

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Licensing and Public Protection Committee
10 May 2023

Report Title: Licensing Act 2003: Regulatory Easements Consultation

Submitted by: Service Director - Regulatory Services

Portfolios: Finance, Town Centres and Growth

Ward(s) affected: All

Purpose of the Report

To inform the Committee of a Home Office consultation as to whether the temporary alcohol licensing provisions enacted in the Business and Planning Act 2020 should be made permanent.

Recommendation

That Members note the content of the report and consultation response submitted.

Reasons

The Home Office have consulted upon on whether the temporary alcohol licensing provisions enacted in the Business and Planning Act 2020 should be made permanent. The consultation has closed and a response has been submitted on behalf of the Council.

1. **Background**

- 1.1 During the Coronavirus pandemic the Government implemented a number of 'regulatory easements' through the Business and Planning Act 2020 including:
- The creation of a Pavement Licensing regime;
 - Changes to alcohol licensing that allowed operators with existing alcohol on-sales licences to also serve alcohol for consumption off the premises and to make deliveries; and
 - Extensions to the limits for Temporary Event Notices.
- 1.2 The Pavement Licensing regime was 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. However, the future plans for this sit within the Levelling Up and Regeneration Bill, rather than within this consultation.
- 1.3 The off-sales easement was designed to be a temporary measure to "boost the economy", with provisions lasting until the end of September 2021. They have already been extended twice to September 2022 and 2023 respectively.
- 1.4 The Temporary Event Notices easement was also a temporary measure that allowed for an extension on limits of TENs for the calendar years of 2022 and 2023.

2. Issues

- 2.1 The Home Office opened a consultation on 6th March 2023 in relation to the easement around allowing existing alcohol on-sales licences to also serve alcohol for consumption off the premises and to make deliveries; and the extensions to the limits for Temporary Event Notices.
- 2.2 The consultation ran for 8 weeks and closed on 1st May 2023.
- 2.3 In relation to each aspect the Home Office consulted upon which of three options would be the preferable position. In relation to the 'off-sales' easement the options were:
- 2.3.1 - Option 1: Do nothing. This means that the easements provided by the Business and Planning Act 2020 lapse after 30 September 2023 and arrangements revert to those set out in the Licensing Act 2003. Any premises licence holder whose licence only allows on-sales will need to apply for a variation if they additionally wish to provide off-sales;
- 2.3.2 - Option 2: Make permanent the temporary regulatory easements for off-sales under the Business and Planning Act 2020, whereby any on-sales alcohol premise licence automatically covers off-sales as well. This would apply to existing and future premises licence holders; or
- 2.3.3 – Option 3: If a venue has both an alcohol premises licence and a pavement licence, the area covered by the pavement licence would be automatically included in the premises licence.
- 2.4 In relation to the Temporary Events Notices (TENs) easements the options were:
- 2.4.1 - Option 4: Do nothing. This means that the easements provided by the Business and Planning Act 2020 lapse after 31 December 2023. The number of TENs permitted will revert to the numbers set out in the Licensing Act, which is 15 TENs per year for a total of 21 days;
- 2.4.2 - Option 5: Extend the easement for a further twelve months, until 31 December 2024. This would mean that the number of TENs permitted will be 20 (from 15) and the maximum duration will be 26 days (from 21).
- 2.4.3 - Option 6: Make permanent the extension to the number of permitted TENs provided by the Business and Planning Act 2020. This would mean that the number of TENs permitted will be 20 (from 15) and the maximum duration will be 26 days (from 21). This would apply to existing and future premises licence holders.
- 2.5 The consultation document is attached as **Appendix A**. The document provides an introduction to the proposals, what the proposals are, the background to them and the consultation questions. There were fourteen (14) questions:

Off-Sales:

1. Q1: Do you agree that when the regulatory easement ends on 30 September 2023, there should be no automatic extension of an on-sales premises licence; anyone wishing to do off-sales should apply to their Licensing Authority for a variation to their on-sales licence?
Yes or No
2. Q2: Should any such amendment to an on-sales licence be treated initially as a minor variation? Yes or No
3. Q3: Should all variation applications automatically be sent to responsible authorities? Yes or No
4. Q4: Should any such amendment to an on-sales licence always be a major variation?
Yes or No

5. Q5: Should all new applications for premises licences specify on-sales and off-sales or should they automatically include both? On and off-sales listed separately or Automatically include both on and off-sales
6. Q6: If a premises licence holder also holds a pavement licence for the same venue, should the area covered by the pavement licence be automatically deemed to be included in the area covered by the premises licence? Yes or No
7. Q7: Do you agree that the regulatory easement should be made permanent, meaning that any on-sales premises licence holder is automatically able to do off-sales without any need to amend their licence? Yes or No
8. Q8: If you answered yes to Q7, should it apply to off-sales, take-away or both? Yes or No
9. Q9: Are you aware of any change in the level of crime and / or anti-social behaviour as a result of the off-sales easement? Yes or No and give reasons for any of your answers to the above questions about off-sales.

Temporary Event Notices:

10. Q10: Do you agree that when the regulatory easement ends on 31 December 2023, the annual allowance should return to the level set out in the Licensing Act which is 15 TENs per year? Yes or No
11. Q11: Should the annual allowance set out in the Business and Planning Act be extended for a further 12 months to 31 December 2024? Yes or No
12. Q12: Do you agree that when the regulatory easement ends on 31 December 2023, the annual allowance of 20 TENs should permanently remain at the level set out in the Business and Planning Act 2020? Yes or No
13. Q13: Do you agree that when the regulatory easement ends on 31 December 2023, the annual allowance of 26 days should permanently remain at the level set out in the Business and Planning Act 2020? Yes or No
14. Q14: Are you aware of any change in the level of crime and / or anti-social behaviour as a result of the TENs regulatory easement? Yes or No and give reasons for any of your answers to the above questions about TENs.

2.6 Officers' have submitted a response to the consultation following a review carried out with Chair of the Licensing & Public Protection Committee and Portfolio Holder. The Council responses to the above questions were:

Off-sales:

1. Yes
2. Yes
3. Yes
4. No
5. On and off-sales listed separately
6. No
7. No
8. N/A
9. No and There still needs to be oversight on whether a premises sells alcohol for consumption on or off the premises, or both. The Business Planning Act 2020 foresaw

that there may be issues with premises being allowed to benefit from the easement with no approval and made provision on how the entitlement could be removed/refused. In most circumstances there will likely be no issue however there, are premises that are cited in locations that may not be suitable to authorise off sales e.g. those situated within a PSPO or surrounded by land over which they have no control that is unsuitable for alcohol consumption. Our opinion is that it would not be suitable for a pavement licence area to be included within a premises licence for two reasons, firstly that it may be that the conditions from the premises licence are not suitable for the external area and secondly, that it would nullify any PSPO meaning there would be no recourse for authorised officers to use those powers, if required.

Temporary Event Notices:

10. No
11. No
12. Yes
13. Yes
14. No and there have no issues with the easement whilst it has been in force, however our view is that this current should be the maximum, and not increased any further, as premises that wish to engage in licensable activities on a regular basis should have to go through the scrutiny process of a premises licence.

2.7 A copy of the Council response is attached as **Appendix B**.

3. **Proposal**

3.1 That Members note the content of the report and consultation response submitted

4. **Reasons for Proposed Solution**

4.1 The Home Office have consulted upon on whether the temporary alcohol licensing provisions enacted in the Business and Planning Act 2020 should be made permanent. The consultation has closed and a response has been submitted on behalf of the Council.

5. **Options Considered**

5.1 Officers considered the implications of allowing premises with on-sales to be automatically permitted to add off-sales to their licence, or suggesting that a full variation application be required. It was determined that a minor variation provided a balanced and proportionate method to obtain the authorisation to do so ensuring compliance with the Licensing Objectives. In relation to TENs it was considered that there should be a return to 'pre-covid' limits, however there is no indication that premises regularly reach either of the limits or that the increased limits have led to any significant issues.

6. **Legal and Statutory Implications**

6.1 The Licensing Act 2003 will be amended if the proposals suggested are approved.

7. **Equality Impact Assessment**

7.1 Not applicable

8. **Financial and Resource Implications**

8.1 If TENs limit remain at their current level it may lead to an increase in TENs being submitted and require officer time to consider, acknowledge and process them. Unless the proposal to

automatically allow on-sales premises to sell alcohol for consumption off premises is approved there will likely be an increase in applications to authorise off-sales.

9. **Major Risks**

9.1 Not applicable

10. **UN Sustainable Development Goals (UNSDG)**

10.1



11. **Key Decision Information**

11.1 Not applicable

12. **Earlier Cabinet/Committee Resolutions**

12.1 Licensing & Public Protection Committee – 18th October 2022

12.2 Licensing & Public Protection Committee – 27th July 2021

12.3 Licensing & Public Protection Committee – 4th August 2020

13. **List of Appendices**

13.1 Appendix A – Home Office consultation document published 6th March 2023
Appendix B – Consultation response sent 17th April 2023

14. **Background Papers**

14.1 [The Business and Planning Act 2020](#)

14.2 [Alcohol Licensing \(Coronavirus\) \(Regulatory Easements\) \(Amendment\) Regulations 2021](#)

14.3 [Business and Planning Act 2020 \(Coronavirus\) \(Amendment\) Regulations 2021](#)