

TAUNTON DEANE BOROUGH COUNCIL

LICENSING COMMITTEE – 19 November 2009

REPORT OF THE LICENSING OFFICER

REPORT UPDATE ON THE INTRODUCTION OF A SIMPLIFIED PROCESS FOR MINOR VARIATIONS TO PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

1 SUMMARY

- 1.1 The Licensing Act 2003 was amended in August to allow a simplified process for minor variations to premises licences and club premises certificates.

2 PURPOSE OF REPORT

- 2.1 This report is intended to update the Members on the changes that have been made.

3 BACKGROUND

- 3.1 The purpose of the minor variation process is to save time, money and regulatory resources by allowing small variations that will not adversely affect the promotion of the licensing objectives to be made to premises licences and club premises certificates through a simplified and less costly procedure.
- 3.2 Under the new process, the applicant is not required to advertise the variation in a newspaper or copy it to Responsible Authorities, but must display details on a white notice at the premises for a period of ten working days.
- 3.3 In determining an application the licensing authority must consult such of the Responsible Authorities, as it considers appropriate and take into account any relevant representations made concerning the application by Responsible Authorities or by an interested party. Representations from interested parties must be made, in writing, within ten working days. Relevant representations must be concerned only with a likely adverse effect of an application on the promotion of the licensing objectives.
- 3.4 The licensing objectives are:
- a) the protection children from harm
 - b) the prevention of public nuisance
 - c) the prevention of crime and disorder

d) the preservation of public safety

- 3.5 The Licensing authority must grant an application if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives. In any other case the authority must reject the application.
- 3.6 There is no right to a hearing in this process, but the licensing authority must take representations into account in arriving at a decision.
- 3.7 If the licensing authority grants an application under the minor variation provisions it must notify the applicant in writing specifying:
- a) the variations which are to have effect; and
 - b) the time when they are to have effect.
- 3.8 If an application is refused, the authority must notify the applicant in writing, giving the reasons for the refusal. The application must be determined within fifteen working of receipt, otherwise the application is rejected and the authority must return the application fee.

Minor variations will generally fall into four categories:

- a) minor changes to the structure or layout of a premises;
- b) small adjustments to licensing hours;
- c) the removal of outdated, irrelevant or unenforceable conditions or the addition of volunteered conditions;
- d) the addition of certain licensable activities.

In all cases, the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.

- 3.9 Many small variations to layout will have no adverse impact on the licensing objectives and so can be subject of a minor variation application. However, changes to layout must be made using the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by:
- a) increasing the capacity for drinking on the premises;
 - b) affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits;
 - c) impeding the effective operation of a noise reduction measure such as an acoustic lobby.

- 3.10 The Licensing authority will consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of premises), which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives.
- 3.11 The addition of live or recorded music to a licence may impact on the public nuisance objective, but this will depend on many factors. The Licensing authority will consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant. It is very much the Government's intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives.
- 3.12 In considering applications to add licensable activities the Licensing authority will normally consider the following factors:
- a) the nature of the licensable activity;
 - b) proximity of the premises to residential areas;
 - c) any licence conditions volunteered by the applicant to reduce the impact of the activity;
 - d) whether alcohol is sold at the premises when the licensable activity is taking place;
 - e) whether it will continue to be sold during any extended period.
 - f) the track record of the premises – whether positive or negative. For example, any complaints or enforcement action related to the licensing objectives or, conversely, any evidence of good practice in carrying on the licensable activity.
 - g) the proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.
- 3.13 Some proposed variations may be seen positively to benefit the promotion of the licensing objectives, an example being a public house licensee applying to stay open an extra hour after the sale of alcohol has ended in order to sell hot drink and food.
- 3.14 Examples of changes that would normally be regarded as minor variations include applications to:
- a) reduce licensing hours
 - b) move (without increasing) the licensed hours for alcohol sales at times between 07.00 and 23.00

c) remove a licensable activity

3.15 Examples of full variations include applications to:

a) extend licensing hours for alcohol sales at times between the hours of 23.00 and 07.00.

b) increase the amount of time on any day during which alcohol may be sold or supplied

c) add the sale alcohol to a licence

d) extend the period for which a premises licence has effect;

e) vary substantially the premises to which a premises licence or club premises certificate relates;

f) specify (in a premises licence) or change an individual as the Designated Premises Supervisor (DPS);

g) disapply conditions requiring the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence at community premises.

3.16 Applications to vary the time during which other licensable activities take place may fall into either category and will be considered on a case-by-case basis, always with reference to any likely impact on the licensing objectives.

In arriving at a decision, the Licensing authority will normally consider the following factors:

a) the nature of the licensable activity;

b) the extent of additional hours sought and whether it will involve later opening or opening at times between 23.00 and 07.00;

c) proximity of the premises to residential areas;

d) any licence conditions already in place to mitigate the impact of the activity;

e) any additional conditions volunteered by the applicant;

f) arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance?

g) whether the proposed extension applies only on the weekend or also during weekdays;

h) whether there will be new admittances during that period;

- i) track record of the establishment whether positive or negative.
- j) whether the premises is already open during the extended period for other licensable activities;
- k) proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

- 3.17 The licensing authority cannot impose its own conditions on the licence through the minor variations process. If the Licensing Officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, the application must be refused.
- 3.18 Applicants may volunteer conditions as part of the minor variation process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with Responsible Authorities or the Licensing authority.
- 3.19 Licence or club certificate conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases therefore, any application to remove or change the wording of a condition will be treated as a full variation.
- 3.20 Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant.

4 RECOMMENDATION

- 4.1 The committee is requested to note the contents of the report

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