

Consultation response

from the Kent Licensed Victuallers Association

Response 1

General comment: Consultation on a detailed document can be difficult when the document is changed without providing any clear guidance through structured questions or enabling a direct comparison to be made. It is often through the comparison and explanation or reasons for any changes that the value of consultation can be seen.

Recommendations

This has been taken on board and will be considered for the next review. The committee were provided with details of all the changes and this information could have been placed on the website alongside the draft policy.

Response 2

The introduction is similar to previous though the area map is removed. The area map can be helpful. There has been some amalgamation of offices and their responsibilities, and it would be helpful for that to be clarified. The committees for different areas remain and indeed there are different policies for Medway and Gravesham which add to the confusion.

Recommendations

During the review process efforts were made to find an accessible map of the new ward areas, but without success. It was therefore decided to direct people to the relevant websites containing this, and other relevant information, in order to avoid accessibility issues and help ensure the information being accessed is always the most accurate and up to date available.

Response 3

The policy changes the reference to various policies by referring to numbering which is helpful and aids reference in communication and at hearings and is a positive change.

Recommendations

None

Response 4

TENs - Reference is made to two types of TEN, a standard TEN and a late TEN, but no explanation is provided of the different processes. A standard TEN must be given no later than 10 working days before the proposed event; no clarification is set out as to the approach to the calculation of these days e.g., clear days does one include the application date and the date of the event or clarification of the definition of a late TEN which may be given not before nine but not later than five working days before the event. Broad reference is made to limits but it would be helpful to persons who may wish to use a TEN to specify the number of temporary event notices that a personal licence holder can give is limited to 50 a

year. People who are not personal licence holders can only give notice of five events in any one year. Given the changes in the numbers that could be used over the past few years and the reduction from January 2024 it would be helpful to specify the limit in the number of TENs at premises that can be used in one year is limited to 15 over a maximum of 21 days. The maximum duration of any single event authorised by a TEN cannot exceed 168 hours (seven days) and the minimum period between events at the same premises by the same premises user is 24 hours. It may also be helpful to refer to although the statutory notice for temporary events notices to the Licensing Authority and the police is 10 working days, it may assist the authorities if event organisers give a greater period of notice of a temporary event for any appropriate checks to be made. This also allows a greater period for any hearing or any discussions to resolve any problems. No reference is made to the police and environmental health who must make their objection within three working days.

Recommendations

All the information about the difference between the types of application, consultation periods and limitations are all shown on our website. There is a link within this section of the policy to the relevant page of our website. If we were to place this information in the policy and then the details changed then we would have to review the policy to change it. Such information is in any case set out in legislation and statutory guidance such that it does not need repeating in a policy document.

Response 5

Operating Schedule – Para 32 is phrased in a very negative way and whilst it may be the perception of some it is not believed to be accurate, and we are not aware of any research which backs this up. Certainly, if this research does exist, we would ask that it is referenced. It is accepted that well run premises can promote the licensing objectives and encouraging licensed operators to refer to the council good practice guides and pool of example conditions is helpful and positive. We would invite the committee to re-phrase in a positive way which reflects Policy 3

Recommendations

The paragraph has been amended slightly so it doesn't read in a negative way.

Response 6

The words "An application may be returned if there is insufficient detail provided in the operating schedule." In the context in which they appear has no legal basis and should be deleted. Certainly, insufficient detail may lead to representations but there is no justification to "return" on this basis.

Recommendations

This sentence has been removed and replaced with advisory information about submitting a detailed operating schedule. This forms part of Policy 3 found on page 7.

Response 7

Consultation – Additional comments - When making a representation with regards to an application (either in opposition to or in support) the person must only address the likely effect of the grant/variation of the premises licence on the promotion of the licensing objectives and the relevant policies that apply. Representations cannot be based on issues that do not relate to the licensing objectives, such as moral grounds or whether the premises does not have the benefit of planning permission.

Licensing and Planning are complimentary but legally distinct regimes with their own considerations. Planning permission, or lack thereof, is not a reason to grant or refuse a licensing application. Planning matters will only be considered where they relate to the promotion of the licensing objectives.

Where possible, representations should include as much detail as possible so that they can be addressed by the applicant at or before a hearing.

Where representations are made by Responsible authorities they should be encouraged to engage with applicants if they attempt to make contact to discuss the content and reasons for the representation. This engagement and meaningful discussion between parties can lead to agreement and therefore strengthen the protections and reduce the concerns of the objector. However, in some cases it will not be possible to come to an agreement. Therefore, the application will be determined at a public hearing of the Licensing Sub-Committee.

Persons who have made a representation and do not withdraw it prior to the Licensing Sub-Committee hearing should be encouraged to attend these hearings if possible. This will allow residents or business the opportunity to hear the applicant's explanation about how they will operate the premises and to enable the representor to elaborate on their representation and if appropriate, to provide additional information and answer specific questions that the Sub-Committee may have relating to their concerns.

Recommendations

It is deemed that a lot of the information in this response is included in the policy already. An additional paragraph has been added to request that representation be as detailed as possible. This can be found at paragraph 39 on page 8.

Response 8

Determination of Applications – reference should be made to proportionality as this is an important factor in the determination process.

Recommendations

Proportionality has been added to paragraph 56 and is already mentioned in paragraph 57.

Response 9

Suspension for non-payment –

This topic has given rise to concern by members due to the apparent practice of the authority which is not in line with the policy by not issuing reminder notices or invoices for payment. If this practice has changed from the stated policy, then it would be the request of the KLVA that this practice be re-considered as the consequence of an error in making the payment is the commission of a criminal offence. Licensed operators do not want to

inadvertently find themselves in this position. It has been said to some members that it is their responsibility to know when the annual fee is payable. However, members have found it difficult to find out the date it is due. Many old licences will be in late November but as time passes more and more licences will be issued with annual fee dates falling due on any date. Your policy refers to invoices being issued but related experience from members suggests this is not happening. It would be useful for members that if the practice of not issuing reminders or invoices is correct then could the annual fee due date be on the council website or be easy to obtain the information by email or call to the licensing department. License holders want to be compliant with the legal requirement. Clarification is sought on this policy.

Recommendations

The Council have set up invoices for every annual fee under the Licensing Act 2003 based on the details held, as provided to them by the licence holders. These invoices are addressed to the Premises Licence Holder, as they are the responsible party for ensuring that the annual fee is paid. They are automatically sent out two weeks prior to the due date.

Any licence holder who isn't receiving their invoice should contact the Licensing Team to raise this and work out why this is the case. It may be that the details held on the licence are no longer correct and an application to update those details is required for example.

Response 10

Additional areas for consideration - external areas and changes to off sales

Consider adding a section to deal with the extended off sales provisions which have been relaxed until 2025, the possibility of adding it as a permanent change to the licence via a variation application and that if a licensed premises has operated with the benefit of this relaxation since 2020 without causing any problems such an application could be made under the minor variation provisions.

Also consider reference to new summary reviews for premises using the relaxation if there are issues with the use of the relaxed off sale provisions.

Recommendations

The off sales of alcohol provision is under a temporary regime, which will expire during the term of this new policy. If we were to add this information to the policy, then we would have to carry out a review in two years' time to remove the mention of it once it expires.

We do not have any policy requirements beyond the regime's legislation and regulations.