

ITEM No ...8.....

REPORT TO: CITY DEVELOPMENT COMMITTEE – 5 SEPTEMBER 2022

REPORT ON: OUTDOOR HOSPITALITY SPACE PERMITS

REPORT BY: EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 213-2022

1 PURPOSE OF REPORT

1.1 This report proposes the introduction of a new Council permit scheme for the management and control of outdoor hospitality space.

2 RECOMMENDATION

2.1 It is recommended that the Committee:

- a approves the introduction of a permit scheme as set out in Appendix A; and
- b delegates authority to the Head of Sustainable Transport & Roads to administer outside space permit applications and to update the permit scheme as required.

3 FINANCIAL IMPLICATIONS

3.1 The revenue costs associated with the administration of permit applications will be recovered through the permit fees detailed in Appendix A.

3.2 There are currently 48 hospitality premises in Dundee utilising pavement seating for which permits will be required. The assessment and administration of permit applications will be undertaken utilising existing Council staff resources, and the income generated will cover the revenue costs borne by the service.

4 BACKGROUND

4.1 The Covid-19 pandemic has prompted an increased demand for outside hospitality space at café premises. The proposed approach formalises the management and control of outdoor hospitality venues and provides specified standards for businesses to meet.

4.2 The report has been prepared in collaboration with the Council's Licensing, Planning, Building Control, Insurance/Risk, Legal, Roads, and City Centre management functions to ensure a corporate approach. The approach is consistent with the outside space permit policies implemented by the 3 other Scottish City Councils.

4.3 As noted in the report, premises will be subject to periodic inspection by appropriate Council officers to check compliance with the terms and conditions of the permit. The Council may suspend or terminate a permit if any of the conditions of the permit are breached.

4.4 Subject to committee approval, businesses currently operating pavement seating will be notified and invited to submit applications for permits which will be required and come into effect from 1 April 2023.

5 POLICY IMPLICATIONS

5.1 This report has been subject to the Pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services or funding and so has not been subject to an Integrated Impact Assessment. An appropriate senior manager has reviewed and agreed with this assessment.

6 CONSULTATIONS

- 6.1 The Council Leadership Team have been consulted in the preparation of this report and are in agreement with its content.

7 BACKGROUND PAPERS

- 7.1 None.

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12 August 2022

APPENDIX A

OUTDOOR HOSPITALITY SPACE PERMITS

1 INTRODUCTION

- 1.1 Dundee City Council supports and encourages the provision of pavement cafés, bars and restaurants in the city, as they make a positive contribution by adding vitality, colour, life and interest to the street scene. 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 Dundee.
- 1.2 Whilst the provision of outdoor hospitality venues is encouraged, it is important that they are properly administered and managed to ensure that they meet the safety requirements and high standards expected in Dundee city.
- 1.3 This document is intended to help businesses understand where outdoor hospitality might be encouraged, the permissions needed from the Council and others, and how applications will be assessed.
- 1.4 Anyone wishing wish to establish and operate an outdoor hospitality area outside their premises should read this document thoroughly to check that the proposal meets all the criteria.
- 1.5 Outdoor hospitality permits will only be issued to cafes, restaurants, public houses or other catering establishments that serve food and/or drink within the premises, as covered by the existing licence, and employ sufficient staff to provide table management to the outside area. Dundee city has a city-wide byelaw that prevents the consumption of alcohol in any public space. Alcohol is only permitted if the premises licence has “outside drinking” on their operating plan or has applied for and has been approved permission for a pavement café occasional licence.

2 LEGISLATIVE REQUIREMENTS

- 2.1 For the purpose of this guide pavement cafés, bars and restaurants are tables and chairs placed on the footway or other public areas where food and drink can be consumed by customers. Outdoor hospitality space on private land are not covered by this document, however will still need a licence and other relevant consents to serve alcohol in this area.
- 2.2 Before agreeing to permit a pavement cafés, bars and restaurants on a footway, the Council must ensure that the public's rights to use the footway are not detrimentally affected and would also need to consider the impact on neighbouring activities, and residential amenity.
- 2.3 The Council's policies and standards for health and safety, environmental health and waste management also require to be adhered to.

3 PERMISSIONS REQUIRED

- 3.1 Permissions to use the footway for an outdoor hospitality space are granted by the issue of permits by Dundee City Council as the Roads Authority under Section 59 of the Roads (Scotland) Act 1984. Tables and chairs placed on the Footpath without permission are an illegal obstruction and the Council will take enforcement action in such cases.
- 3.2 A proposal to extend the outdoor hospitality space beyond the width of your own frontage also needs the express written consent of any other interested frontagers who are affected by the proposal.
- 3.3 Other permissions/consent may be required in addition to a permit. Planning permission for the use of the outside space, and for any permanent fixtures such as structures, canopies or

lighting would also be required. A Building Warrant may be also required for permanent or limited life structures dependent on their size, location and period of use.

4 CONDITION OF BUILDING FAÇADE

- 4.1 Ownership and leasing arrangements for the building will set out maintenance obligations. In the interest of public safety, we require the external envelope of the whole property be inspected to ensure its condition does not pose any risk to persons using the pavement hospitality area. Written confirmation from a competent professional should be submitted confirming that the building at all levels is structurally sound, with no evidence of loose masonry, plant growth or leaking rhones/downpipes.

5 DESIGNING THE PAVEMENT HOSPITALITY AREA - SIZE AND LAYOUT

- 5.1 To a large extent the size and layout of your proposed outdoor hospitality space will depend upon the characteristics of the site outside your premises, the space available (including the required footpath width to allow unhindered passage for pedestrians), the street furniture, the type of premises, etc. Ideally it should be seen as an integral part of the main premises rather than an unrelated after-thought. There are however a few fundamental principles to follow:
- a the pavement hospitality area should generally occupy an area directly in front of and be visible from your existing premises;
 - b the needs of other users of the Footway should be considered eg, pedestrians, tradespeople, adjacent businesses etc;
 - c a clear pedestrian route of at least 2.0 metres must be maintained between the kerb line and the hospitality area boundary. Where this is not possible applications will be assessed on an individual basis dependant on the surrounding environment. In areas of very high pedestrian flow, it may be necessary to leave a clear route of greater than 2 metres in width;
 - d the pavement café, bar or restaurant must not be more than 4m from the premises, if the pavement café cannot be seen from the premises, then CCTV must be installed;
 - e there should be no vehicles movement between the premises and the licenced pavement area; and
 - f no vehicles are permitted within the approved pavement area at any time.
- 5.2 Depending on the scale of the pavement café, bar or restaurant and its location, it may be necessary for an application to be:
- a accompanied by a pedestrian/disabled audit, which can be supplied by a qualified member of the Royal Society for the Prevention of Accidents;
 - b in pedestrianised areas the hospitality area boundary should be a maximum of 4 metres from the building line;
 - c no structures or signs will be allowed outside the designated area, the presence of tables and chairs should never discourage pedestrians from using the footway;
 - d emergency exit routes from your own and adjacent buildings should not be obstructed by the street café, bar or restaurant area and emergency service vehicles must always have access along all streets, even in pedestrianised streets;

- e it is not appropriate to set a standard size for such facilities. Each application will be evaluated on its merits taking account of the site characteristics, the space available and the proposed layout;
- f the layout of the furniture and means of enclosure must provide adequate access and circulation space for all customers including wheelchair users and those with push chairs, buggies, etc;
- g tables and chairs should not be located where they will impede drivers, sight lines or obscure Footway signs; and
- h the area to be used must allow for other requirements such as kerbside parking, bus stops, pedestrian crossings and access to inspection chambers.

5.3 When designing the outdoor hospitality area, you should consider whether:

- a your existing toilet and washing facilities are adequate to accommodate any increased customer numbers;
- b the outdoor seating provision should be of appropriate proportions to that of the internal – it should ideally not be of a greater proportion than 25% of the interior seating provision;
- c outdoor hospitality area should not adversely affect the architectural or historic character of a listed building or its setting or the conservation area in which it is located; and
- d if it is intended to operate the facility during the hours of darkness the applicant should consider the level of lighting. Whilst lighting levels may be adequate for a footway, it may need supplementing to allow the facility to operate safely. If it is proposed to attach the lighting to the building, consent may be needed if the building is listed.

6 BOUNDARIES

- 6.1 Once the size and layout is agreed it is important that it is always adhered to. All activities associated with the café must be contained within the agreed boundary including all tables, chairs, parasols, planters, barriers/fencing etc.
- 6.2 In all instances, unless it is inappropriate or impracticable, you will have to provide a portable means of enclosure for the pavement area such as barriers or planters. These should be stable and sturdy, eg, colourful canvas separators on metal uprights, not contain protruding parts and have a tapping rail. Ropes or chains do not provide sufficient positive guidance for the blind and visually impaired and therefore are not considered suitable. Discrete advertising of the name of the premises may be permitted. Enclosures must not be used to advertise services but can contain the premises title and logo or products sold, and proposed details should be provided with the application.
- 6.3 When the area has been agreed a definitive plan of the area showing the boundaries and the dimensions will be attached to, and form part of, the Permit. A copy of the Permit and plan must always be kept on prominent display on the premises and be available for inspection.

7 FURNITURE

- 7.1 This guide does not wish to define a standard style of furniture for pavement cafes, but the furniture should be of a high quality, uniform in style, capable of being cleaned and being moved in and out of premises, and should not detract from the surrounding architecture. Plastic, garishly coloured or picnic/camping style equipment is not suitable and will not be approved. Only furniture approved by the Council may be used. The Council reserves the right to reject applications where inappropriate furniture is proposed.

- 7.2 When choosing your furniture, you should have regard to the footway 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.
- 7.3 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.
- 7.4 At least one child's highchair should be available for customers to use within the outdoor area.
- 7.5 If planters are to be used within your permitted area, these must be well maintained with a vibrant array of bedding plants/flowers. If planters are noted poorly maintained, without plants, or contain litter, cigarette stubs, or glass products, the Council will request their removal with immediate effect. Planters must be removed at end of each day to ensure no obstructions remain on the footway.
- 7.6 If you intend to use parasols, they must not be attached to the building. You will be required to use a large heavy-duty commercial type of parasol, fitted with wind flaps, and be tested to withstand up to force 8 gales. Garden style umbrellas are not acceptable and bright, garish or reflective colours should be avoided. Their metric dimensions, materials and colour must be specified as part of the application and their proposed locations shown on the site layout plan. Parasols, when opened, should be safely secured and contained entirely within the boundaries of the 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 footway. If heating or lighting is to be provided the equipment must be electrical and attached to the inside of the parasol, in a safe manner. External gas fuelled heaters are not permitted.
- 7.7 All items which constitute a pavement café, bar or restaurant must be readily portable by staff and are to be removed at the close of business each day or at any time if required in an emergency.
- 7.8 The only advertising permitted on parasols is the name of the facility. 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 food, drink or other products will not be allowed.
- 7.9 The use of canopies, awnings, blinds etc which are to be attached to the building are not encouraged.

8 MANAGING THE PAVEMENT HOSPITALITY SERVICE

- 8.1 Alcohol must be purchased within the premises for consumption outside. Advice on this may be sought from the Licensing Board, however it is the responsibility of the applicant to be aware of whether the licence held allows for the consumption of alcohol off the premises. The permit holder will be held responsible for the control of customers using the pavement café, discouraging disorder. They must ensure that their customers are informed that they must remain within the boundaries of the pavement café, when in possession of alcohol, otherwise they are in contravention of the bylaw that bans drinking alcohol in public places. Where there is evidence of continuous breaches of this, the permit and occasional licence will be withdrawn.
- 8.2 The crockery or cutlery used in pavement cafés should be of good quality and a uniform style. Menus should be readily available either at the tables or on request.
- 8.3 The pavement café area is to be used only for the service and consumption of food and drink. 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 always followed.

- 8.4 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 off the premises will not be permitted within the pavement café area.
- 8.5 All the food and drink which is consumed within the pavement area should be ordered and purchased from within the existing premises.
- 8.6 All notices required in terms of Consumer Protection/Environmental Health legislation must be displayed in:
- a accordance with the requirements of the law. Further advice is available from the Commercial/Trading Standards Service;
 - b all tables must be cleared of all uneaten food, used crockery, cutlery etc and properly cleaned of any spillage immediately after customers vacate them;
 - c any food spilt on the Footway must be removed immediately and the area washed immediately. This will minimise the likelihood of birds and/or vermin scavenging in the area; and
 - d if birds roost on buildings or in trees adjacent to the pavement café, applicants must provide parasols to cover the area of the tables and chairs in order to minimise the risk of food contamination.

9 SITE CLEANLINESS

- 9.1 The permit 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. An area of approximately five metres around the site should be kept clear of any stray or windblown litter from the café.
- 9.2 The area should be swept when necessary to keep it clear of litter and refuse. Spillage and breakage, 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 thoroughly washed at the end of each trading day.
- 9.3 Businesses are responsible for the removal of all discarded cigarette stubs generated by users of the pavement café.
- 9.4 There must be at least one suitable litter bin and one suitable smoking bin provided within the outdoor hospitality area at all times of operation. Wheelie bins are not suitable for this purpose.
- 9.5 If smoking is permitted in the pavement facility, each table should be provided with an ashtray which should be emptied each time the table is cleared. Where smoking is not permitted a "No Smoking" sign should be placed on each table. At the end of each day all discarded cigarette stubs must be cleared. Smoking must be restricted to no more than half of the tables provided.
- 9.6 All tables and chairs and other equipment must be properly maintained and kept in a clean, tidy and safe condition at all times, the entirety of the pavement facility must be removed overnight for storage off site, unless otherwise agreed by the Council in writing.
- 9.7 Failure to comply with the cleaning requirements will jeopardise renewal of the permit. Failure to comply with them at the end of the day may result in the Council carrying out the work for which the permit holder will be charged.

10 GOOD CITIZENSHIP

- 10.1 It will be the responsibility of the permit holder to ensure that the hospitality area is operated in accordance with these guidelines, conditions of the permit, and should be managed and maintained to the same standards as the interior of the premises.
- 10.2 The pavement facility must be operated in a safe and efficient manner ensuring that there is no safety risk or nuisance caused to other users of the footway or nearby premises.
- 10.3 The area should be kept under supervision at all times of its operation and all patrons/customers should be seated at all times. Patrons/customers are not permitted to drink whilst standing in the outdoor area.
- 10.4 The Council will not permit any fixtures to or any excavation of any kind to the surface of the footway.
- 10.5 Every effort should be made to avoid causing damage to the footway or adjacent property. The cost of rectifying any damage to the footway surface or to street furniture caused by any activity connected with the pavement café operation may be recharged to the permit holder.
- 10.6 Police Scotland will be consulted on all licenced pavement café applications.
- 10.7 The permit holder is responsible for the satisfactory conduct of people within the outdoor area. Rowdy or unruly behaviour may lead to the suspension or termination of the permit.
- 10.8 Music, whether amplified or not, will not be permitted to avoid nuisance to any residents or businesses in the vicinity or to any other users of the footway.
- 10.9 The permit holder will be required to indemnify the Council against all actions, demands, costs, charges or expenses arising from using the footway under the permission granted. The Council will, therefore, require the permit holder to hold third party public liability insurance in the sum of at least £5,000,000 with an insurance company of repute to be approved by the Council. Details of the third-party liability insurance should be enclosed with the pavement permit application.
- 10.10 Granting a permit to operate an outdoor hospitality area does not imply an exclusive right to the area. The operator should be aware that the Council reserves the right to gain access to the pavement café area for cleaning, repairing and maintaining the footway or street furniture. Other organisations, such as statutory undertakers, may also require access for maintenance and repair of their equipment. The Council therefore reserves the right to suspend the permit temporarily if, for any reason, it becomes necessary.
- 10.11 The Council will not allow 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 Council will need to be satisfied that applicants have made satisfactory arrangements for the storage and collection of all refuse associated with their business. The Council reserves the right to refuse a permit to any applicant who has not made suitable arrangements for the internal storage and collection of refuse and to withdraw the permit if the approved arrangements are not adhered to.

11 HOURS OF OPERATION

- 11.1 Operating hours are September to June 11.00am Monday to Saturday and 12.30pm Sunday, (closing at 9.00pm) and July and August 11.00am Monday to Saturday and 12.30pm Sunday, (closing at 10.00pm).

- 11.2 If the area also has an occasional licence for the consumption of alcohol the licensing board will only issue licenses until the terminal hour of 10pm Jul/Aug and 9pm for the rest of the year. This permit may be extended if the normal closing time of the premises has been extended with permission from the licensing board for a special event in the city. The proposed hours of operation will need to be included on your application. All furniture, etc is to be removed and the pavement café area swept and washed within 30 minutes of the facility closing. This condition may be waived in pedestrianised areas with the proviso that the Council has the right to reinstate this condition should circumstances change.
- 11.3 In certain pedestrianised areas the footway remains open to vehicular traffic during part of the day, if the presence of an outdoor hospitality space would obstruct the free flow of traffic it may be necessary to restrict the opening hours. In any case the Council reserve the right to stipulate the hours of operation.

12 SEEKING PERMISSION

- 12.1 It is recommended that you seek advice before you submit your application. Council officers will be pleased to provide advice on specific cases before the formal application is made. This does not guarantee approval of permissions being sought but it may help to minimise expenditure on preparing an application and save expenditure in cases where an application would be turned down.
- 12.2 To apply for your permission to use the footway you need to complete an application form for a pavement café permit.
- 12.3 You should enclose with your application details of the furniture, parasols and the means of enclosure to be used. These details should include their metric dimensions, colours, materials, etc, as well as drawings, photos or pictures of the proposed items. City Council may refuse an application if it is felt that in our opinion, the location is generally unsafe for such reasons as:
- a dangerously busy adjacent road;
 - b distraction to motorists approaching nearby junctions; and
 - c a particularly intensive pedestrian volume at the location.
- 12.4 Applicants are reminded that no sales from the pavement are allowed, and the use of unbreakable/polycarbonate glasses and ashtrays is recommended.

13 HOW LONG WILL IT TAKE?

- 13.1 As each application is different, then the time taken to process them will inevitably vary. In general, it is estimated that it will take approximately one month to process an application from its receipt to issuing a permit. The application process will be expedited if your proposal complies with the good practice procedures contained in these guidelines, and your application is accompanied by all the required supporting information.

14 WHAT WILL IT COST?

- 14.1 The fee for processing an application for an Outdoor Hospitality Space permit covers the administrative and legal costs incurred in the preparation and issue of the permit, and the rental of part of the public footpath, in line with the Council's rules on street trading.
- 14.2 The cost is £200 annual administration fee for up to 24 chairs in an unlicensed venue and £500 in a licensed venue with a supplementary fee of £25 for each additional chair. This will be updated annually.

- 14.3 Once your application has been processed and approved, payment should be made as requested prior to any operation commencing.
- 14.4 In addition, should other statutory consents be required there will be associated charges.
- 14.5 If you are proposing to use the area for the consumption of alcohol you must also have an occasional licence granted by the licensing board before the area can be used, you must also comply with any conditions attached to that licence. Licenses can only be granted in 14 day blocks. If you have any questions in relation to occasional licenses you should contact the licensing board at licensing.board@dundeecity.gov.uk or call 01382 434444.

15 THE OUTDOOR HOSPITALITY AREA IN OPERATION

- 15.1 Outdoor Hospitality Space permits issued by Dundee City Council are not transferable and should not, therefore, be regarded as a transferable asset.
- 15.2 Permits are normally granted for a maximum of one year and are renewable annually at the discretion of the Council.
- 15.3 Permits and plans for the facility should be displayed in a prominent position.
- 15.4 The permit will include terms and conditions based on these guidelines that must be complied with. The Council will carry out periodic inspections to make sure that all the terms and conditions of the permit are being adhered to. These guidance notes and plans of the pavement café must be kept on your premises at all times.
- 15.5 The Council may suspend or terminate a permit if any of the conditions of the permit are breached.
- 15.6 The Council, Police Scotland, or The Scottish Fire and Rescue Service can suspend or terminate the consent at any time, without notice, should the occupation endanger the public or be the cause of disorder.
- 15.7 In the event of streetworks requiring to be completed in the area of a pavement café/bar/restaurant the Council will serve 3 days written notice to the owner/manager to remove all furniture/barriers etc.

16 CONTACT

- 16.1 Roads Maintenance Partnership:

Dial: 01382 833666

E-mail: rmp@dundeecity.gov.uk

Applications should be returned to:

Roads Maintenance Partnership
Dundee City Council
Fairmuir Depot
365 Clepington Road
Dundee
DD3 8DZ