

RESPONSE OF TONBRIDGE AND MALLING BOROUGH COUNCIL TO THE HOME OFFICE CONSULTATION ENTITLED "REBALANCING THE LICENSING ACT"

QUESTION 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

RESPONSE 1: The Council would welcome this change as it would give a greater opportunity for licensing authority concerns to be taken into account. However, procedures will need to be carefully set up to ensure the role of the Licensing

Authority as a responsible authority and as the decision maker are kept separate.

QUESTION 2: What impact do you think reducing the burden of proof on licensing authorities will have?

RESPONSE 2: Reducing the evidential burden from "necessary" to what is most appropriate to promote licensing objectives brings about greater flexibility in the decision making process and could produce less challengeable decisions.

If what is meant is altering the onus of proof and test before steps are taken it would be helpful for the applicant to demonstrate the impact of his application and mitigation proposed, supporting that claim with firm evidence.

QUESTION 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

RESPONSE 3:

- Applicant to demonstrate that application is not detrimental to the area e.g. add a 'justification box' for granting an application to the Operating Schedule and require its completion.
- Move away from current practice of presumption to grant

QUESTION 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

RESPONSE 4: Police evidence should, and in practice does, carry significant weight in any event and the effect of the proposal would be to lessen the discretion of the Licensing Sub-Committee and put the applicant in the position of having to rebut the police assertions.

The independence of the Committee (elected members) in its quasi-judicial role is central to this Act. To require it to defer to one particular Responsible Authority's viewpoint could prejudice the outcome, and hands control of the process to the Police.

All those appearing before the Hearing need to provide evidence sufficient to satisfy the Committee; weighting it in favour of one body is not within the intention or spirit of the Act.

If the authority has to be explicit that the police evidence has not been relevant it could damage relationships and public confidence.

QUESTION 5: How can licensing authorities encourage greater community and local resident involvement?

RESPONSE 5: Licensing Authorities would seek to publicise policy consultation more widely through Parish Councils, residents associations etc. They could also make responding to consultation easier using online responses.

It is also considered that the applicant should be specifically required to notify the relevant Parish/ Town Councils (where they exist) of their application. The present requirements are unsatisfactory, as they can lead to a situation whereby the Parish/ Town Council are not notified of a licensing application, whilst at the same time being notified of a linked planning application for the same premises e.g where it is proposed to change the use of a building in order that it may be used as a bar.

In the absence of a Parish/ Town Council, it is suggested that the applicant should be required to notify their immediate neighbours in writing of the proposed application.

QUESTION 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

RESPONSE 6: It could avoid any arguments over whether authorities are too prescriptive in their application of this test but it would allow anyone whether affected or not to express views about "community" issues. In practice very few representations are rejected on the grounds that the 'interested party' was not within the vicinity.

This proposal would allow pressure groups to object to certain types of premises nationwide. Currently all local authority Members are interested parties and can respond on behalf of the community and if Licensing Authorities are to be a Responsible Authority will this be necessary? On balance the Council would not support this change.

QUESTION 7: Are there any unintended consequences of designating health bodies as a responsible authority?

RESPONSE 7: Based on the current licensing objectives a health body could only make a representation on public safety or protection of children from harm and possibly crime and disorder if there is an increase in crime victim injuries but not on public health effects of alcohol e.g., liver disease etc. Additionally the Act focuses on individual properties and it could be difficult for health bodies to provide data relevant to this level. It is felt that the value for health bodies is at a strategic level through the Statement of Licensing Policy & the Community Safety Partnership. It is suggested that health bodies should be made a statutory consultee to statements of licensing policy.

QUESTION 8: What are the implications in including the prevention of health harm as a licensing objective?

RESPONSE 8: How do you quantify it? Should account be taken of food, and drugs as well as alcohol?

How would that be related to specific premises and how could a link between the harm to health and alcohol premises density or hours etc be shown?

If the concentration is on alcohol –

- Would you impose a ban on serving more than X amount to a person?
- How would you regulate it with people using multiple premises in an evening or over time?

QUESTION 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

RESPONSE 9: This could lead to the rise of single purpose 'community groups', pressure groups with a single aim to stop or close down all licensed premises in their area. This would lead to an increase in hearings with all the associated costs.

It is felt that the current system sufficiently identifies and encourages the public to participate in the process including the recently introduced position whereby councillors on the licensing authority are interested parties. Additionally, bodies representing persons who live in the vicinity may already make representations as interested parties.

The increased costs of hearings has to be funded by local authorities or the applicant through the fees.

QUESTION 10: What would be the effect of making the default position for the Magistrate's Court to remit the appeal back to the licensing authority to hear?

RESPONSE 10: The proposal is not entirely clear but it is difficult to see how this could be made Article 6 compliant if an appeal was remitted to the determining body without a rehearing. This may well lead to more challenges in the Higher Courts.

If the Magistrate's Court do hear sufficient to amount to a hearing surely all this does is add another layer, increased time, cost and delay.

QUESTION 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises license holder receives the determination?

RESPONSE 11: This is seen as a good idea as experience shows that appellants do appeal the decision to delay its financial consequences knowing that the appeal will not be heard for many months or to avoid a suspension until x is corrected because it will be done before appeal and then withdraw appeal. It is suggested that this could follow the same route as the Interim Steps allowed after the call for an Expedited Review (S. 53B, Licensing Act 2003). However, the Authority will need some protection against any subsequent action against it from the appellant if they are later successful in their appeal and claim against the authority for loss of trade etc.

QUESTION 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

RESPONSE 12: This measure deals with sale of alcohol only not regulated entertainment and late night refreshment which are also associated with crime and disorder and public nuisance so does not fully assist. This tool would affect premises with good management as well as bad and not deal with the problem issues. Flexibility is to be welcomed but determining the needs of local communities may be complex especially if community views conflict.

QUESTION 13: Do you have any concerns about repealing Alcohol Disorder Zones?

RESPONSE 13: No.

QUESTION 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

RESPONSE 14: Licensing Authorities would not seek to introduce Cumulative Impact Policies unless they were aware of a problem and therefore should be able to evidence the need for these policies. In fact the change could lead to more pressure for these with little or no evidence leaving them open to challenge (which would almost certainly happen). Therefore the current position is about right.

QUESTION 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

RESPONSE 15: The late night levy, if introduced, will need to not just cover policing costs but will also local authority costs such as street sweeping, CCTV, urinals and others. The difficulty is in determining these costs and how that will be encompassed within a levy. Additionally how will the levy be then charged to individual properties and would there be different levies for different areas. However, it is a good idea for the police and local authorities to recover these costs and worthy of further detailed exploration to overcome the difficulties highlighted above.

QUESTION 16: Do you think it would be advantageous to offer such reductions for the late night levy?

RESPONSE 16: It could be advantageous but the difficulties involved e.g. what schemes will count, what level of involvement is required, should first be resolved. It needs to prevent token involvement by poorly managed premises attracting discount and good management without involvement attracting none.

QUESTION 17: Do you agree that the additional costs of these services should be funded by the late night levy?

RESPONSE 17: Yes as highlighted in the answer to question 15.

QUESTION 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

RESPONSE 18: It is believed that it would be unlikely to cut alcohol related crime but may concentrate it during a shorter period or confine it to a particular area. This is probably an issue for the Police to comment on whether it is advantageous or not.

QUESTION 19: What would be the consequences of amending the legislation relating to TENs so that:

- a) All the responsible authorities can object to a TEN on all licensing objectives?**
- b) The police (and other responsible authorities) have five working days to object to a TEN?**
- c) The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?**
- d) Licensing authorities have the discretion to apply existing licensing conditions to a TEN?**

RESPONSE 19:

- a) Main concern with TENs is public nuisance, therefore Police and Environmental Protection should have the right to object. Beyond that the Licensing Authority should have the discretion to consult whoever it feels is most appropriate, as per the Minor Variation process. To extend the ability to object to all Responsible Authorities is time consuming and bureaucratic.
- b) This is a good idea as it allows a sensible time to investigate the proposal and prevents holding objections.
- c) It could be argued non-Premises Licence holders (the amateurs) should be required to give greater notice than those who are in the trade (the professionals), although in practice some amateurs are not aware of the requirement to obtain a TEN, which has led to situations whereby event organisers approach the Licensing Authority for permission less than 10 days prior to the event . However on balance it is felt that it should be the same for all and that period should be 15 Working Days, this being a balance between a longer consultation period and the purpose of TENs, to allow short notice 'licences'.
- d) Yes they should as experience shows that Premises Licence holders will use the system to circumvent Conditions on their licence which were imposed to protect communities. Whilst it is considered that occasional late opening should be regulated by way of a TEN (as opposed to applicants building in provision for this within their premises licence, and making use of the ability to open late without forewarning to residents), it is felt that such events should not be without appropriate regulation.

QUESTION 20: What would be the consequence of:-

- a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 a year?**
- b) Restricting the number of TENs that can be applied for in the same vicinity (e.g. a field)?**

RESPONSE 20:

- a) It is best to leave it at 50 for Personal Licence holders because there are some businesses that only operate 'outside bars', such a restriction could put them out of business. Experienced supervision of TENs is preferred.
- b) This is a sensible approach as the current position is open to abuse. However, unsure how it could be implemented.

QUESTION 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

RESPONSE 21: Yes.

QUESTION 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

RESPONSE 22: If the matter was sufficiently serious to consider more than 7 days closure the Police should be seeking a Review of the Premises Licence and/or a prosecution through the courts.

QUESTION 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

RESPONSE 23: This proposal is supported, although consideration needs to be given as to the mechanism for triggering the review.

QUESTION 24: For the purpose of this consultation we are interested in expert views on the following:-

- a) Simple and effective ways to define the "cost" of alcohol.**
- b) Effective ways to enforce a ban on below cost selling and their costs.**
- c) The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

RESPONSE 24: Not an issue for Licensing Authorities but any measures introduced requiring licensing authority enforcement need to have clear, simple criteria not requiring investigation for each product or premises – not something complex.

QUESTION 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

RESPONSE 25: Yes as the cost of the service (including the costs of consultation on policy) should be fully funded by the fee without any subsidy from the council taxpayer. This should also be regularly reviewed to ensure that the costs of the service are not allowed to grow without justification. It is vital to ensure that costs do not escalate due to officers becoming involved in an overcomplicated and time-consuming process.

QUESTION 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

RESPONSE 26: Yes, although it might be fair to first impose a period of suspension, so as to allow for cases of genuine error or unforeseen delay.

QUESTION 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

RESPONSE 27: No, as b & c were not an issue and is too complex to be effective.

QUESTION 28: Would you support the repeal of any or all of the mandatory conditions?

RESPONSE 28: Whilst all of the mandatory conditions can be imposed as required by the Licensing Authority on an individual premises licence, many of these are relevant to all licences and therefore it is not considered that these should be repealed.

QUESTION 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

RESPONSE 29:

1. The requirement to review and publish a statement of policy every 3 years should be removed. Licensing Authorities should be free to develop a policy if they considered it appropriate for their area (which was the case in any event prior to the LA 2003), but the present statutory requirement, allied with the extensive statutory guidance, has led to a situation whereby many policies simply repeat the guidance, with no local flavour.

2. Hot drinks should be removed from Late Night Refreshment provisions.
3. There should be a central database for Personal and Premises Licences and TENS.
4. A person should only be DPS of one Premises (responsibility)
5. Require a DPS to have day to day control on Premises.
6. Call for the Review of a Designated Premises Supervisor
7. Call for the Review of a Personal Licence
8. Put a Condition of no TENS on a Premises Licence