

Insights

THE BUSINESS AND PLANNING BILL: THE ROAD TO RECOVERY?

Jun 26, 2020

SUMMARY

The Government yesterday published its Business and Planning Bill. The Bill includes an assortment of measures to support businesses as the country transitions from lockdown into recovery, including the introduction of new 'pavement licences', extending construction hours and eagerly anticipated measures to extend planning permissions. In this blog we discuss the details and implications of this Bill as currently drafted.

Background

Earlier this week it was reported that the Government was proposing to introduce measures to remove some of the short term planning and licensing obstacles that could hinder businesses as the economy starts to re-open. The Government has now revealed its proposed legislation, in the Business and Planning Bill (the "Bill"), which is intended to be fast-tracked with MPs to consider all stages of the Bill on Monday 29 June 2020.

Extension of planning permissions

Planning permissions usually expire if they are not implemented within 3 years from the date of grant. Due to Covid-19 a large number of development schemes were put on hold leaving insufficient time for implementation before they lapse.

The Bill contains an automatic extension for some planning permissions and an extension, subject to an 'additional environmental approval' for others.

The proposed extensions currently only apply to planning permissions in England.

Automatic Extensions to 1 April 2021

The following permissions will automatically be extended to 1 April 2021, with no further action needed:

- relevant planning permissions (essentially any planning permission that isn't deemed or granted by a development order) and outline planning permissions due to expire between 28 days after the Bill passes and 31 December 2020;
- listed building consents requiring the commencement of works between 23 March 2020 and 31 December 2020; and
- reserved matters approvals application deadlines between 23 March 2020 and 31 December 2020.

Extensions to 1 April 2021 subject to “additional environmental approval”

Relevant planning permissions and outline planning permissions that expired between the start of lockdown (23 March 2020) and 28 days after the Business and Planning Act comes into force, require **developers to apply to the local planning authority for “additional environmental approval” to revive them to 1 April 2021.**

“Additional environmental approval” can only be granted by the planning authority if the “EIA requirement” and the “habitats requirement” are both met. These conditions will be satisfied if, at the time the planning authority makes the decision, the authorised development:

- is not an EIA development¹;
- the development is an EIA development but the Environmental Impact Assessment remains up to date;
- does not require a habitats assessment²,
- or the development was previously the subject of a habitats assessment which ascertained it would not adversely affect the integrity of a European site or European offshore marine site, and which remains up-to-date;

Applications for “additional environmental approval” must be approved by the planning authority within 28 days, otherwise they are deemed to be approved. The approval cannot be granted subject to any further conditions.

The ability to revive these planning permissions will expire on 31 December 2020. However, under the Bill the Secretary of State has powers to amend the above dates (and processes) by further regulations.

Speeding up Planning Appeals

The Bill will permanently grant the Planning Inspectorate the ability to use more than one procedure (written representations, hearings and inquiries) at the same time when dealing with a planning

appeal in England. This flexibility will make the appeals process more efficient and faster decisions.

The Bill also temporarily permits electronic inspection of the Mayor of London's spatial development strategy until 31 December 2020.

Pavement Licences

To help food and beverage operators to maximise their capacity whilst complying with social distancing guidelines, the Bill introduces a fast track procedure for pubs, bars, restaurants and others selling food or drink for consumption to obtain a "pavement licence" from the local authority.

A pavement licence will allow operators to put removable furniture on part of the highway adjacent to their premises for use, among other things, in connection with the sale, serving, or consumption of food and drink.

The application must be displayed by site notice and go through a 7 day public consultation period from the day after the application was made. Local authorities will then have 7 days to make a decision following the end of that period. Failure to reject the application will amount to a deemed grant of the licence. The local authority can levy a fee of up to £100 for each application. Operators must provide evidence of public liability insurance, plans of their proposed seating and risk assessments for managing Covid-19 issues such as social distancing, toilet provision and service by staff.

The local authority may specify the period of the licence (for a minimum of three months). If unlimited, the licence will expire on 30 September 2021. It is not expected that this fast track system will continue after that date as it is designed to help businesses operate over the worst phase of the Covid-19 outbreak. After that date, it is likely that the previous system of requiring planning permission and a separate pavement licence will return.

Any licence granted may be subject to conditions that the local authority considers reasonable. All licences however will be subject to a "no-obstruction condition", preventing interference with traffic and access to other apparatus, and any condition published by the Secretary of State before it is granted.

For the purposes of any unauthorised development carried out pursuant to the pavement licence (for example if it amounts to a change of use) the licence will constitute deemed planning permission.

Alcohol Licences

Provisions in the Bill temporarily vary the Licensing Act 2003 so that those holding an on-premises premises licence on the day before the Bill takes effect, are automatically and immediately permitted to sell alcohol for consumption off-premises, either for take away/delivery or to drink

outside the premises. The permission will only exist until 30 September 2021 and will then fall away unless made permanent.

Such sales are not permitted if, over the preceding three years the relevant licensing authority:

- Refused an off-licence application;
- Refused to vary an on-licence to allow off-licence sales; or
- An existing licence was varied to prohibit off-licence sales.

Construction Working Hours

Planning permissions typically contain planning conditions restricting the hours within which construction can be carried out.

The Bill introduces a fast track route for developers to apply to the planning authority to amend conditions or approved documents setting out restrictions on construction working hours. The temporary amendments expire on a date set by the planning authority no later than 1 April 2021.

Applications must be made in writing, electronically, to the planning authority who must decide within 14 days whether to approve the modification. If a decision is not made within 14 days the modification is deemed to be approved.

Comment

The Bill will be a welcome relief to many across the development, hospitality & leisure and construction industries providing the opportunity for valuable schemes to come forward and for businesses to quickly and lawfully adapt their operations.

Notwithstanding the automatic functions of the Bill, it may put pressure on local authorities to determine applications within tight timescales. It therefore remains to be seen what the above processes will look like in practice.

While these measures go some way in starting to address the concerns of businesses, there are still key issues which the government have remained silent on and it will need to act swiftly if other measures are to be introduced before Parliament's summer recess.

1. In accordance with Town and Country Planning (Environmental Impact Assessment) Regulations 2017

2. In accordance with the Conservation of Habitats and Species Regulations 2017

RELATED PRACTICE AREAS

- Planning & Zoning
- Real Estate
- Licensing
- Hotels and Hospitality

MEET THE TEAM



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