

Guidance Notes To Town and Parish Council's On Making a Representation Licensing Act 2003

On 25 April 2012, the Home Office made amendments to the Section 182 Guidance of the Licensing Act 2003.

One of the amendments was the removal of the "vicinity test" when making a representation against an application for a new premises licence or a variation of an existing premises licence. This change in the law now allows representations to be made by any individual, body or business, including Town and Parish Councils, which has grounds to do so. This removes the requirement whereby a representation must come from a person or business within a prescribed distance from the premises submitting the application.

Town and Parish Councils can now make a representation for or against an application for a premises licence without necessarily having to represent an individual living in or business located in the vicinity.

When making a representation equal consideration should be given to both the day and night time economies.

Unless the premises is located in a declared Cumulative Impact Zone the fact that you may think that there are enough licensed premises in the area already will not be deemed to be a relevant representation against an application.

For a representation to be relevant it must relate to one or more of the Licensing Objectives.

The licensing objectives

1. Prevention of crime and disorder

Criminal activity or conduct that seriously offends against social morality and public order.

An example of this would be serving somebody who was already inebriated and/or supplying so much alcohol that the person would create disorder such as urinating or vomiting in the street.

2. Public safety

The public safety objective relates to the physical safety of persons using the premises and not with public health. Public Health is a Responsible Authority in their own right and can make a representation should they deem it appropriate to do so.

For example the safety of patrons attending a premise that was holding a foam party.

3. Prevention of public nuisance

Public nuisance is the interruption of a person's comfort and convenience. This should be balanced against the benefits to be derived from the leisure amenity of such premises.

An example of public nuisance would be continuous loud music, bright lights or obnoxious smells emanating from the licensed premises that would interrupt persons or businesses ability to comfortably carry out their daily activities.

4. Protection of children from harm

Protecting children from “moral, psychological and physical harm”

An example of this would be underage alcohol sales or showing age rated films to underage persons.

(N.B, Planning related issues are not covered by the four licensing objectives. Planning issues should be raised with the planning department as they are a Responsible Authority and may submit a representation if it is deemed appropriate.)

Relevant representations

A representation must be relevant. A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant.

Representations must relate to the impact of licensable activities carried on from the premises on one or more of the four licensing objectives.

For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.

Representation must be balanced and proportionate

Representations must be balanced and proportionate and must not be frivolous or vexatious. The licensing authority will consider the main effect of the representation and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification.

Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

The licensing authority must not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement.

All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

The authority's determination should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

How to make a representation

- Representations must be made clearly in writing stating the reasons for objection
- They must relate to at least one of the four licensing objectives
- It must be specific to the premises and the application
- It must be submitted within the legal consultation period (this will be printed on the blue notices outside the premises, and in a locally circulating publication and on the Council's website)

What happens when a representation is made?

Once a representation is made the licensing authority will decide whether it is a relevant representation or not. If the representation does not relate to the four licensing objectives or if it is frivolous or vexatious it will be rejected and the person who made the representation will be informed why it has been rejected. If however the representation is deemed relevant, the application for the premises licence or the variation of a premises licence will be determined by the licensing committee or sub-committee at a hearing.

Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.

The applicant may take into the consideration the representations and offer to negotiate with you to resolve your concerns. If the person or body making the representation accepts this, they can withdraw the representation. Representation must be withdrawn 24 hours before the first day of any hearing.