

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Licensing and Public Protection Committee
18 October 2022

Report Title: Business and Planning Act 2020 Update

Submitted by: Head of Regulatory Services

Portfolios: Finance, Town Centres and Growth

Ward(s) affected: All

Purpose of the Report

To inform members of updates relating to the Business and Planning Act 2020, and relevant Regulations, which relates to the relaxations in respect of pavement licenses and alcohol off-sales.

Recommendation

That Members:

- 1. Note the proposed amendments to the Business and Planning Act 2020 and contents of the Regulations.**
- 2. Note that all Pavement Licences will be granted to expire on 30th September 2023.**

Reasons

The Business and Planning Act 2020 received Royal Assent on 22nd July 2020. Subsequently various Regulations have been, or will be, laid down extending the provisions that relate to Pavement Licensing and alcohol off-sales.

1. Background

1.1 The 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 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 allowed 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. Last year the temporary measures were extended to expire on 30th September 2022.

- 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 Licenses:

- 2.1 The Council currently has 18 premises that have been granted a Pavement licence. There are an additional 3 that were issued but have since lapsed and a number of applications rejected on the basis of either being in unsuitable locations, or the applicant not providing the requisite documentation. 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 has announced that to further support businesses they will be extending the provisions for Pavement Licences to end on 30th September 2023, with a view to making the licence regime permanent. The provisions to make the regime permanent are set out in the Levelling Up and Regeneration Bill which is currently making its way through both Houses.
- 2.3 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. Where the premises proposes amendments they will have to apply anew.
- 2.4 The timescales for consultation and determination of a licence application are short and 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 and 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:

- 2.5 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. Last year the temporary measures were extended to expire on 30th September 2022.
- 2.6 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.

- 2.7 Similarly to Pavement licences, the Government has 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 2023. The Regulations were laid down on 22nd September 2022 with a view that they come into force before 30th September 2022.
- 2.8 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. Government has committed to consulting upon whether these changes should be made permanent in the future, either in the current format or with a view to a simplified variation application procedure. No date has been set for this to take place but they have suggested it will be within the '*next few months*'.
- 2.9 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.

3. **Proposal**

3.1 That members:-

- a) Note the proposed amendments to the Business and Planning Act 2020 and contents of the Regulations.
- b) Note that all Pavement Licences will be granted to expire on 30th September 2023.

4. **Reasons for Proposed Solution**

- 4.1 Government have laid regulations to extend the provisions in relation to pavement licences and 'off-sales' of alcohol.
- 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 can be issued with an expiry date of 30th September 2023. Any application received would then have to reapply in October 2022 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 processes for dealing with applications 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 2020](#)

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](#)

14.5 [Business and Planning Act 2020 \(Pavement Licences\) \(Coronavirus\) \(Amendment\) Regulations 2022](#)