



Belfast
City Council



Pavement café licensing

Guidance for Applicants during the Covid19 Pandemic

For further details email pavementcafes@belfastcity.gov.uk

Building Control Service, Ground Floor, 4-10 Linenhall Street, Belfast BT2 8BP

Foreword

The COVID-19 pandemic presents unprecedented challenges with disruption to society likely to last for some time. Pro-active resilience and creativity now will aid in getting back to normal once the pandemic has passed. The Council has produced this temporary guidance as an aid to assisting the hospitality sector to prepare for reopening as effectively and safely as possible.

Under the provisions of the Licensing of Pavement Cafés Act (Northern Ireland) 2014, the Council may grant Pavement Café Licences on such terms and conditions and subject to such restrictions as may be reasonably specified in the Licence.

It is not intended that this guidance should be treated as a complete and authoritative statement of the law which is contained only in the Act and Regulations made under it.

As this temporary guidance has been issued in unusual circumstances it will be subject to review in 12 months' time. However, the Council may modify or dispense with such aspects of this guidance during that 12 months as it thinks appropriate depending upon issues which may arise through this initial period. Changes in the government's guidance in relation to Covid-19 and to the Department of Infrastructure's Pavement Cafes Guidance, which is awaited will also be considered.

Definitions

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| Furniture | Includes tables, chairs, umbrellas, barriers, heaters, menu boards or other approved fittings. |
| Licensed area | A public area as defined on a plan approved by the Council as a pavement café. |
| Licensed period | The days and hours approved by the Council when the licensed area can be used as a pavement café. |
| Licensing Order | The Licensing (Northern Ireland) Order 1996. |
| Pavement café licence | The permission given by the Council to allow the placing of temporary furniture on a specified public area for customers to consume food or drink supplied from the licence holder's premises. |
| Public area | A place in the open air, to which the public has access, as of right and which is not a market area. |
| Public nuisance | Noise disturbance or other nuisance caused to local residents or neighbouring businesses. |
| Temporary furniture | Furniture that can be removed from the pavement within 20 minutes. |

Legislation

Council's power to Licence pavement cafés is contained in the Licensing of Pavement Cafés Act (NI) 2014 and associated Regulations.

Purpose of this temporary guidance?

This guidance document has been prepared by Belfast City Council ("the Council") to help business owners to prepare an application for a Pavement Café Licence during the Covid19 pandemic.

Please note that this document is for guidance only and is not intended to be a legal interpretation of the legislation.

Business operators must ensure they are familiar with Government legislation and guidance relating to Covid19 and adhere to all requirements relevant to their workplace, to ensure the health and safety of their staff and customers. This includes social distancing requirements.

What is a Pavement Café Licence?

A Pavement Café Licence authorises a person who carries on a business involving the supply of food or drink (in or from premises) to place furniture (tables, chairs etc.) on a public area for use by their customers. This includes cafés, restaurants, pubs, retail outlets providing refreshments, takeaways, supermarkets with a deli counter, etc.

Note: A licensed pavement café area will remain a public place and is therefore subject to all other legislation applicable to such areas except alcohol bye-laws in certain circumstances.

Who may apply?

Any person or persons who carry on a business (in or from a premises) involving the supply of food or drink to the public, may apply for a Pavement Café Licence.

Is the area you want to use suitable for a pavement café?

Appendix 1 of this guidance document offers advice on what the Council will consider in assessing applications including:

- Pedestrian and vehicular access.
- Size and layout.
- Likely disturbance to other businesses or residents.
- Furniture design.
- Safety issues.

In general, the pavement café area will need to be set-up immediately adjacent to the premises. However, a Licence for a remote café may be granted where:

- The proposed café does not interfere with vehicular or pedestrian traffic flow, and
- The Licence holder is able to demonstrate that they will be able to exercise proper control and supervision of the remote pavement café area.

Hours of operation

The Council will set the days and hours of use for the pavement café area having regard to the location, likely disturbance to local residents, street cleaning or other businesses and representations from interested parties.

Licences will normally be granted for set hours between 8 am and 11 pm and will be reflective of the normal operating hours of the business. If the premises are licensed under the Licensing Order, a Licence will not be issued beyond 11.30pm, regardless of the additional operating hours that may apply to the premises.

Unlicensed pavement cafés

It is an offence to place furniture (for the use for the consumption of food and drink) on a public area without a Pavement Café Licence. The Council will take a graduated approach to enforcement in line with its Regulation and Enforcement Policy.

The Council has the power to remove any furniture placed on the pavement without a licence where it is considered necessary to do so and may recover the costs reasonably incurred in removing and storing this furniture.

Making an Application

Before submitting an application please read this guide thoroughly to check whether your proposal will meet all the criteria. You are also advised to contact the Council to discuss your proposals PRIOR to submitting your application. This may help to minimise time wasted for applications which may later be refused.

All applications for a Pavement Café Licence must be accompanied by the following:

Site Location plan

A plan must be provided (preferably ordinance survey) showing the proposed pavement café area marked in red and the adjoining streets and properties.

Licence Fee

All applications for a Pavement Café Licence would normally be accompanied by the relevant fee determined by the Council. **However, given the current prevailing circumstances the Council has decided to waive the fee until further notice, subject to review.**

Proposed Café Plan

A plan must be provided of the proposed pavement café area, the streetscape and all utilities and services including lamp-posts, bollards, fire hydrants, manholes, cycle stands, litter bins and any other items of street furniture located within the immediate vicinity. The dimensions of the proposed pavement café area must also be shown.

Please see Appendix 4 for examples of pavement café plans.

Details of the Furniture

Provide details of the number, materials and types of chairs, tables, umbrellas, etc., to be provided in the café (photographs/manufacturers, detailed brochures of proposed furniture or photographs of existing furniture would be helpful to the Council).

Other information

Public liability insurance cover with minimum indemnity of £5m will be required (see our Public liability insurance Guidance Note).

Licensed premises

Premises licensed under the Licensing (NI) Order 1996 will be required to provide details of their Liquor Licence to assist the Council in processing the application and to enable us to notify the court if your application is granted. This is because the pavement café area will be treated as part of the licensed premises for the purpose of the Licensing Order.

If the café is to be located away from the main premises or patrons / staff will need to cross a public pavement to reach the café area, then you must provide a management plan.

Public Notice

Applicants are required to fix a public notice to the premises on the day the application is made to the Council. The notice must be positioned so as to be visible to the public for 28 days. Interested parties can make representations to the Council in respect of an application.

A draft Notice template is provided at Appendix 3. The Council would urge all applicants to use this template.

In addition, the Council will make the application details available to be viewed by the public on the Council's web site until the end of the period allowed for representations.

You must complete the declaration on the application form stating that you have erected the required notice and that you will maintain it in place for 28 days from the date of application.

We suggest that you take a photograph showing the public notice in place and submit the photograph with your application to the Council.

Consultation

It is recommended that businesses discuss their proposals with adjacent property occupiers to inform them of the application.

When assessing the application we will also consult with the following:

- DfI Roads
- The Police Service for Northern Ireland where the premises are licensed to sell alcohol,
- Any other Council Departments, organisations or individuals as appropriate.

Can my Licence application be refused?

Yes. Each application will be considered on its own merits. Due to factors such as visual impact, width restrictions, obstructions or heavy pedestrian flow it may not always be possible to accommodate pavement cafés in all locations.

As an alternative to refusing an application, the Council may suggest changes to your proposal to meet the licensing criteria and make it acceptable e.g. by amending the size and shape of the licensed area.

If your proposal fails to meet the criteria and your application is refused by the Council, you will be informed of that decision.

Should an application be refused the applicant may appeal the decision to the Magistrates' Court within 21 days of being notified of the Council's decision. Licence holders may also appeal a decision to suspend or revoke a Licence or vary the area and Conditions of a Licence (as an alternative to revocation), or to limit the duration of a Licence.

How long will it take to process my application?

The Council aims to provide you with a determination within 5 weeks from date of receipt of a completed application which includes all the required plans, liquor licence information (where applicable) and the public liability insurance.

If there are objections to the granting of the Licence, or other input from consultees, this period may be extended to consider those objections or considerations.

Appendix 1: Suitability Criteria for Licence

Design

The pavement café must make a positive contribution to, and must be in keeping with the surrounding area, other buildings and public realm. Simple robust designs will be preferred and excessive or elaborate detail or signage should be avoided unless clearly justified by the particular context.

Street café proposals should not hinder reasonable use of the footpath, cause nuisance to adjacent frontages, or interfere with apparatus or access to apparatus within the footpath. To this end the applicant is expected to comply with all statutory requirements and obtain all necessary permissions before trading.

Size and layout

Each application will be considered on its own merits on a site by site basis, taking account of the characteristics of the site, the space available and the proposed layout of the café area. The pavement café will also need to be designed in such a way as not to compromise access where applicable.

Any pavement café design/plan should be compliant with the requirements of the Disability Discrimination Act 1995 and Department for Infrastructure criteria.

The licensed area should:

- Avoid conflict with the principal lines of pedestrian movement, particularly for disabled people, older people and those with mobility needs.
- Avoid conflict between customers going in and out of the café, passing pedestrians and neighbouring premises.
- Ideally be confined to the frontage of its own premises with close integration of internal and external activities however this does not preclude a remote location.

In order to safeguard the interests of pedestrians, particularly disabled people, older people and those with mobility needs including pram and wheelchair users, a minimum width of 2.0 metres clearance should be maintained on the pavement between the edge of the licensed area and the kerbside. It may be acceptable to reduce this width to an absolute minimum of 1.5m in constrained environments.

Where the seating area is adjacent to a road junction or vehicular access, 10 metres clearance should be left to allow for junction visibility.

In pedestrianised areas 6 metres of unobstructed road width must be maintained in the street at all times. For examples of pavement cafés and the plans required to be provided please refer to Appendix 4.

The proposed licensed area used must take into account other activities in the immediate vicinity (e.g. kerbside parking, loading bays, bus stops, emergency vehicle access, emergency exits, street cleaning machines, and pedestrian crossings).

Where an application contains a proposal to establish a pavement café abutting neighbouring premises, the Council would advise that the applicant should discuss their proposal with the owners or occupiers of the adjoining premises before an application is made.

It is important that no obstructions such as tables, chairs, menu boards, planters or barriers are placed outside this licensed area or left on the pavement or any part of the licensed area outside the approved hours.

Boundaries

When in use, the licensed area should ideally be enclosed by way of adequate screening, to demarcate the area to make it distinguishable to other pavement users, and to assist blind and visually impaired pedestrians. Portable barriers must have solid/fixed horizontals and verticals (tap rail), with the upper and lower rails set at 1000mm and 100mm above ground level respectively. Rope barriers are not considered suitable. Bases should not cause an obstruction or tripping hazard to pedestrians. In relation to smaller café areas with limited pavement width the Council may only require barriers at each end of the licensed area.

All furniture must be removed outside the licensed period and when the pavement café is not operating within the licensed period. The materials used should, therefore, be lightweight in construction and portable, but stable enough to prevent collapse if accidentally walked into or overturned by a gust of wind.

The design of the barrier should complement the character of the surrounding area and may be required to be of a specific design in order to maintain continuity along the street frontage. The colours and materials used for the enclosure should ensure that it is not visually dominant in longer views but will allow key elements to stand out against the background in close up.

Well maintained planters can be particularly attractive and could be used as part of the means of enclosure, but must be positioned within the licensed area. In certain circumstances, it may be possible to utilise existing street railings, planters and bins as a suitable means of enclosure.

Furniture

Furniture should be of a high quality, uniform in style, capable of being moved in and out of premises. Only furniture approved by the Council may be used.

In order to safeguard those with a visual impairment, It is important that furniture should generally be of one colour (preferably in black, grey or dark green) and non-reflective wherever possible.

- Metal furniture should be chrome, brushed aluminium or powder coated in a matte finish;
- Timber is acceptable;
- Plastic should generally be avoided but if used must be of a durable industrial grade with a matte finish;
- Parasols should be of the heavy-duty commercial type and suitably secured by purpose designed pavement weights to avoid being blown over;

All furniture items, e.g. menu boards and portable gas heaters need to be approved as part of the licensed area and details must be included in the application. Where heating is to be provided, this must be of a type suitable for outdoor use and shall be placed within the licensed area. If patio style liquid petroleum gas (LPG) heaters are to be used, they must to be adequately secured upright, be fitted with a flame failure device and be maintained on a regular basis.

All furniture must be of a temporary nature that can be removed within 20 minutes at the end of the licensed period or when access to the area is required by any statutory body or in the event of an emergency. The application must explain where the furniture will be stored after the licensed period.

If the main premises operate for longer than the licensed period the applicant should give consideration as to where the furniture is to be stored, this should be made clear within the application.

Environmental implications and other requirements

It will be the responsibility of the licensee to keep the licensed area clean and free of litter, during the licensed hours and at the conclusion of business each day. This will include the cleaning of liquid spillages onto the pavement.

The conduct of customers using the licensed café area will also be the responsibility of the licensee.

All food premises should be registered with the Council.

The licence does not create or imply an exclusive right to use the licensed area.

The licence will not permit the use of amplified music or loudspeaker equipment. If you wish to provide entertainment you must apply for an entertainment licence.

Licensees must promote a safe, clean and generally welcoming environment in the pavement café area.

Licensees may wish to consider, for the convenience of their patrons, dividing their licensed café area into smoking and non-smoking sections, with each section clearly marked.

Licensees are reminded that they must comply with the Smoke free legislation. If you are unsure of these requirements please contact us by email on envhealth@belfastcity.gov.uk for advice on the Smoke free legislation.

Safety and Control

It is the responsibility of the licensee to ensure that the pavement café area and the equipment used complies with all appropriate legislation in relation to food safety, health and safety and alcohol consumption requirements.

Applicants are reminded of their duties, to carry out a risk assessment, under the Health and Safety at Work (NI) Order 1978 as they relate to the area and activities covered by the pavement café.

Applicants proposing to Licence a café which is remote from their main premises or where customers and staff need to cross a public pavement to reach the café area, must provide a management plan for the café detailing how the café will be managed and supervised.

Appendix 2 contains the standard Conditions of Licence. These standards will be applied to any Licence granted by the Council. The Council may also place additional terms and conditions on the Licence as and when they consider it appropriate.

Planning Issues

You should also consider whether you require Planning permission. There are three reasons why you might need consent from the Council's Planning Service and these are described below.

Planning permission for a change of use

Planning permission may be required for a change of use of the land if the pavement café is to be located on the public highway or outside the curtilage of the premises. However, given the prevailing circumstances and desire to support the economic recovery, the Council is not requiring planning applications for a temporary change of use at this time as it is satisfied that the main issues are adequately covered as part of the licensing process.

Planning permission for physical structures or alterations

Planning permission is not normally required for a pavement café with temporary furniture. However, planning permission may be required for proposals that are more permanent.

If you answer "yes" to any of the following questions then you may need to submit a planning application.

- Will any street furniture (such as tables and chairs) be permanently fixed to the ground?
- Will there be any other permanent fixtures and fittings outside the building?
- Do you intend to make any alterations to the shopfront?
- Do you intend to add a permanent or retractable awning to the shopfront?
- Do you plan to erect a permanent or fixed means of enclosure (such as a barrier, wall or railings) on the street greater than 1 metre in height?

Advertisement Consent

You may also need Advertisement Consent to erect any new advertisements. However, the regulations allow certain types of advertisement to be erected without the need for Advertisement Consent. Advertisement Consent is normally not required provided that:

- The advertisement is displayed for the purposes of identification, direction or warning, with respect to the building on which it is displayed;
- The advert does not exceed 0.3 square metres in area;
- The advert is not illuminated;
- No character or symbol is more than 0.3 metres in height;
- No part of the advertisement is more than 5 metres above ground level

If you have any doubt about whether you need planning permission please contact our Planning Service by email: planning@belfastcity.gov.uk; or by telephone: 02890 500510.

Consumption of Alcohol

Alcohol **may** be consumed in a licensed pavement café area where the premises are licensed under the Licensing Order unless:

- The business is an 'off sales' as defined under Article 5(1) (b) of the Licensing Order, or
- The Council has prohibited the consumption of alcohol where it is likely that there would be disorder caused by permitting consumption of alcohol.

If the area outside my premises belongs to someone else and not adopted by DfI Roads, do I need a Licence?

Yes. Each application will be considered on its own merits. You need to provide a copy of the landlords consent, lease or licence.

The area outside my premises is owned by me, but the public have access to it. Do I need a Licence?

Yes. Each application will be considered on its own merits. Please contact the Council to discuss the proposed area PRIOR to submitting an application form.

Appendix 2: Standard Conditions of Licence

The following standard conditions will be applied to any licence granted by the Council. Council may also place additional terms and conditions on the licence as and when they consider it appropriate.

1. The Licensee shall be responsible at all times for compliance with the terms and conditions of the Pavement Café Licence.
2. The licensed area must only be used to place temporary furniture for the purpose of consuming food and/or drink supplied from the licence holder's premises.
3. The Licensee shall at all times ensure that the pavement café furniture is not placed outside the licensed area.
4. Only furniture permitted by the Council shall be used in the licensed area and such furniture shall be placed in accordance with the layout plan as agreed in writing by the Council.
5. The licensee shall only place furniture on the licensed area on those days and during those hours as permitted by the licence.
6. Any furniture provided in the licensed area shall not mark or damage the surface of the pavement.
7. Furniture should be sufficiently portable that it can be removed within 20 minutes.
8. Adequate storage approved in writing by the Council must be provided to ensure that furniture can be stored securely when the premises are closed.
9. The Licensee shall ensure that adequate Public Liability insurance cover is in force to cover the licensed area and provide proof of that insurance upon demand by the Council.
10. The licensee shall ensure good order is maintained during all times the Pavement Café is open.
11. The licensee shall ensure that the pavement café is operated in a manner ensuring that there is no safety risk, nuisance, public health issue or detriment to amenity caused to other users of the highway or nearby premises.
12. This licence does not in any way permit the playing of live or recorded music for the entertainment of customers in the licensed area.
13. The licensee must have in place a commercial waste collection contract and provide proof of that contract upon demand by the Council."

Licensing of Pavement Cafés Act (NI) 2014

PUBLIC NOTICE - APPLICATION FOR A PAVEMENT CAFÉ LICENCE

Notice is hereby given on XX/XX/2020

That the following premises applied to Belfast City Council for a Pavement Café Licence:

Name of premises:

Address:

The pavement café is to be immediately outside the premises / located at:

You can find details of this application on the Council website at
www.belfastcity.gov.uk/pavementcafes

[You can also arrange to view this application, free of charge, by contacting the Council at the address below. \(Please email or phone as our customer reception is currently closed due to COVID-19\)](#)

Any objections to this application must be made within 28 days of the date of this Notice. Objections must be in writing (post or email) and sent to the address below.

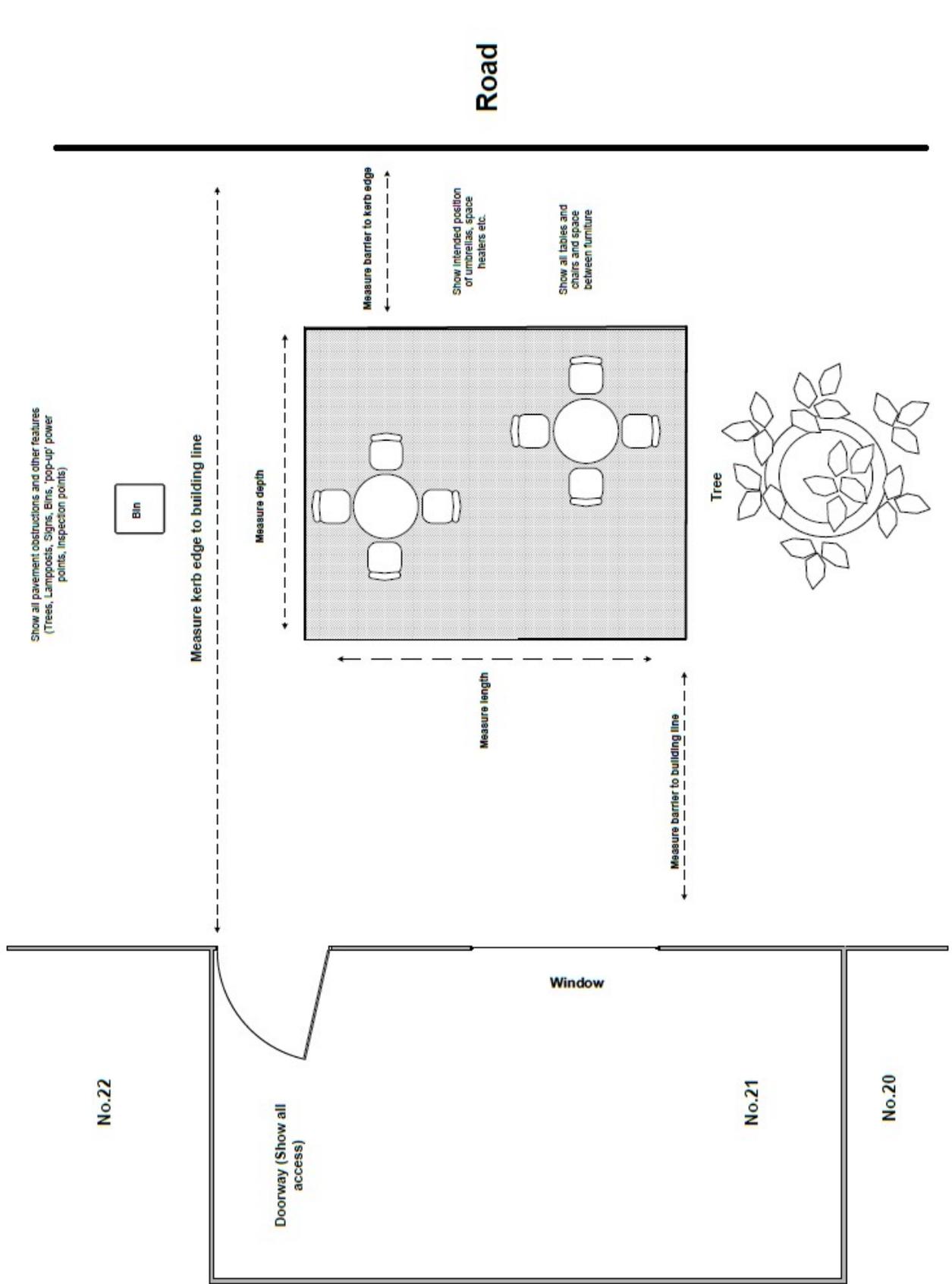


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Place & Economy Department
Building Control Service
Ground Floor, 4-10 Linenhall Street, Belfast BT2 8BP

Phone: 028 9027 0650 Email: pavementcafes@belfastcity.gov.uk

Appendix 4a: Examples of pavement cafés layout plans



Appendix 4b: Examples of pavement cafés layout plans

