

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

**Licensing and Public Protection Committee
27 July 2021**

Report Title: Business and Planning Act 2020 Update

Submitted by: Head of Environmental Health

Portfolios: Finance, Town Centres and Growth

Ward(s) affected: All

Purpose of the Report

To inform members of updates planned for the Business and Planning Act 2020 which relates to the relaxations in respect of pavement licenses alcohol off-sales, and the temporary increase in Temporary Event Notice limits for 2022 and 2023.

Recommendation

That Members:

- 1. Note the proposed amendments to the Business and Planning Act 2020 and contents of the Regulations.**
- 2. Note that if Regulations are passed then all Pavement Licences be granted to expire on 30th September 2022.**

Reasons

The Business and Planning Act 2020 received Royal Assent on 22nd July 2020 for immediate implementation. In August 2020 the Licensing & Public Protection Committee agreed standard conditions and application criteria for Pavement Licences, and noted the legislative changes that relaxed alcohol sales for consumption off the premises ("off-sales"). Draft regulations were laid on 9th June 2021 to extend these provisions and increase the Temporary Event Notice limits for the years 2022 and 2023.

1. Background

1.1 The new Business and Planning Act 2020, received royal assent on 22nd July 2020 and made significant changes designed to help premises (including public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours) to survive and then bounce-back from the pandemic lockdown.

1.2 The provisions included:

- A new "Pavement Licence" regime, to be administered by local authorities, designed to make it easier for premises serving food and drink such as bars, restaurants and pubs to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.
- Alcohol licensing changes that will allow operators with existing alcohol on-sales licences to also serve alcohol for consumption off the premises and to make deliveries.

1.3 The Act originally included temporary measures (up to 30th September 2021) to support businesses selling food and drink through economic recovery as lockdown restrictions were lifted but social distancing guidelines remained in place.

1.4 The measures in the Act were designed to support businesses selling food and drink such as cafes, pubs and restaurants by introducing a temporary fast-track process for these businesses to obtain permission, in the form of a “pavement licence”, for the placement of furniture such as tables, chairs, umbrellas and patio heaters on the pavement outside their premises. This enables them to maximise their capacity whilst adhering to social distancing guidelines.

2. **Issues**

Pavement Licences:

- 2.1 To date the Council have received 23 applications for Pavement licences, issuing 14 and rejecting 9. The main reason for rejecting the applications is that the proposed locations of the outside areas were on private land and not public highway.
- 2.2 The Government have announced that to further support businesses they will be extending the provisions for Pavement Licences to end on 30th September 2022. Draft regulations were laid on 9th June 2021 but have not yet been passed.
- 2.3 If the regulations are passed then any application for a Pavement licence, new or renewal, may be granted with an expiry date of 30th September 2022. Any applications received prior to the passing of the regulations will retain the end date of 30th September 2021.
- 2.4 At the Committee meeting on 4th August 2020 Members agreed that licences would be granted for a period of 12 months, or to the expiry date on 30th September 2021, whichever was soonest.
- 2.5 To support businesses if the regulations are passed then licences run until 30 September 2022. This reduces the burden on businesses having to renew a licence more than once and spreads out applications. There is no formal provision to renew a licence however if there are no amendments to be made the Council are proposing to implement a renewal process where the licence holder confirms nothing has changed rather than ask them to apply anew.
- 2.6 The timescales for consultation and determination of a licence application are tight and will still effect all applications. The applicant must post a notice on the premises on the same day as the application is made. The notice must be in place for a consultation period of 5 working days beginning with the day after the day the application is submitted. The Council must publish the application on its website and allow people to comment during the 5 working days consultation period. The Council must consult with the highway authority and ‘such other persons as the local authority considers appropriate’ e.g. police, residential neighbours. The Council must determine the application within a period of 5 working days beginning with the first day after the consultation period. If the Council does not determine the application within this period, the pavement licence will be deemed as granted.

Off-Sales:

- 2.7 The measures originally included in the Act modified provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It was designed to be a temporary measure to “boost the economy”, with provisions lasting until the end of September 2021.
- 2.8 The measures make it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption off the premises. This will allow businesses to trade whilst keeping social distancing measures in place inside.

- 2.9 Similarly to Pavement licences, the Government have also announced that to further support businesses they will be extending the provisions that allow 'on-sales' only premises to sell alcohol for consumption off the premises ('off-sales') to end on 30th September 2022. Draft regulations were laid on 9th June 2021 but have not yet been passed.
- 2.10 Nothing else has been amended. There is no requirement for an application to be made. It only applies to premises licence and not club premises certificates, a notice still needs to be displayed at premises benefitting from the relaxation provisions, certain licence conditions remain suspended and it only applies to current licensing hours up to an end time of 23.00 hours.
- 2.11 If there are problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operated using the new permission, any responsible authority, including the police or environmental health, could apply for a new off-sales review. The off-sales review process is modelled on the existing summary review process. In the event that an off-sales review is triggered, it will only relate to off-sales authorised by virtue of these provisions, or conditions which have effect by virtue of these provisions: it cannot be used to revoke the existing licence or modify pre-existing licence conditions.

Temporary Event Notices

- 2.12 The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021, which also cover the 'off-sales' relaxation, seek to amend the provisions in relation to Temporary Events Notices (TENs) limits for the calendar years 2022 and 2023. Currently an individual can submit a maximum of 15 TENs that cover a maximum of 21 days with a calendar year. The regulations propose to extend the limits in 2022 and 2023 so that an individual can submit a maximum of 20 TENs that cover a maximum of 26 days with a calendar year.

3. Proposal

3.1 There are a number of matters which committee need to decide, these are:

3.2 **Note the proposed amendments to the Business and Planning Act 2020 in relation to pavement licences and 'off-sales' of alcohol, and the increase in limits for Temporary Event Notices.**

3.3 **Note that if Regulations are passed then all Pavement Licences be granted to expire on 30th September 2022.**

4. Reasons for Proposed Solution

- 4.1 Government have laid draft regulations to extend the provisions in relation to pavement licences and 'off-sales' of alcohol and the increase in limits for Temporary Event Notices.
- 4.2 The Council needs to continue with a mechanism in place for determining pavement licensing applications.

5. Options Considered

- 5.1 Members could decide not to approve that pavement licence applications received after the regulations come into force can be issued with an expiry date of 30th September 2022. Any application received between the date they come into force and 30th September 2021 would

then have to reapply in October 2021 which would add burden onto the businesses and Council

5.2 Members could decide not to approve a simplified 'renewal' process but this would also add burden onto the businesses and Council

6. **Legal and Statutory Implications**

6.1 The legal and statutory implications are fully addressed in the body of this report.

7. **Equality Impact Assessment**

7.1 There are no issues arising from this report.

8. **Financial and Resource Implications**

8.1 The Council can charge a fee of up to £100 per pavement licence application. In August 2020 the Committee agreed to waive this fee.

9. **Major Risks**

9.1 The risk of not accepting the recommendation is that the Council will have overly burdensome process for dealing with application once the regulations are approved and come into force.

10. **Sustainability and Climate Change Implications**

10.1 There are no issues arising from this report.

11. **Key Decision Information**

11.1 This is not a key decision.

12. **Earlier Cabinet/Committee Resolutions**

12.1 4th August 2020 – Licensing & Public Protection Committee

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 The Business and Planning Act

14.2 The Business and Planning Act Guidance for Pavement Licences

14.3 Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021

14.4 Business and Planning Act 2020 (Coronavirus) (Amendment) Regulations 2021