7) of the 1980 Act states that “frontagers” means: “the owners and occupiers of any premises adjoining the part of the highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both, have been, are being or would be provided; but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide operate facilities wholly or partly between their premises and the centre of the highway.”
- 4) Section 115E (3) of the 1980 Act prohibits a council from granting such permission unless the consent of frontagers with such an interest is obtained; however consent must be not be unreasonably withheld.
- 5) Section 115F of the 1980 Act permits the Council to require payment for, and place conditions on, any grant of licence.
- 6) Section 115G of the 1980 Act requires that a council shall not exercise its power or grant a permission until they have taken into consideration all representations made to them in connection with the proposal.
- 7) Section 115J of the 1980 Act states that it may be reasonable for consent (as detailed in Section 115(E) to be given for a specified period of time or subject to the payment of a reasonable sum. The section also states that consent is to be treated as unreasonably withheld if the Council has served a notice asking for consent and a response of either consent or refusal to give consent is not received within 28 days.
- 8) Section 115K deals with any failure to comply with terms of the licence and permits the Council to serve a notice requiring remedy of the breach. If this notice is not complied with, the Council may take the steps themselves and recover reasonable expenses.

BACKGROUND

- 9) On 26 July 2018 officers from Licensing met with the applicants and the Town Centre Manager to discuss a proposed application for a pavement café. The area of pavement was outlined, and several options were discussed concerning the suitability of the site and potential layout of the café, the extent of the area the café would occupy and the stone steps between the proposed site and the existing café Hatch.

The barriers surrounding the café were also discussed and several suggestions were made regarding the extent and structure of those barriers.

- 10) The applicant was advised that there would likely be objections to the application and if it was suggested that they submit a plan of the layout of the café and Licensing would consult on its suitability.
- 11) On 17 August 2018, an application for the grant of a licence to operate a pavement café was made by Mr and Mrs Robson in respect of the paved area around the Pulse Lights on Blackwellgate.
- 12) This area is adjacent to the Mrs and Mrs Robson's café which is situated on the corner plot on Blackwellgate and would be separated by a public walkway.
- 13) The application proposed that the pavement café would operate as an extension of the current café and table service would be offered.
- 14) It was also proposed that the café would occupy the area surrounding the four "Pulse Lights" on Blackwellgate and use the pulse lights as part of a feature of the café.
- 15) The proposed hours of operation are

Monday to Saturday	8:00 to 19:00
Sunday	10:00 to 16:00
- 16) The café layout proposes that there will be five tables and 20 seats. A copy of the application is attached at Appendix 1.
- 17) On 17 August 2018, Licensing consulted with Environmental Health, the Police, and Highways. Additionally, where an application is made within the town centre, DAD were also consulted.
- 18) On 19 August 2018, Mr Pybus from DAD responded to the consultation and advised that the café layout or position did not meet the Council's Policy on pavement cafes.
- 19) Mr Pybus also pointed out that anyone wanting to try the pulse lights would need to get in amongst the tables and chairs which would be extremely difficult for wheelchair users or anyone with a visual impairment.
- 20) Mr Pybus advised that many people who have a visual impairment use street furniture to try to get a bearing on their location but also that the lights would create an obstacle to disabled people accessing the tables and chairs. He was also concerned that the barriers surrounding the proposed cafe would be placed on the tactile corduroy hazard warning at the top of the steps. He explained street tactiles give a message to anyone with visual impairments and should not be obstructed. A copy of Mr Pybus's response is attached at Appendix 2 and photographs of the area to be occupied by the proposed café are attached at Appendix 3.
- 21) On 20 August, the applicants were advised of the objection to the application and were asked if they wished to re-locate the café or if they wanted to proceed with the application as is, then the matter would be referred to the Council's Licensing Committee.

- 22) The applicant responded and stated that they would like to the application to go forward.
- 23) A short while later, Highways responded stating that they agreed with Mr Pybus and that the enclosing of a feature intended for public enjoyment should not be supported.
- 24) The Police have no objections to the application.

DECISION

- 25) The Council has a Policy concerning pavement cafes which was revised in March 2014. The Policy makes it clear that whilst the provision of pavement cafes is encouraged, it is important that they are properly administered and managed to ensure that they meet the high standards expected in Darlington town centre. They should not obstruct the highway or create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.
- 26) And the policy also states that the area to be used must take into account 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 crossings that are required for free passage of normal road users. A copy of the Pavement Café Policy is attached at Appendix 4.
- 27) Members are respectfully reminded that there is no direct legislation controlling pavement cafes and that local authorities can choose to give permission to the placing of tables and chairs on the public highway.
- 28) Members are also advised that should they opt to grant the application then such grant should be subject to a disability impact assessment.
- 29) The options therefore are as follows: -
 - a) Grant the application subject to the standard pavement café conditions and disability impact assessment
 - b) Grant the application, subject to a disability impact assessment, and place additional conditions on the licence that Members may consider necessary to address any concerns
 - c) Reject all or part of the application

Members are reminded that there is no statutory right of appeal to the Magistrates or County Court in respect of this matter. Members will however be aware that dissatisfied parties may elect to seek a judicial review

LEGAL IMPLICATIONS

- 30) There are no issues that the Assistant Director, Law and Governance consider need to be brought to the specific attention of Members, other than those highlighted in the reports.

CRIME AND DISORDER ACT 1998 SECTION 17

- 31) The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The contents of these reports provide details of criminal activities.

RECOMMENDATION

- 32) Members are requested to determine an appropriate course of action in relation to the attached report and provide reasons for their decision.

**IAN WILLIAMS
DIRECTOR OF ECONOMIC GROWTH AND NEIGHBOURHOOD SERVICES**

Julie Richings - Licensing Manager ext. 6391

APPENDICES

APPENDIX 1	Application Form
APPENDIX 2	Response from DAD
APPENDIX 3	Photographs of the proposed area of pavement
APPENDIX 4	Pavement Café Policy 2014.



**HIGHWAYS ACT 1980 SECTION 115E
APPLICATION FOR A PAVEMENT
CAFÉ LICENCE**

RECEIVED
17 AUG 2018
LICENSING

Before completing this form please refer to the Council's Guide to Licensing Pavement Cafés and the checklist on the last page of the form. This form, together with the specified supporting documents should be submitted to:

Licensing
Darlington Borough Council Town Hall
Darlington DL1 5QT 01325
405888

For Office Use Only:

Grant Renewal Variation

Ref: DL18/01319/PAVEM

Fee Paid: £240.00

Receipt Number: 17/8/18. #554

Date Received: 17/8/18.

- Grant** Please complete form fully
- *Renewal** Please complete sections 1 2 4 5 6
- *Variation** Please complete form fully

*Reference number of current Pavement Café Licence:

*Expiry date of current Pavement Café Licence:

SECTION 1 APPLICANT DETAILS

Surname Robson

Forenames Veruschka Jasmin Jane and Phillip Alan

Full Postal Address 46 Woodland Terrace
Darlington

Postcode: DL3 9NU

Telephone Number Mobile Telephone 07825 213512

Email Address

hatchluncheonette@outlook.com

SECTION 2 LOCATION OF PAVEMENT CAFÉ BUSINESS

Trading Name

Hatch Luncheonette

Full Postal Address

32 Blackwellgate, Darlington

Postcode: DL1 5HG

SECTION 3 DETAILS

Please give details of how you propose to operate the Café or details of proposed variation. (please refer to the Guide and continue on a separate sheet if necessary).

The Pavement cafe will be operated as an extension of our existing cafe and in the same way. Table service will be in operation and the same food and drinks menu will be offered as is within the cafe. The same hours of operation will be in place.

If you propose to open the pavement café beyond dusk what arrangements are in place for lighting? - The lighting from the shop front is sufficient to light the seating area after dark.

SECTION 4 – ARTICLES FOR SALE

Please state which articles of food and drink you intend to supply for consumption in the pavement café

Full menu as in operation within the premises, drinks including our existing hot drinks and alcohol offering.

What facilities do you have for the hygienic storage of food - Full kitchen which has been inspected by environmental health and holds a 5 star food hygiene rating

What food preparation facilities do you have at the premises - Full kitchen which has been inspected by environmental health and holds a 5 star food hygiene rating

Are the premises registered as a food business with Darlington Borough Council

Yes

x

No

If yes what was the date of the last inspection

July 2018

SECTION 5 – HOURS OF OPERATION

Within the permitted hours of operation (refer to the Guide) please state the hours you intend operating / or are operating the Café on normal/market days eg 8.30 am – 9.00 pm.

Days	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
May-August	8am-7pm	8am-7pm	8am-7pm	8am-7pm	8am-7pm	8am-7pm	10am-4pm
Sept- April	8am-7pm	8am-7pm	8am-7pm	8am-7pm	8am-7pm	8am-7pm	10am-4pm

SECTION 6 SEATING ARRANGEMENTS – photographs may be useful

Please state the numbers of tables and chairs to be placed within your Pavement Café	TABLES	5	CHAIRS	20
Construction of furniture to be used	Wood	Metal	x	Other
Colour of furniture to be used	Grey			
Colour of Parasols to be used	Grey	Type of Material	Canvas & wood	

SECTION 7 – CONSENT

Have you the express consent of your business neighbours to this application? **YES**
Please provide details of neighbouring businesses either side of your proposed Pavement Café:

a)	Northern Goldsmiths, Saks and Durtona have been spoken to and do not object in principle.
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b)	
----	--

(NB letters of express consent from neighbouring businesses will speed up the application process)

This application **must** be accompanied by the following documentation:

Please ✓

- A completed application form
- The Application Fee
- Two copies of a location plan at 1:100 scale
- Two copies of a site plan at 1:100 scale which includes no of table chairs and parasols
- Risk Assessments covering Health and Safety and Food Provision
- A copy of the Public Liability Insurance Certificate (£5 million) in respect of the operation of a Pavement Café

SECTION 7 - DECLARATION

I declare that the information provided within this application form is true and correct.
I hereby apply for permission to operate/continue to operate a Pavement Café in accordance with the above details

Signed: [Signature]

Date: 14/08/2018

NB Please read carefully the following statement before signing this application form:

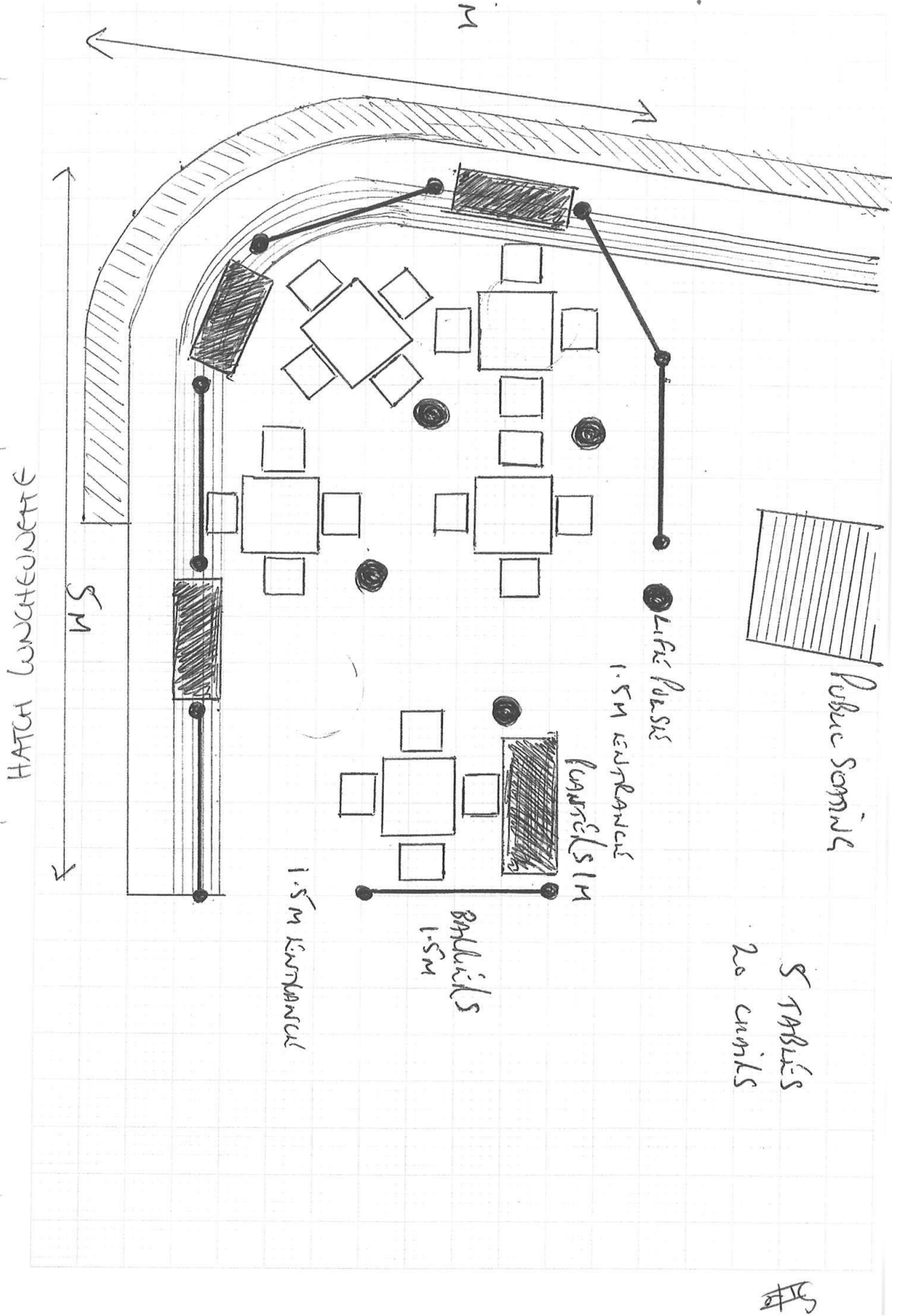
How we collect and use information : The information and supporting evidence collected on this form by Darlington Borough Council, will be used to process

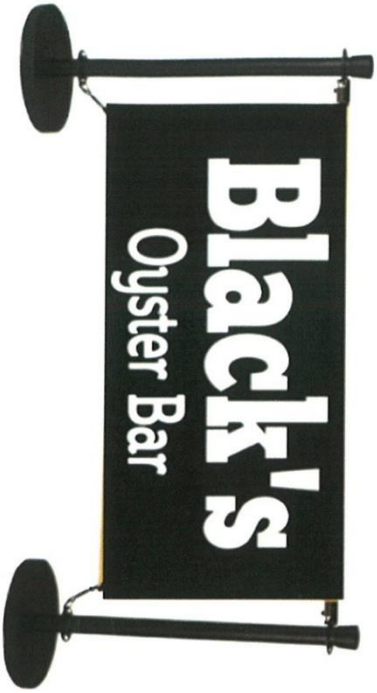
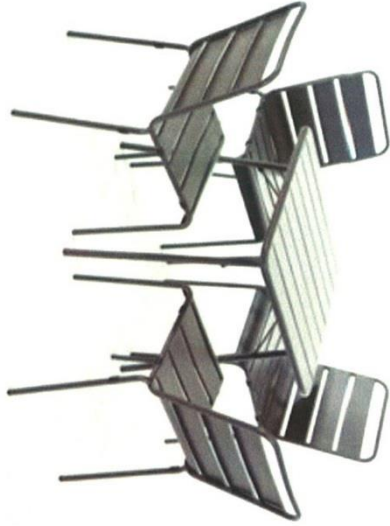
your application. The information may be passed to the Department of Social Security, Employment Service and Inland Revenue, as permitted by law.

We may check information provided by you, or information about you provided by a third party with other information held by us. We may also get information from certain third parties, or give information to them to check the accuracy of information, to prevent or detect crime, or to protect public funds in other ways, as permitted by law. These third parties include Government Departments and Local Authorities. We will not disclose information about you to anyone outside Darlington Borough Council nor use information about you for other purposes unless the law permits us to do so. Darlington Borough Council is the Data Controller for the purposes of the Data Protection Act 1988. If you want to know more about what information we have about you, or the way we use your information, you can ask the: Corporate Information Governance Team, Corporate Services, Town Hall, Darlington DL1 5QT (01325 388076 or email dataprotection@darlington.gov.uk).

Grant + 2 adjoining premises

Site Plan





19/8/18.

Adam Oliver

From: Gordon Pybus <gordon.pybus@darlingtondisability.org>
Sent: 19 August 2018 11:39
To: Adam Oliver; Environmental Health Licensing; Alcohol Harm Reduction Unit; Paul Ibbertson; DL Inspectors Defects
Subject: RE: PAVEMENT CAFE: Hatch Luncheonette, 32 Blackwellgate, Darlington DL3 9NU
CONSULT END: 14/09/2018

Hi

I don't understand why this pavement café application is out for consultation when it doesn't meet the requirements set out in the policy.

There must be a minimum of 2meter between a pavement café area and any street furniture and yet this is proposing to set up a pavement café in the middle of street furniture i.e. the 'pulse lights' and next to a public seat.

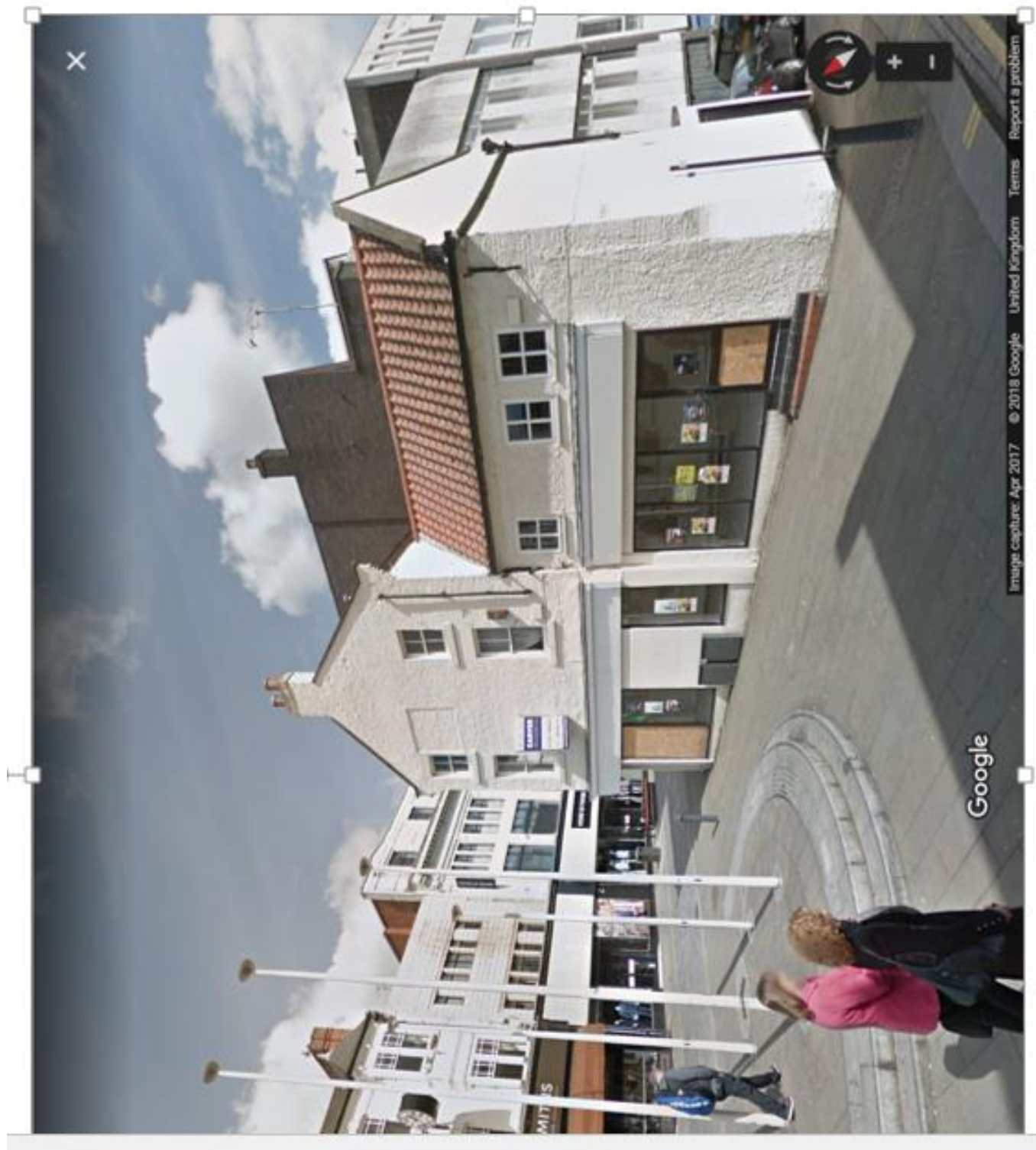
Anyone wanting to try the 'pulse lights' would need to get in among tables and chairs which would be extremely difficult for wheelchair users or anyone with a visual impairment. Street furniture is also used by many people who have visual impairments as a landmark, somewhere to get their location from. Even if they were classed as just lamp posts they would still street furniture and still create an obstacle for many disabled people accessing the tables and chairs.

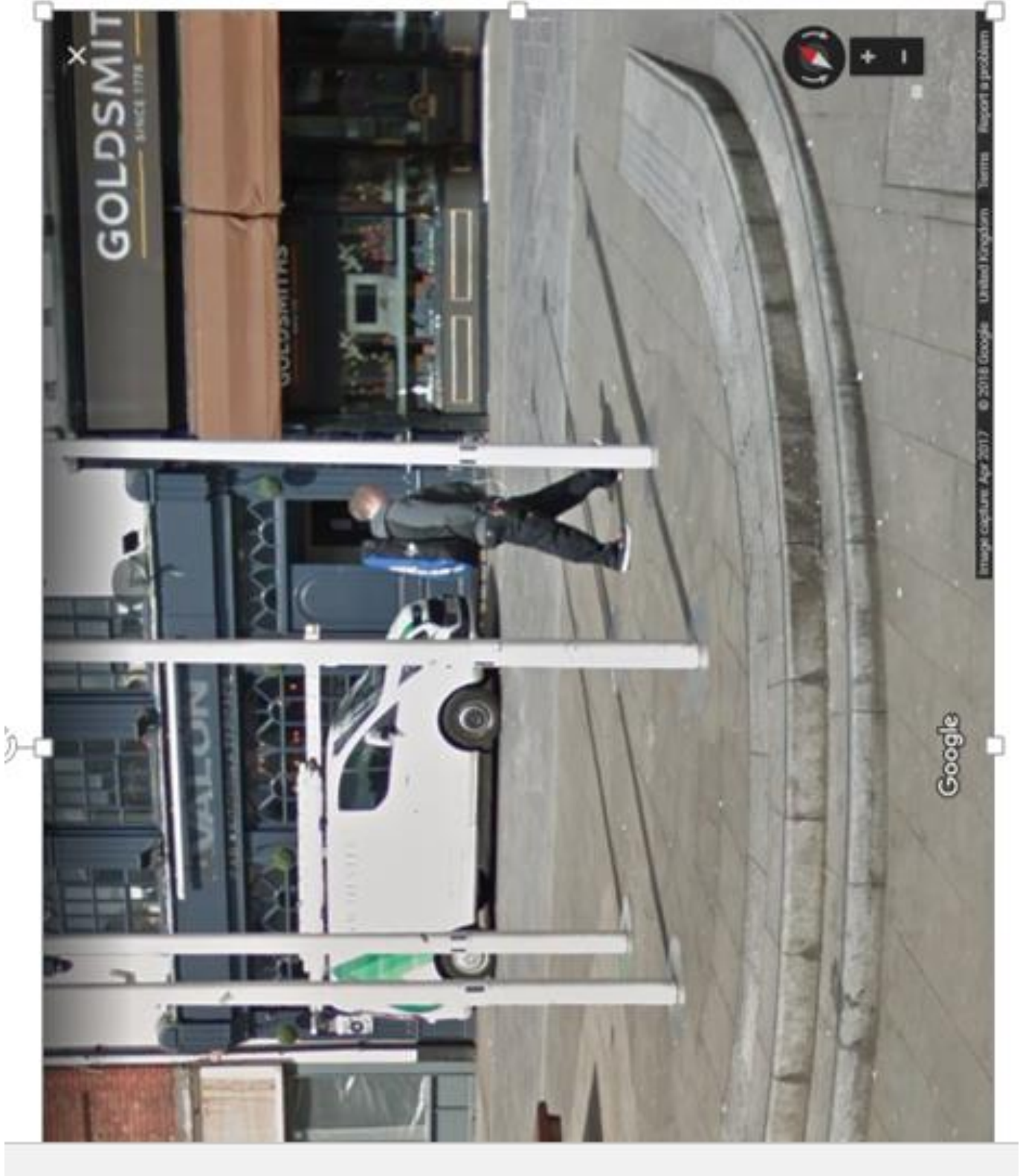
It is proposed to erect barriers on the tactile corduroy hazard warning at the top of the steps around the proposed pavement café area. Street tactile's give a message for people with a visual impairment and must never be obstructed in any way. Tactile's can't be in use one day but not the next or part of a day, they must be available at all times. Also like street furniture they are used by many people who have a visual impairment as somewhere to get their location from.

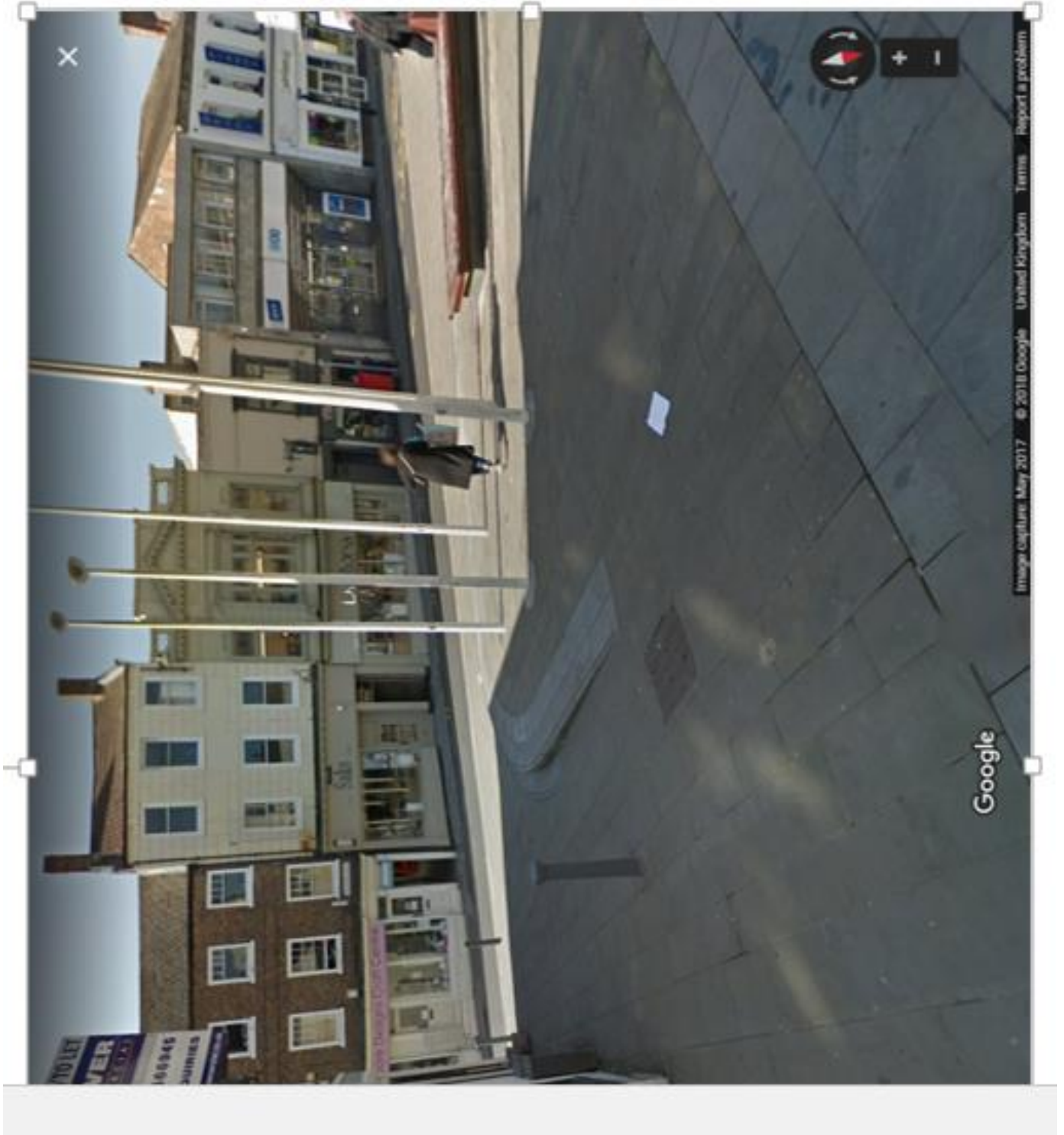
I object to the application on the ground giving above, however I should not have been put in this position because as I have already said this application doesn't meet policy and should not be out for consultation.

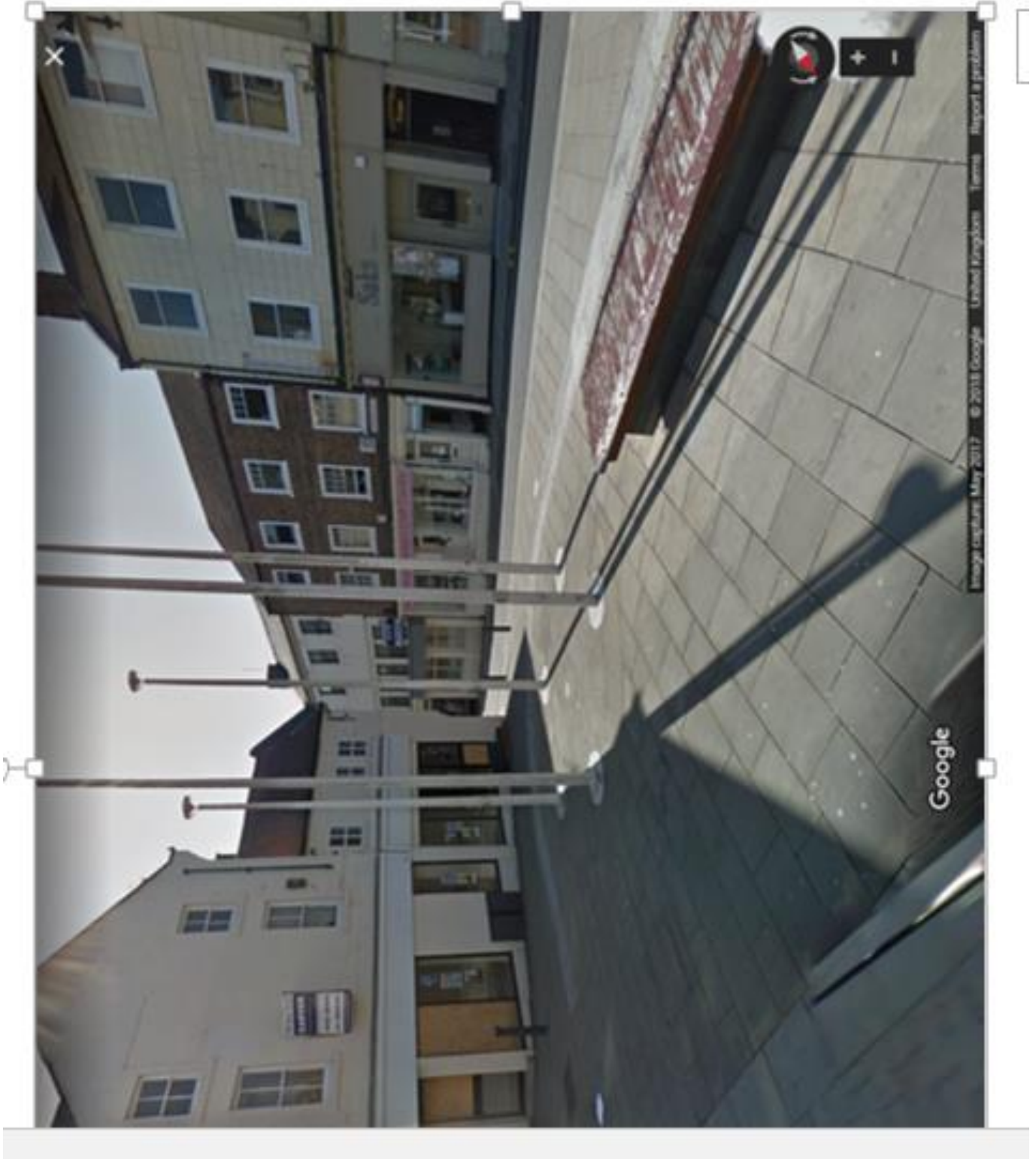
Regards
Gordon

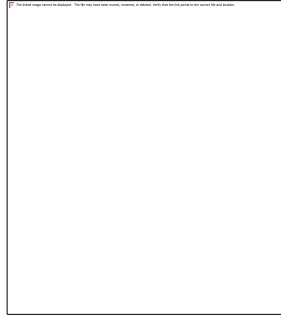
Gordon Pybus
Chairman, Darlington Association on Disability
01325 489999
Direct 01325 254595











PAVEMENT CAFÉ POLICY



HIGHWAYS ACT 1980 Section 115E

Revised March 2014.

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1. GENERAL

Introduction

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. Darlington Borough Council supports and encourages the provision of pavement cafes in the town centre, 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 Darlington.

The idea of a pavement café is to offer the public the chance to eat and/or drink outside. It is not aimed at increasing the overall size of a public house. If the Council considers that the overall effect of an application will result in a significant increase in customers, additional facilities may be required at the premises to meet that need eg. toilets

Whilst the provision of pavement cafes is encouraged, it is important that they are properly administered and managed to ensure that they meet the high standards expected in Darlington town centre. They should not obstruct the highway or create a hazard for pedestrians, especially for blind, partially sighted and other disabled people.

The area to be used must take into account 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 crossings that are required for free passage of normal road users. Barriers and tapping rails should be positioned and maintained to the satisfaction of Darlington Borough Council and should be totally removed outside the permitted hours of operation of the café.

The pavement café should occupy an area directly in front of and be visible from your existing premises. Emergency exit routes from your own and adjacent buildings should not be obstructed by the pavement café and emergency service vehicles must have access along all streets at all times, even in pedestrianized streets.

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 carriageway or 'shared use surface'
- Any highway verge
- Where width of the pavement makes it impractical.
- Where authorised street furniture makes it impossible

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 adequately lit to allow safe access and egress from the site for both customers and staff.
- The existing toilet and washing facilities are not adequate to accommodate an increased number of customers using the pavement café 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.

In considering the above matters, the standard guidance will be that a licence will only be issued if an unimpeded pedestrian route can be maintained at all times. The route shall ensure that all pedestrians and particularly those with a disability can maintain their normal path where feasible. All applications will be considered on their own merits.

Pavement café licences will only be issued to cafes, restaurants, public houses or other catering establishments that serve food and drink within the premises and employ sufficient staff to provide table service to the outside area.

Pavement café licences will not be issued to self-service premises or takeaway food shops.

The Council will carry out periodic inspections to make sure that all the terms and conditions of the licence are being observed.

A pre-licensing visit will be made to each premise upon receipt of an application for the grant, renewal or variation of a pavement café licence, to discuss the application process, the proposed operation of the cafe etc. to provide advice and information to the applicant.

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 will be made at the end of the 'season' in order to discuss the operation of the café over that period and to determine any revision of policy if necessary.

Any other visits to the premises will be made on a risk rated rationale determined by the findings of the above visits and/or complaints received during the period of the licence.

2. DEFINITIONS

In this Policy, the following phrases shall mean:

Pavement Café:	Pavement Cafés are considered to be tables and chairs placed on the public highway (includes pavements) where food and/or drink is served.
Market Day:	Usually Mondays and Saturdays *
Event Day:	Days when special events take place in the Borough
Normal Day:	Any day other than a Market Day when no special event is taking place in the Borough

* May include craft and farmers markets regularly on Fridays and other specialist markets on Thursdays and other days throughout the year.

3. LEGAL SITUATION

Permissions to use the highway for pavement cafes 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 obstructing the highway

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.

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 on him requiring him to take such steps to remedy the breach as are specified in the notice within such time as is so specified.

If a person who is served a notice and fails to comply with the notice, the council have the power to take whatever steps are necessary themselves.

Where a council have incurred expenses in the exercise of the power, those expenses, together with interest at such reasonable rate as the council may determine from the date of service of a notice of demand for the expenses, may be recovered by the Council from the Licence holder.

Under the terms of the Highways Act 1980, the Council cannot grant permission unless it obtains the express consent of interested frontagers who may be materially affected by the proposal.

Section 115A(7) of the 1980 Act states that “frontagers” 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.

For express consent to be required, the frontage would have to be affected by the placing of the structure etc between his own frontage and the highway, rather than a structure adjacent to his own frontage

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 and to a refusal of a licence in the future.

The Council will not permit any wheeled refuse containers, beer kegs, bottle crates, A-boards or advertising signs or any other unsightly or unapproved items to be placed on or adjacent to the pavement café area.

The barriers, table, chairs, and layout shall be as agreed by the Council and conform to the plan at all times

Menu or advertising boards will not be accepted as part of the boundary or as a separate advertising opportunity within the pavement café or on the highway.

On expiry of the licence, where there has been an application to renew the licence prior to its expiry, these conditions shall be deemed to remain in force whilst the premises lawfully continue to operate as if a licence was in force. 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.

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.

The licence holder shall not cause or undertake any alterations to the highway surface.

The licence holder shall not assign, sub-let or part with his interest or possession of a licence.

The Council may at any time vary the conditions of a Licence.

The Council will not grant a licence to persons under the age of 18 years.

The Council may suspend or terminate a licence if any of the conditions of the licence are breached.

A licence holder may terminate a licence at 21 days' notice by informing the Council in writing.

The licence does not take precedence over Police powers to preserve order.

4. PRIVATE LAND

This policy relates only to pavement cafés on a public highway. (Cafes on private land are not covered by this policy. They may not need a pavement cafe licence though may require planning permission if the structures and fittings are not of a temporary nature.

Land that you might consider to be private may in fact have become highway if the public have enjoyed access over it for at least twenty years or if the Council have formally adopted the land. Before proceeding, it would be wise to check with Planning Services to establish if planning permission is necessary and with the Highways Authority to confirm land ownership. Please see Contacts at Section 19 of this document.

5. RIGHTS OF ACCESS

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

6. ADVERTISING

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 Darlington Borough Council.

7. DESIGNING THE PAVEMENT CAFÉ

7.1 Size and Layout

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 taking into account the needs of other town centre users and it is not appropriate for this Policy to set a standard size for the Pavement Café – see Layout Guide Dimension Criteria below

Plans to be submitted with an application shall be drawn to scale, with dimensions, including areas required, the number of tables and chairs to be provided and pinch points detailing width and length. Applications should take into account market and event days where relevant. Space should be left between the tables and chairs to allow access for all, including wheelchair users.

The layout of furniture and means of enclosure will only be approved if adequate provision has been made for customers with disabilities.

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.

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 very likely that the Council will refuse it.

7.2 Minimum Unobstructed Space Criteria

On a normal street, there must remain at least 2.0 metres (6.6 feet) of unobstructed space between the carriageway and the front of the pavement cafe to allow pedestrians to pass by safely.

On streets with high pedestrian usage, there must remain at least 2.75 metres (9 feet) of unobstructed space.

Each case will be judged on its merits and the unobstructed space will be set between 2.0 and 2.75 metres according to the frequency of pedestrian usage and other relevant parameters.

This requirement may however be waived by the Council in certain locations e.g. Skinnergate. In addition, a minimum of 2.0 m shall be left between the edge of the Pavement Café and the edge of any adjacent carriageway or vehicle route.

An absolute minimum clear width of 2.0 metre is required from any single point of obstruction e.g. bollard.

A 2.0-metre wide access to the premise should be kept clear at all times.

7.2 Layout Guideline Dimension Criteria

A table and two chairs are deemed to occupy a minimum of 2.0 metres by 1.0 metre. (this does not include space for circulation)

A table and four chairs are deemed to occupy a minimum of 2.0 metres by 2.0 metres. (this does not include space for circulation)

You must also make allowance for any other equipment and circulation requirements within the area applied for.

7.3 Lighting

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.

7.4 Tables and Chairs

All furniture shall be of high quality constructed of wood or metal and approved by the Council. Parasols must not have any advertising on except for the name of the business. The advertising of alcohol or cigarettes is not allowed. All proposed furniture and parasols will be inspected by an Officer of the Council to ensure that they are adequate in quality, construction and colour prior to any licence being issued.

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.

It may be advisable to discuss this at an early stage and certainly before any furniture is purchased. Full details, including metric dimensions, materials and colours, of proposed furniture, ideally accompanied by photographs, illustrations or drawings, will be required as part of the application.

The Council reserves the right to reject applications where inappropriate furniture is proposed. Plastic tables and chairs will not be acceptable.

Tables, chairs, parasols, barriers, etc. shall not be stored on the highway when the pavement café is not open or when the furniture is not in use. If furniture is stored within the premises, any fire exit or escape route must not be blocked by stored furniture.

The Council reserves the right to refuse a licence to any applicant who has not made suitable arrangements for the internal storage and collection of refuse and to withdraw the licence if the approved arrangements are not adhered to.

The layout of the café's furniture and means of enclosure must provide adequate access and circulation space for all customers including wheelchair users and those with pushchairs, buggies, etc.

Tables and chairs should not be located where they will impede drivers' sight lines or obscure highway signs.

All necessary items shall be removed from the highway if requested by a police officer, an authorised Council Officer or representative of a public utility. These items shall remain off the highway for as long as is required.

7.5 Parasols

To protect customers from excessive ultra violet radiation, parasols shall be available for use at each table if the pavement café area is in direct sun between the hours of 12:00 to 15:00 hours, and a customer requests that a parasol be provided.

Parasol's metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan.

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. Bright, garish or reflective colours should be avoided.

Parasols, when opened must not overhang the boundary of the pavement café and must remain closed in periods of high winds, Parasols 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 pavement café or any other users of the highway.

In some circumstances, it may be appropriate for larger freestanding parasols covering several tables at once to be used. Each case will be dealt with on its merits.

Garden style umbrellas are not acceptable.

7.6 Space Heaters

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 plan.

You will also 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).

In considering an application, the Council will have regard to the inherent safety of the equipment, its location, storage of Liquid Petroleum Gas cylinders, maintenance and training arrangements.

The 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
- review assessment and revise if necessary

7.7 Other Furniture

If you propose to use planters within your pavement café, good quality plastic or glass fibre may be permitted as a means of reducing their weight to maintain portability.

At least one children's high chair must be available for customers to use within the pavement café.

7.8 Barriers

Barriers or other means of enclosure are required in order to ease pedestrian movement, guide the visually impaired, protect users of the facility and contain the licenced area.

The entire pavement café (apart from entrances) **shall be enclosed in its entirety** with a suitable barrier and space will be required for circulation and access within the enclosed area in addition to that for tables and equipment.

Structures must be sturdy enough to prevent collapse if accidentally walked or stumbled into. They should consist of at least two solid horizontal elements; the lower element should not be more than 155 mm above the ground and the second element between 800 and 1000 mm above the ground.

Hoops or post and chain type barriers and low-level objects will not be acceptable

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

Each barrier can incorporate the café logo if desired. The barriers should be supported by suitable 'feet' that do not cause a trip hazard to pedestrians particularly partially sighted people.

7.9 Accessibility

All pavement cafes should be accessible for wheelchair users.

Where access to the pavement café is not level, a suitable and stable ramp shall be provided at all times.

8. ALCOHOL

In order to supply alcoholic drinks at the pavement café you will need to obtain the permission of the Licensing Authority in the form of a Premise Licence. This is an entirely separate consideration to granting a pavement café licence.

Drinks shall not be served to people standing outside the boundary of the pavement café, nor shall people purchasing drinks within the area be permitted to stand and drink or to take them outside of the area.

No alcohol shall be sold or consumed within the designated Pavement Café area unless in compliance with any beverage licence.

A pavement café licence should not be a means to extend the overall capacity of a public house. It is expected that a pavement café shall will enhance facilitates provided by offering food and drink in a pleasant outdoors environment, however, if the service of alcohol only takes place in a pavement café and there is anti-social behaviour or disorder, then the pavement café licence may be reviewed, revoked or not renewed.

Drinking alcoholic beverages directly from bottles is not permitted in the pavement café area. Wine may however, be served from the bottle at outside tables. All glasses should be made of toughened or tempered safety glass, polycarbonate, plastic or paper cups.

The café area should be kept under supervision at all times of its operation and all patrons/customers should be seated at all times.

9. SMOKING

Pavement cafes are not intended to be used as an outdoor smoking area. However, smoking will be permissible where the café is being used as intended for the consumption of food and drink.

Where smoking is permitted, a minimum of two thirds of the pavement café area must be designated smoke free and a “**No Smoking**” sign placed on each table in this area.

If the café consists of two tables or less then no provision shall be made for smoking within the pavement café.

This shall be extended thus

No of tables	Provision of smoking tables
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3-5 tables	1 table
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6-8 tables	2 tables
9-11 tables	3 tables
12-14 tables	4 tables
15-17 tables	5 tables
18-20 tables	6 tables
21-23 tables	7 tables
24-26 tables	8 tables
27-29 tables	9 tables and so on

Each table where smoking is permitted should be provided with a windproof ashtray that must be emptied each time the table is cleared or vacated

Whilst electronic cigarettes (e-cigarettes) are not classed as a cigarette, licence holders may wish to consider their own policy in relation to their usage in the pavement café.

The term “electronic cigarette” is a generic term and not very helpful since, despite their name, e-cigarettes are totally different from cigarettes. They do not burn tobacco and do not create smoke and are not classed as cigarettes so it is a matter for the licence holder to decide if and where e-cigarettes can be used within a pavement café.

10. FOOD

Food businesses are required by law to be registered with the local authority. This is an entirely separate consideration to granting a pavement café licence. This can be done by obtaining an application form from Environmental Health, please see Contacts section on page 15 of this policy.

The pavement café area is to be used only for the service and consumption of food and drink.

The Council expects food provision to be at the very least, the provision of sandwiches, pastries, cakes etc., extending to table meals.

All food offered for sale must be detailed upon a menu or menu board, available to each patron.

Items such as canapés, appetisers, cocktail snacks, nuts, crisps etc. will not be deemed to constitute food for the purposes of the pavement café licence.

Food and drink must not be stored or prepared outside the normal premises as there may be difficulties with temperature control and a risk of contamination. It is imperative that good food hygiene practices are followed at all times.

All the food and drink that is consumed within the pavement café area should be ordered and purchased there.

The crockery and cutlery used in pavement cafes should be of good quality and a uniform style. Plastic plates and cutlery are not acceptable.

Food should be served on plates and not in plastic or cardboard containers or paper bags or other wrappers.

All tables must be cleared of all uneaten food, used crockery, cutlery etc. and properly cleaned of any spillage immediately they are vacated by customers.

Any food spilt on the highway must be removed immediately and the area washed at the earliest opportunity. This will minimise the likelihood of birds scavenging in the area.

If birds roost on buildings or in trees adjacent to the pavement café, applicants should consider providing parasols or some other form of cover in order to minimise the risk of food contamination.

Food should never be placed in an unprotected area where a passing guide or assistance dog could be drawn to it.

The licence holder will be responsible for the cleanliness of the pavement café area at all times. Care should also be taken to ensure that litter does not stray or get blown further afield.

Menus should be readily available either at the tables or on request. A-boards must not be used to display menus or advertise the cafe as they can cause dangerous obstructions to pedestrians.

An area of approximately 5 metres around the site should be kept clear of any stray or windblown litter from the café.

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 must be taken to avoid nuisance to customers and to ensure that hazards are not created during this work. The café area should be cleansed at the end of the trading day or as soon as practicable.

At least one suitable litterbin must be provided within the café area at all times of operation. Wheelie bins are not suitable for this purpose

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.

11. NOISE

The issuing of this licence does not in any way permit the playing of live or recorded music for the entertainment of customers using the external area, in order to prevent public nuisance to nearby residents and adjacent premises and cafes.

Advice on how to minimise noise disturbance can be obtained from the Council's Environmental Protection team (see section 19 of this policy for contact details).

12. FEES

The current fees payable for the grant and renewal of consent permits are available from the Licensing Office and the Council's website.

Fees are based on the size of the proposed external pavement café area.

Fees are due on an annual basis.

Fees are not refundable if the application is unsuccessful.

Fees are not refundable where a licence is surrendered.

Variations to Fee Structure

The fee structure is reviewed annually as part of the budgetary process. Notice of the current scale of fees will be supplied to new applicants at the time of application

13. INSURANCE

The Licence holder shall indemnify Darlington Borough Council against all liability which may at any time be taken made or incurred in consequence of the use of Pavement Cafés and for this purpose must take out a policy of insurance in the sum of up to £5,000,000. The holder must also produce to the Council, on request, current receipts for premium payments and confirmation of annual renewals of the policy.

14. MANAGEMENT

The licence holder is responsible for the satisfactory conduct of people within the pavement café. Rowdy or unruly behaviour may lead to the suspension or termination of the licence.

15. HOURS OF OPERATION

The **maximum** permitted hours of operation will be between:

Monday to Sunday between the hours of 08.00 hours and 22.30 hours

Please note that these are maximum hours that may be applied for. If there are objections to the total number of hours of operation requested then shorter hours may be offered. If no compromise can be agreed, then the application will be referred to the Council Licensing Committee for consideration.

Please also note that there is no drinking up period therefore licence holders will be expected to manage the laying out and clearing of the pavement café within these hours. Posts, barriers tables and chairs shall not be placed upon the highway before the commencement of operational hours and shall be removed entirely before the end of the operational hours.

The pavement café area shall be cleared of all waste and litter at the end of each and every licensed opening period.

16. APPLICATION REQUIREMENTS AND PROCESS

Each application for **grant and/or renewal** will be accompanied by:

- i) A completed application form; and
- ii) Risk assessments covering Health and Safety and
- iii) The prescribed fee; and
- iv) A certificate of Public Liability Insurance of at least £5 million. This must indemnify the Highway Authority against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose, and

- v) Details of brand, type and materials of proposed furniture; and
- vi) Details of any external lighting and heating equipment; and
- vii) Details of opening and closing times, and
- viii) Contact details for the applicant and of the property owner (if different) and
- ix) A site plan to scale of 1:100 (or 1:200 if considered adequate by officers). This should show:
 - The proposed boundaries of the café giving dimensions and distance from kerb line and street furniture such as bollards etc.
 - Building line
 - Kerb line
 - Layout and dimensions of tables and seating
 - Dimensions and points of access
 - Location and dimensions of parasols and any freestanding lighting and/or heating equipment.

If the plan is not to scale and/or does not contain full details with accurate dimensions, then the application will be rejected and returned.

Applications shall be sent to

Licensing, Darlington Borough Council, Town Hall, Feethams, Darlington. DL1 5QT

If a licence is transferred then the new licence holder shall produce a certificate of Public Liability Insurance of at least £5 million. This must indemnify the Highway Authority against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose.

17. CONSULTATION

Grant of Licence

Where the application is for the grant of a licence, the Council will undertake a full consultation which will include the Police, and various sections within the Council (Planning, Environmental Health, Highways, Utilities, Darlington Association on Disability (DAD), and, if the pavement Café is to be located in the Market place, the Markets Officer will also be consulted.

The Council will publish street notices and will consult with nearby frontages that may be affected. The street notices, in the case of a first time application, will be displayed for a minimum of 28 days at the premise

Renewal of Licence

Where the application is to renew the licence, the Council will consult with the Police and Environmental Health only, unless there is a variation to the hours of operation, the size or layout of the pavement café when the Council will undertake a full consultation.

Variation of Licence

Where the application is to vary the terms of the licence i.e. to increase the number of covers, or to amend the layout of the pavement café, the Council will undertake a full consultation.

Transfer of Licence

Where the application is to transfer the licence, the Council will consult with the Police and Environmental Health only.

All Applications

Applications for a Pavement Café Licence may be submitted with an alternative layout plan that would provide a bigger café area, at certain times or periods, however, only one pavement café layout may be provided at any one time. Pavement cafes licenced areas may not be divided by splitting the café into two discreet areas. .

The Applicant shall provide a written assessment of the risks to which their employees are exposed whilst at work and must also assess whether there are risks to members of the general public that arise out of the general conduct of their business specifically in relation to the highway and also the remedies to such risks.

NB Reviews of risk assessments shall always be carried out when there is reason to suspect that a current assessment is no longer valid or on event days where activities affect the premises and the result of the review must be documented.

18. TERMS AND CONDITIONS

The licences will run from the date they are issued to the following March 31st and are, thereafter, renewable annually on April 1st at the discretion of the Council.

The pavement café licence must be displayed in a prominent position in an external window facing the frontage.

On certain event days, the pavement café may be required to close. Should this be required a notification will be sent from the Council's Public Events Safety Advisory Group (PESAG) advising of the times and reason for the closure)

19. CONTACTS

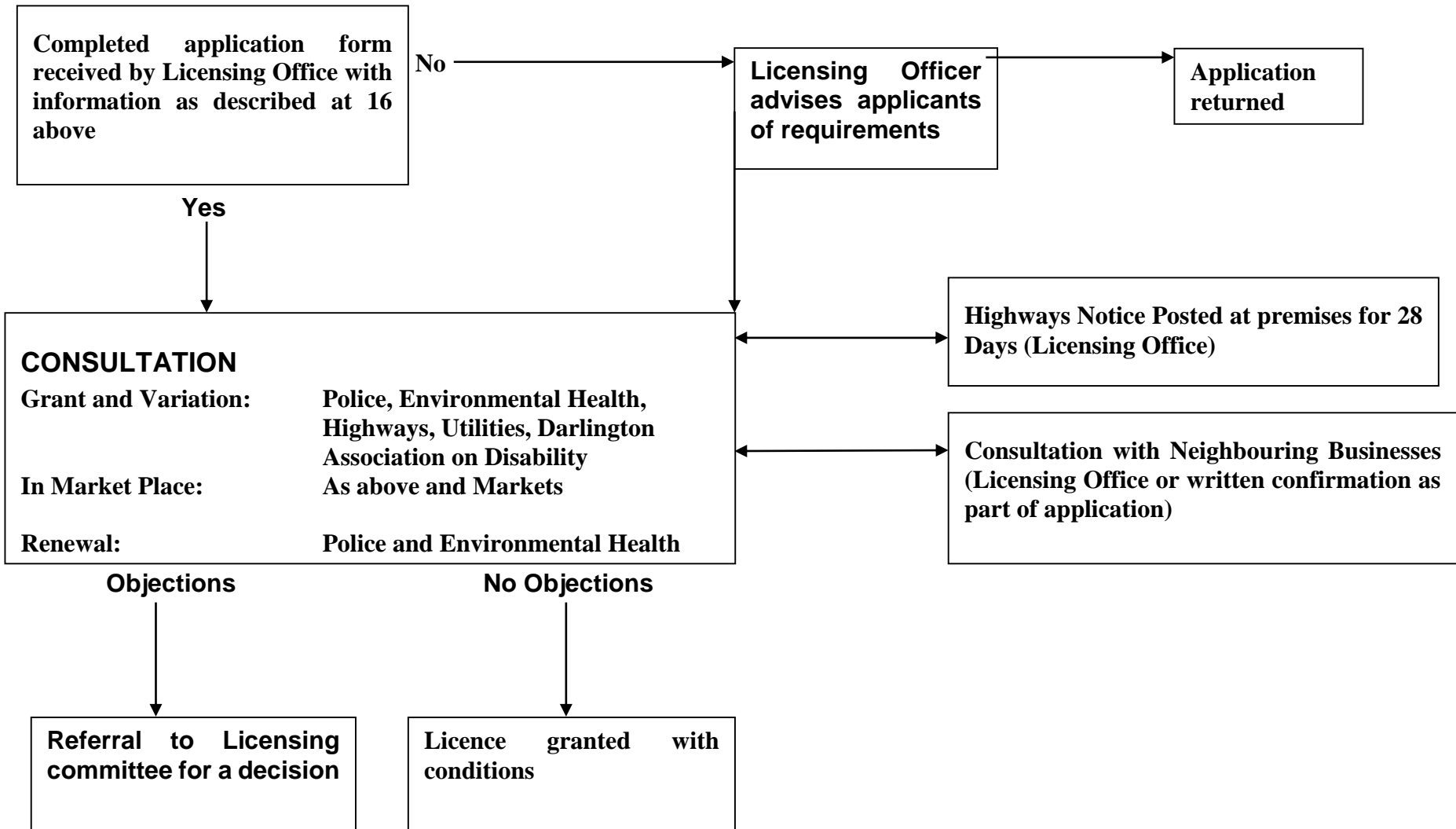
These contact details may prove to be useful:-

Subject	Details
Planning Enquiries	☎ 01325 388082 ✉ planning.enquiries@darlington.gov.uk
Highway Enquiries	☎ 01325 388748 ✉ highways@darlington.gov.uk
Market Square/Pedestrian Heart Enquiries	☎ 01325 388692 ✉ markets@darlington.gov.uk
Food/Health and Safety Enquiries	☎ 01325 388566 ✉ customerservices@darlington.gov.uk
Licensing Enquiries	☎ 01325 388577 ✉ licensing@darlington.gov.uk
Durham Police Enquiries	☎ 101 Ext 742782 ✉ ahru@durham.pnn.police.uk
Street Fixtures/Furniture	☎ 01325 388777 ✉ streetscene@darlington.gov.uk

20. SUMMARY OF PROCEDURE FOR GRANT OF PAVEMENT CAFÉ LICENCE

Complete Information

Not Complete



21. STANDARD CONDITIONS FOR PAVEMENT CAFÉ LICENCES

Policies

1. Licences shall be granted for a maximum of one year and shall expire on 31 March each year
2. Application Fees are payable in advance and shall not be refunded if application is unsuccessful
3. All licences shall be issued in accordance with the Policy in Relation to Pavement Café Licences revised March 2014.

General

1. The maximum permitted hours of operation as stated on the attached licence shall not be exceeded without prior permission from the Council.
2. A copy of the licence and pavement café layout plan must be displayed at the premises at all times.
3. Food and non-alcoholic drinks must be available at all times when the pavement café is open.
4. Smoking will be permissible within the pavement café provided the café is being used for the consumption of food and drink.
5. Where smoking is permitted, a minimum of two thirds of the pavement café area must be designated smoke free and a **“No Smoking”** sign placed on each table in this area.
6. Each table where smoking is permitted should be provided with an ashtray that must be emptied each time the table is cleared or vacated.
7. Posts, barriers tables and chairs shall not be placed upon the highway before the commencement of operational hours and shall be removed entirely before the end of the operational hours. The area shall be left clean and tidy and free of any rubbish.
8. Furniture stored within the premises should not at any time block a fire exit.
9. The use of advertisement boards is prohibited
10. The advertising of alcohol or cigarettes is prohibited
11. Barriers and parasols can advertise the name of the business only.
12. The café area must be supervised at all times whilst it is operational
13. No live or recorded music shall be played within any part of the Pavement Café.
14. Emergency routes from adjacent buildings and the applicant’s premises shall not be obstructed by the pavement café
15. The licence holder shall not cause or permit any alterations to the highway surface.
16. The licence holder shall not assign, sub-let or part with his interest or possession of a licence.
17. The Council may suspend or terminate a licence if any of the conditions of the licence are breached.
18. A licence holder may terminate a licence at 21 days’ notice by informing the Council in writing.

19. Authorised Officers of the Council and Police Officers shall have access to a pavement café at all reasonable times.
20. 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.

Management

21. The licence holder shall be responsible for the conduct of people, both patrons and employees, within the pavement café area.
22. Patrons shall not be permitted to remove food, drinks, crockery or any cutlery from the pavement café.
23. Only patrons seated at tables shall be served or permitted within the pavement café

Service

24. All tables must be cleared of all uneaten food, used crockery, cutlery etc. and properly cleaned of any spillage immediately they are vacated by customers.
25. No alcohol shall be sold or consumed within the designated Pavement Café area unless in compliance with any beverage licence.
26. Food must be prepared on the premises in an appropriate kitchen area.
27. Food and drink must not be stored or prepared outside the normal premises
28. All the food and drink that is consumed within the pavement café area must be ordered and purchased there.

Articles used in the Café

29. All furniture shall be of high quality constructed of wood or metal and approved by the Council.
30. Parasols shall be available for use at each table if the pavement café area is in direct sun between the hours of 12:00 to 15:00 hours, and a customer requests that a parasol be provided.
31. Parasols, when opened must not overhang the boundary of the pavement café and must remain closed in periods of high winds
32. All drinks shall be decanted from the bottle except when a customer has ordered a particular bottle of wine, in which case, the opened bottle may remain on the table or be decanted into a polycarbonate wine container. Staff shall ensure that empty wine bottles are removed from the pavement café immediately.
33. 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
 - . Metal Cutlery
34. At least one children's high chair must be available for customers to use within the pavement café.

35. 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.

Boundary and Barriers

36. 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.
37. All activity associated with the pavement café shall be contained within the boundary including tables, chairs and other permitted equipment.
38. 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.
39. Barriers must not be permanently fixed to the ground on a public highway.
40. Where access to the pavement café is not level, a suitable and stable ramp shall be provided at all times.
41. A minimum distance of 2.0 metres between the edge of the pavement café and the edge of any adjacent carriageway or vehicle route shall be maintained. If the pavement café is on a street with a high pedestrian usage this minimum may be increased to 2.75 metres. An absolute minimum clear width of 2.0 metre is required from any single point of obstruction e.g. bollard.

Litter

42. The licence holder shall 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
43. Suitable litter/refuse bin(s) shall be provided within the pavement café area at all times of operation. The licence holder shall be responsible for disposing of all waste produced at the pavement café

Insurance

44. 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, (eg 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.
45. 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.