

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

20 August 2007

Report of Chief Solicitor

Part 1- Public

Matters for Recommendation to Council

1 LICENSING ACT 2003: REVIEW OF STATEMENT OF LICENSING POLICY

Summary

The purpose of this report is to recommend that the Council adopt, for consultation purposes, a draft revised Statement of Licensing Policy based upon the Kent Model and to approve arrangements for a Consultative Forum.

1.1 Introduction

1.1.1 Section 5 of the Licensing Act 2003 required the licensing authority to prepare and publish a statement of its licensing policy every three years. During the three year period, the policy must be kept under review and the licensing authority may make such revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objectives are being met.

1.1.2 The Council's first statement was adopted on 14 December 2004 and amended on [] following consideration of the High Court's verdict in the *Canterbury* case, which considered the Kent Model.

1.1.3 Unlike the other documents which form part of the Council's budget and policy framework, which are developed through the Cabinet and the Policy Overview Committee, under the Licensing Act 2003 the development of the policy is a wholly non-executive function. Our timetable for achieving this review is as follows:

20 August 2007	Licensing and Appeals Committee adopts revised draft statement for consultation purposes
12 November 2007	Licensing and Appeals Committee considers representations received.
11 December 2007	Statement approved by Council.

1.2 Statement of Licensing Policy

- 1.2.1 Members have previously agreed the principle of developing a county-wide Model policy statement. The original model was drafted under the auspices of the Kent Licensing Forum which includes representatives of all Kent authorities, the police and fire services and representatives from the trade. The Model has now been revised by the Kent Licensing Forum and the Kent Licensing Regulatory Steering Group.. Members of those groups include representatives of the Kent Police, the Kent and Medway Fire and Rescue Authority and Crime and Disorder Reduction Partnerships as well as licensing authorities and the trade. The review has taken into account the criticisms of the original Model made in the High Court in the Canterbury case. The purpose of a policy statement is to set a framework which enables the licensing authority to constrain the excesses of deregulation, whilst remaining flexible enough to deal with innovations in the development of the trade.
- 1.2.2 I set out in **[Annex 1]** a draft revised Statement of Licensing Policy for this Council. This document is based very closely upon the revised Kent model. It contains some minor adjustments to reflect the culture of our organisation. This document sets out how the Council is going to administer the Act in controlling the provision of alcohol, entertainment and late night refreshment, based on the four statutory licensing objectives: -
- Reduction of Crime and Disorder
 - Protection of Public Safety
 - Prevention of Public Nuisance
 - Protection of Children from harm.
- 1.2.3 The aspect of the new licensing regime which has received most attention is the change in the way hours of operation are controlled. Under the statutory guidance, the statement of policy should generally emphasise that consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is said to be necessary to reduce anti-social behaviour and disorder which can in some towns be caused by friction at late night fast food outlets, taxi ranks, railway stations, bus stops, etc.
- 1.2.4 At the same time, the Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists, without compromising the ability to resource local services associated with the night-time economy: providing consumers with greater choice and flexibility is stated to be an important consideration. Consequently, on this aspect the policy statement is drafted in a very flexible way so that in 'problem' cases the Council has the freedom to make an appropriate determination.

1.3 Consultation process

1.3.1 Before determining its policy, the licensing authority must consult the persons specified in the Act. These are:

- (a) Kent Police and the British Transport Police;
- (b) Kent and Medway Fire and Rescue Authority;
- (c) persons/bodies representative of persons who will become local holders of premises licences;
- (d) persons/bodies representative of persons who will become local holders of club premises certificates;
- (e) persons/bodies representative of persons who will become local holders of personal licences; and
- (f) persons/bodies representative of businesses and residents in its area.

1.3.2 The views of all these persons/bodies listed should be given appropriate weight when the policy is determined. Our initial canvas of the trade indicates that there are no local representative trade bodies which might be used for consultation purposes and it is recognised by the Government that, in some areas, it may be difficult to identify persons or bodies representative for all parts of industry affected by the provisions of the 2003 Act, but in those cases licensing authorities must make reasonable efforts to identify the persons or bodies concerned.

1.3.3 Beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation and for it to decide whether any particular person or body is representative of the group described in the statute. Government guidance is that, when undertaking consultation exercises, licensing authorities should have regard to the cost and time and that consultations should mainly be targeted rather than general.

1.3.4 It is, therefore, proposed to use our existing local consultative forum including representatives of those whom we are required to consult. The membership of the forum is set out at **[Annex 2]**. We have tried as hard as we can to ensure that the membership reflects as many interests as possible, whilst trying to keep it within manageable proportions. However, it may be that in future the membership will need to be adjusted in light of experience.

1.3.5 In addition to the Forum, it is our intention to make the draft statement available as widely as possible, including on our website, so that everyone has the maximum opportunity to make comments.

1.4 Legal Implications

1.4.1 This adoption and review of the statement of licensing policy under the Act is mandatory for this Council.

1.5 Financial and Value for Money Considerations

1.5.1 None.

1.6 Risk Assessment

1.6.1 The Council is required to implement this legislation.

1.7 Recommendations

1.7.1 Members are **recommended** to:

- 1) adopt the draft Statement of Licensing Policy in **[Annex 1]** to the report for consultation purposes; and
- 2) agree that consultations may be commenced immediately prior to approval of the draft statement by Council.

Background papers:

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Licensing Act 2003 and Statutory Guidance
Kent Model Statement of Licensing Policy
Judgement of Mr Justice Richards in Regina (British Beer
and Pub Association and Ors) v Canterbury City Council
Case reference: [2005] EWHC 1318 (Admin)

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