



OPEN REPORT LICENSING AND APPEALS COMMITTEE

Licensing and Appeals Committee – 21 September 2022

Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022 - Extension to Temporary Pavement Licensing Regime

Report of Director of Regulatory Services

Report Author and Contact Details

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Wards Affected

District wide

Report Summary

This report provides an update on information received from Government in respect of a further extension to the temporary pavement licensing regime.

The temporary licensing regime was first introduced in September 2020, with the implementation of the Business and Planning Act 2020 (“the Act”). The aim of the provision was to assist food and drink businesses to re-open and be able to operate viably during the pandemic, before the lock-down periods were fully relaxed.

The report explains that on 27th July 2022 the Government introduced the Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022 (“the 22 Regulations”), which includes provisions to extend the expiry date of the temporary pavement licensing regime to 30 September 2023.

Recommendations

1. That the report be noted, and the extension to the temporary pavement licence regime is implemented, with applications for pavement licences to expire on or before 30 September 2023 being invited from food and drink businesses.
2. That the Committee recommends that the Governance and Resources Committee considers an application fee for a pavement licence, as part of the Council’s annual fees setting report, later this year.

List of Appendices

None

Background Papers

Ministry of Housing, Communities & Local Government (MHCLG) Guidance on Pavement Licences 26 July 2022
Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022
Report to Council Meeting – 2 July 2020 (Minute Number 385/19)
Report to Licensing and Appeals Committee – 30 June 2021

Remittance Advice (18 January 2022) - and email (31 August 2022) from the Department for Levelling Up, Housing and Communities

Consideration of report by Council or other committee

Governance and Resources Committee - to consider a proposal, as part of the annual fee setting process, to introduce an application fee for pavement licences with effect from 1 April 2023.

Council Approval Required

No

Exempt from Press or Public

No

Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022 – Interim extension to the Temporary Pavement Licensing Regime

1. Background

- 1.1. Members of the Committee may recall that The Business and Planning Act 2020 (“the Act”) was introduced in 2020 to support various business sectors through the pandemic, including the hospitality industry.
- 1.2. The Act included a number of temporary relaxations to other pieces of legislation, eg: the Licensing Act 2003, to allow off-sales of alcohol to those businesses only licensed to sell alcohol for consumption on licensed premises, and to increase the number of Temporary Event Notices (TENs) that could be given in respect of the same premises during the calendar years 2022 and 2023. The Act temporarily removed the need to obtain planning permission to allow the use of temporary structures in beer gardens and car parks. eg gazebos and marquees etc .
- 1.3. The Act made provision for the introduction of a Temporary Pavement Licensing regime. The temporary provisions enabled a business operating from premises that are used as public houses, wine bars or other drinking establishments, or other use for the sale of food or drink for consumption on or off the premises, to place removable furniture such as stalls, tables and chairs on the highway outside their premises.
- 1.4. Proprietors of such businesses could apply to their Local Authority (district, borough or city council) for a licence to use an outside space that was part of, or adjacent to their premises. The aim being to allow businesses to re-open safely, and to support them through the economic recovery as the coronavirus lockdown restrictions were eased in the summer of 2020, and again in 2021.
- 1.5. In July 2021, the Government extended the power to licensing authorities, to continue to determine applications for temporary pavement licences, until 30 September 2022.

2. Key Issues

- 2.1 At the end of July this year the Government confirmed that the Pavement Licensing regime has been given an interim extension until 30 September 2023, under the provisions of the Business and Planning Act 2020 (Pavement Licence) (Coronavirus) (Amendment) Regulations 2022.

- 2.2 The extension has been introduced, pending a decision regarding whether the responsibility will become a permanent one for the district, borough and city councils.
- 2.3 In Derbyshire, the responsibility for pavement café licensing was Derbyshire County Council's, pre-August 2020. This was because the means to obtain a licence to place furniture such as tables and chairs on the highway is a permanent measure set out in Part 7A of the Highways Act 1980.
- 2.4 The process set out in the Highways Act involves a minimum consultation period of 28 days and does not specify an amount of time for local authorities to reach a decision on applications; the Explanatory Memorandum part of the new Regulations suggests that on average this approval time was 42 days (based on a sample of local authorities researched).
- 2.5 There is no statutory cap on fees when making an application for a licence under the 1980 Highways Act. In some cases, application fees charged pre-COVID have exceeded £300.
- 2.6 The temporary pavement licence provisions were introduced in "the Act" to create a temporary faster, cheaper, and more streamlined regime. Under the temporary provisions the application fees for applying for a licence can be set by the local authority but must not exceed £100.
- 2.7 The fast-track process means that applications are subject to a 7-day consultation period, and then a further 7-day determination period during which the local authority is expected to either grant a licence or reject the application. A licence is automatically deemed granted if the authority does not make a decision on the application before the end of the determination period. These provisions were introduced as a temporary measure in response to coronavirus, and due to expire on 30 September 2022.
- 2.8 Since September 2020 the District Council has received and processed 25 applications for pavement licences. 21 businesses were granted licences, 3 applications were refused and 1 application was withdrawn.
- 2.9 In addition to the 25 pavement licence applications processed, the Licensing Team received 11 applications from businesses wishing to provide seating and tables for their customers on areas of land owned by the District Council. These included land such as Ashbourne Market Place and Scarthin Parade in Cromford. These applications were processed in the same way as the fast-track pavement licences, but were issued as Sitting-Out Licences by the Council's Estates Manager.
- 2.10 It is recognised that there are a number of premises that have not yet applied for a licence and have been operating a pavement café for some year's pre-2020 without a pavement café licence which the County Council were responsible for administering. These businesses will be invited to make an application.
- 2.11 Taking into account the number of premises that have not yet obtained or applied for a Pavement licence, it is expected that there could be 50-60 across the Derbyshire Dales that will require processing, monitoring and enforcing during the next 12 months.

- 2.12 The District Council resolved in 2020, not to charge an application fee for this licence, as the expectation was that the licensing regime was temporary until September 2022.
- 2.13 In January 2022, a new burdens grant of £4,123:00 was received from the Department for Levelling Up, Housing and Communities. This first payment included a one-off set-up cost associated with implementing the new process and roughly the costs for running the temporary scheme during the first year.
- 2.14 At the end of August 2022, a Section 31 grant payment of £2,419:00 was received for year 2. This payment is intended to absorb the approximate costs for continuing to operate the temporary pavement licensing regime, of processing, monitoring and enforcement not covered by any application fees charged.
- 2.15 As we move into the third year of providing the service, and aim to licence all premises that have not yet applied for or obtained a licence, this could introduce resource implications, if an application fee is not charged and the grant payment received does not cover the cost of the service.
- 2.16 The Committee may wish to recommend that a fee is proposed for consideration in the annual fees and charges report to the Governance and Resources Committee, as part of the annual fee setting process.
- 2.17 Licensing Policy

In 2020, the licensing regime temporary and a generic application procedure was prescribed in the Business and Planning Act and guidance that accompanied it. It was not considered necessary to introduce a formal policy at that time.

The Government has indicated that this responsibility may become a permanent one for the District Council, and if so, consideration could be given to developing a formal policy. Whilst a Policy is not set in stone and can be deviated from with good reason, it is a starting point, and advises would-be applicants, existing licence-holders and the general public how applications for pavement licences are determined.

3. Options Considered and Recommended Proposal

- It is a legal requirement under the regulations that the temporary licensing regime is extended to the end of September 2023, it is therefore recommended that the extension to the temporary pavement licence regime is implemented, with applications for pavement licences to expire on or before 30 September 2023 being invited from food and drink businesses.
- The Council waived the application fee during 2020-21 and 2021-22, and the new burdens grant will have off-set some of the costs of setting up the system. However, as the number of applications expected during the next 12 months is likely to be significantly more than during the previous 2-year period, it is recommended that charging the maximum application fee of £100 permitted by Government, should be considered with effect from 1 April 2023.

4. Timetable for Implementation

- The process for dealing with applications for pavement licences has been on-going since August 2020.
- The introduction of an application fee for pavement licences from 1 April 2023, would need to be considered by the Governance and Resources Committee as part of the annual fee setting process, which takes place at the end of the year.

5. Policy Implications

- 5.1 The legislation/regulations do not require councils to adopt a formal policy at the current time.

6. Financial and Resource Implications

- 6.1 The licensing service should set fees on a full cost recovery basis. A detailed cost recovery exercise has not been carried out, but the cost of processing a licence would be more than £100.
- 6.2 The Council has received new burden and section 31 grants from the Department for Levelling Up, Housing and Communities, and will not be reimbursed for any costs if an application fee is not set. Any shortfall in the cost of providing the service will need to be met/subsidised by the Council.
- 6.3 Therefore the financial risk has been assessed as low.

7. Legal Advice and Implications

- 7.1 This report provides an update on information received from Government in respect of a further extension to the temporary pavement licensing regime.
- 7.2 There are 2 recommendations in this report one is for noting and the second is recommending a further report to be brought before Members in due course.
- 7.3 Therefore the legal risk in connection to this report has been assessed as low.

8. Equalities Implications

- 8.1 None directly applicable to this decision.

9. Climate Change Implications

- 9.1 There are no direct climate change implications arising directly from this report.

10. Risk Management

- 10.1 The District Council has a statutory responsibility to continue to implement the pavement licensing regime.

Report Authorisation

Approvals obtained from:-

	Named Officer	Date
Chief Executive	Paul Wilson	
Director of Resources/ S.151 Officer (or Financial Services Manager)	Alison Wood	
Monitoring Officer (or Legal Services Manager)	James McLaughlin	