

Pavement Licences

Before the Covid-19 Pandemic, restaurants, bars and cafes in the UK could apply to their Local Authority for a permit under the Highways Act 1980 ("the 1980 Act") to place tables and chairs on the highways adjacent to their premises. The 1980 Act contained the regime which has colloquially been known as the "Pavement Licence".

Under this regime, there was a minimum 28 working-days consultation period for the Local Authority to reach a decision after an application, no national fee structure for applicants, and discretionary and variable conditions set by each Local Authority. The cumulative effect was that it was costly and time-consuming for businesses to apply for such permits.

Pavement Licences

In response to the pandemic, the Government introduced the Business and Planning Act 2020 ("the 2020 Act"). The Act came into force on 22 July 2020 and made temporary provisions for a fast-track process to allow businesses selling food or drink to obtain authorisation from the Local Authority for the placement of furniture such as tables and chairs on highway adjacent to their premises.

Eligible businesses include public houses, cafes, bars, restaurants, snack bars, coffee shops and ice cream parlours including where such uses form an ancillary aspect of another use, for example supermarkets, or entertainment venues which sell food and drink.

The 2020 Act regime was extended by the Business and Planning 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2021 ("the 2021 Regulations") to 30th September 2022.

Businesses are still required to submit a new application and renew their Pavement Licence if it expires before 30th September 2022, until the new regime takes effect.

Existing Pavement Licence Regime

Fee

- Application fee is capped at £100.

Process

- Consultation period of 7 days
- Determination period of 7 days
- Local Authority to respond to application within 14 days from date of submission of application
- Pavement Licence deemed granted if no response at the end of the above period.

Requirements

All Licences are subject to locally negotiated conditions in addition to the following mandatory conditions:

- No rights of the public or members of the public (e.g. disabled people) are to be obstructed by the placement of furniture on highway,
- Reasonable provisions for seating to be provided where smoking is not permitted.

Duration

- Minimum duration is 3 months
- Maximum duration is any period up to 30 September 2022 (extended from September 2021).

Renewal

- Renewals follow the same process as the application for a new licence.

Levelling Up and Regeneration Bill (2022)

The Levelling Up and Regeneration Bill introduced by Parliament in 2022 ("the 2022 Bill") purports to make changes to the existing Pavement Licence regime and make permanent the temporary provisions of the 2020 Act.

Transition from Existing Regime to New Regime

The proposed changes take effect once the Bill is passed and enacted. Where a Pavement Licence application has been granted or deemed as granted without a specified duration before the new regime takes effect, the licence

will be in force for 2 years from the date of enactment. All other licences which expire on 30th September 2022, or after the new regime has taken effect will need to renew under the new regime.

New Pavement Licence Regime

New Applications

Fee

- Application fee is capped at £500

Process

- Consultation period of 14 days
- Determination period of 14 days
- Local Authority has a total of 28 days to make a final decision
- Pavement Licence deemed granted if no response at the end of the above period.

Requirements

All Licences will be subject to conditions set by Local Authorities in addition to the same mandatory conditions as above.

Duration

- No minimum duration
- Maximum duration of 2 years.

Renewal Applications

Fee

- Application fee is capped at £350.

Process

- More streamlined application process introduced (previously new application was required),
- Consultation period of 14 days
- Determination period of 14 days
- Local Authority has a total of 28 days to make a final decision
- Pavement Licence deemed granted if no response at the end of the above period.

Conclusion

The pavement licence regime is generally considered to have been a success. It was expected to become permanent, so this is no great surprise. The process will

become longer, and the costs will increase once the new regime comes into play.

Please do contact any member of the Commercial Real Estate and Licensing Team at Winckworth Sherwood for more information.

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