

Licensing Act 2003

Guidance Notes for 'Other Persons' Making Representations

Borough Council of
**King's Lynn &
West Norfolk**



1. This guidance describes the process for making representations to the Borough Council of King's Lynn & West Norfolk about applications for new premises licences or certificates; variations to existing premises licences or certificates; or provisional statements. It also contains information about the hearings process. Unless stated otherwise, references to 'licences' in this text also apply to club premises certificates.

Who can make representations?

2. In addition to the responsible authorities (i.e. the professional such as the police, fire, trading standards, environmental health etc.) 'other persons' may make representations provided that they are 'relevant'. A 'relevant' representations is one that relates to the likely effect on the grant of the licence on at least one of the four licensing objectives and are not frivolous or vexatious. Please see paragraph 4 on the licensing objectives and paragraph 12 for further guidance on what is frivolous or vexatious.

What to look out for

3. When applicants want to apply for a new licence, or vary their existing one (for example to put on additional activities or extend their hours), they must advertise the application by:

Placing a notice at or on the premises

- On A4 (or larger), pale blue paper.
- Printed legibly in black ink or typed in a font of at least 16.
- Placed prominently at or on the premises where it can be conveniently read from the exterior of the premises.
- Placed every 50 metres on the external perimeter of the premises abutting any highway (where applicable).

Placing a notice in a newspaper

- Newspaper circulation must be in the vicinity of the premises.
- Advertisement will be at least once in the 10 days following receipt of the application by the Borough Council.

Licensing Register

4. Application details can also be viewed in the Borough Council's "licensing register". The register will show the opening hours, licensable activities and any steps the applicant has volunteered to take to promote the four licensing objectives. The four licensing objectives are:

- ❖ The prevention of crime and disorder;
- ❖ Public safety;
- ❖ The prevention of public nuisance; and
- ❖ The protection of children from harm.

5. If 'other persons' believe that granting a licence in the terms it has been applied for is likely to have an effect on the promotion of one or more of these objectives, they have 28 consecutive days starting on the day after the day on which the application was given to the Borough Council, to make a representation to that authority. Details of how to do this are set out below.

Licensing Policy

6. Before making representations, 'other persons' may wish to look at the Borough Council's "licensing policy statement". This can be found on the Borough Council's website and sets out the Borough Council's policy about licensing.

Operating Schedule

7. When considering the steps that an applicant has volunteered to promote the licensing objectives, it is important to remember that applicants should already be adhering to legislation in

other areas, and they may feel there is nothing additional they need to do to promote the licensing objectives. Some applicants may therefore simply say something like “nothing beyond existing Health and Safety/Fire Safety etc. requirements” or if they are applying to vary a licence “nothing beyond the steps we are currently taking, which are already conditions of the licence”.

Making representations

8. Representations should be made in writing to the Borough Council where the premises are situated. This Borough Council will also accept representations by email. All representations must be about the likely effect of granting the licence or certificate on the promotion of at least one of the four licensing objectives. It would be wise, therefore, to explicitly link any representation to one or more of the objectives.

9. Representations do not have to be objections: it is possible to make representations in support of an application and its positive impact on one or more of the licensing objectives. This might be because, for example, an application to vary a licence to add new activities might change the style and nature of a problem premises and attract a lower risk customer base.

10. There is no requirement to produce a recorded history at a premises to support representations, and in fact, this would not be possible for new premises. However, it will assist their case if the representations are specific to the premises and evidence based. So, for example, if an ‘other person’ believes a variation to an existing premises may cause problems in relation to crime and disorder, they may wish to talk to local police beforehand, or document existing problems themselves by, for example, keeping a diary or photographic evidence of any incidents. Licensing authorities will need to be satisfied that there is an evidential and causal link between the representations made, and the effect on the licensing objectives.

11. In addition, the licensing authority can only consider representations that are not “vexatious” or “frivolous”.

What does a frivolous or vexatious representation mean?

12. “Frivolous” or “vexatious” will bear their ordinary meaning. Whether representations are frivolous or vexatious will be for the licensing authority to determine. For example, the licensing authority might find the representations were vexatious if they arise because of disputes between rival businesses or they might be frivolous representations if they plainly lacked seriousness.

13. Other persons cannot make representations anonymously even if somebody else (e.g. a local MP or councillor) is making the representation on their behalf. This is because, for example, the Borough Council needs to be satisfied that the person making the representation is not being vexatious. It is also important that an applicant is able to respond to a representation, for example, if they believe that it isn’t a “relevant” representation. If other persons are concerned about possible intimidation, they could consider asking the police, or another appropriate responsible authority to make a representation on their behalf.

Things you may want to consider when making representations

- ❖ **If no relevant representations are made, the licence or variation must be granted (subject to the mandatory conditions).**
- ❖ It may be helpful to get the backing of other residents, or businesses, or other “responsible authorities”, such as the police or environmental health.
- ❖ Look at the Borough Council’s “licensing register”. This will show you if other people have asked for a review of the premises in the past.
- ❖ If you are thinking of raising a petition, it is important to ensure that the licensing authority can determine whether all the signatories are relevant. So, including their addresses and indicating clearly what representation(s) they are all making would be helpful. It would also help if a spokesperson could volunteer to receive details about the hearings etc. from the licensing authority and may be willing to speak on behalf of the petitioners at the hearing.
- ❖ If you want to ask another person, such as an MP or local Councillor to represent you, it is advisable to make such a request in writing so that the individual can demonstrate he or

she was asked. It will be a matter for the MP or Councillor to decide whether they should agree to your request. They are not obliged to do so however, most elected representatives are happy to help residents with this sort of issue. Councillors who are part of the licensing committee hearing the application will not be able to enter into discussions with you about the application, outside of the formal hearing, so it is suggested that you do not approach them.

- ❖ Consider how you would like the situation to be rectified.
- ❖ If making a representation in support of an application, explain how the proposed activities would help promote the licensing objectives.

What happens after a representation has been made?

14. If the licensing authority considers that the representations are relevant it must hold a hearing to consider those representations - unless all parties can come to an agreement beforehand, and agree that a hearing is unnecessary. For example, the licensing authority may offer to try and resolve matters via a negotiated agreement outside a formal hearing. You will need to decide if this is appropriate for you, but you can, of course, insist upon the hearing.

15. The licensing authority will write to you to inform you of the date and time of the hearing and will explain the format of the hearing.

16. If an applicant withdraws their application after a hearing date has been arranged, the licensing authority will let them know that the hearing has been cancelled. Persons making representations should be aware that if they make representations about an application that is later withdrawn, and the applicant makes a new, amended application, their representations will not automatically be taken forward. Any amended application would need to be re-advertised as set out above. Other persons will then have the opportunity to decide whether to make representations about the new application.

Licensing Committee Hearings

17. Persons that made representations will be sent an agenda which will include the Licensing Officer's report prior to the hearing. They will also be sent a form in which they are required to give notice to the Borough Council at least 5 working days before the start of the hearing, stating:

- Whether they will attend the hearing in person;
- Whether they will be represented by someone else (e.g. councillor/MP/lawyer). Whether they think that a hearing is unnecessary (if, for example they have come to an agreement before the formal hearing);
- If they want another person to appear at the hearing (not to represent them), a request for permission for the person to attend, and details of their name and how they may be able to assist the authority in relation to the application

18. Persons making representations must let the Borough Council know as soon as possible (in writing no later than 24 hours before the start of a hearing, or orally at the hearing) if they wish to withdraw their representation.

19. Hearings will generally be held in public, unless the Borough Council decides it is in the public interest to hold all, or part of the hearing in private. The Borough Council will ensure that a record is taken of the hearing.

20. Hearings will normally take the form of a discussion and will be led by the Borough Council, which will consist of three local authority elected councillors (this will be the licensing sub-committee drawn from a full licensing committee of 15 councillors). The Borough Council will explain the procedure to be followed. It will determine any request for additional persons to appear at the hearing. It will consider evidence produced in support before the hearing and can consider evidence produced by a party at the hearing, but only if all parties agree. Further evidence can also be produced if this was sought for clarification of an issue by the authority before the hearing. Cross-examination of one party by another during a hearing is not allowed, unless the Borough Council thinks it necessary. The parties are entitled to address the authority and will be allowed equal time to address the authority and, if they have been given permission by the authority to do

so, they will be given equal time to ask any questions of any other party. The Borough Council will disregard any information it considers to be irrelevant.

NB - A hearing can still go ahead in the absence of any party (e.g. - applicant or objector)

Hearing Decisions

21. As a result of the hearing, the licensing authority must then decide how to proceed in order to promote the licensing objectives. It may:

- ❖ Decide to grant or vary the licence in the same terms as it was applied for;
- ❖ Decide that it is necessary to refuse to issue or vary the licence;
- ❖ Decide to grant or vary the licence, but to modify the conditions;
- ❖ Exclude from the scope of the licence a licensable activity.
- ❖ In the case of a premises licence involving the sale of alcohol, refuse to specify a person as the premises supervisor

22. The Borough Council must give notice of its decision within 5 working days (if it does not give a decision at the hearing) and include information on the right of a party to appeal against the decision.

For further information about making representations, please contact licensing at the Borough Council.

Contact Details:

Borough Council of King's Lynn & West Norfolk
King's Court
Chapel Street
King's Lynn
Norfolk
PE30 1EX

Telephone: (01553) 616200
Fax: (01553) 691663
Email: EHLicensing@west-norfolk.gov.uk

Further Information:

Public Licensing Register:

<http://www.west-norfolk.gov.uk/Default.aspx?page=21421>

Statement of Licensing Policy:

<http://www.west-norfolk.gov.uk/pdf/Microsoft%20Word%20-%20Final%20BCKLWN%20Policy%20Jan%202011.pdf>

Licensing Act 2003:

<http://www.west-norfolk.gov.uk/Default.aspx?page=21664>

Responsible Authorities:

<http://www.west-norfolk.gov.uk/pdf/Responsible%20Authorities%2026%20Jun%202012.pdf>