



FYLDE BOROUGH COUNCIL

Guide to: Making Representations



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Licensing Act 2003

Making Representations

The Licensing Act 2003 requires thorough scrutiny of applications both by experts and by the local residents and businesses. Responsible authorities such as the police, fire authorities, health and safety, environmental health authorities, and others, will be notified of every application for a new premises licence, or variation of existing licences. They will have the opportunity to make representations to the licensing authority but only about the effect of the grant of the licence on the promotion of at least one of the licensing objectives.

The Act also enables residents and businesses (interested parties) in the vicinity of the premises to make relevant representations about any application for new or for variations to licences. This gives the local community a greater say than ever before in licensing decisions.

Interested parties are bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:

- A person living in the vicinity of the premises in question,
- A body representing persons living in that vicinity, for example, a residents' association,
- A person involved in a business in the vicinity of the premises in question, and
- A body representing persons involved in such business, for example, a trade association.

For a representation to be relevant it must be one that is about the likely effect of the application on the promotion of the four licensing objectives. Also, if the representation is made by an interested party it will not be relevant if the licensing authority considers it to be vexatious or frivolous, (a decision which can not be challenged on appeal but only by a judicial review). It is not intended for an application to be a re-run of the planning process.

The four Licensing Objectives are:

- Prevention of crime and disorder
- Promoting public safety
- Prevention of public nuisance
- Protection of children from harm

When applying for, or seeking to vary, a premises licence, an applicant must give notice of their application to each responsible authority. The applicant is also obliged to advertise his/her application. Any residents living or business operating in the vicinity of the premises which are the subject of the application will be able to make representations to the licensing authority about the application if they wish to do so. This includes the ability to raise objections.

All interested parties and responsible authorities will have a period in which they can make representations to the licensing authority about the application. If the licensing authority considers that the representations are relevant, it must hold a hearing to consider those representations unless all parties concerned agree that this is unnecessary. The licensing authority will, at such a hearing then have choices as to how it proceeds, depending upon what is necessary for the promotion of 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.

If no relevant representations are made the licence or variation must be granted (subject to the mandatory conditions).

Reviews of Licences

An interested party or responsible authority can, at any time, apply to the licensing authority for a review of a premises licence on a ground relating to the licensing objectives. The person or body requesting the review must notify the holder of the premises licence and each responsible authority of their request. The licensing authority must advertise the application for the review and invite representations from responsible authorities and interested parties.

The licensing authority can reject any ground for the review if it considers it to be frivolous, vexatious or a repetition. If not rejected, the licensing authority must hold a hearing to consider the application

The applicant for the review must give notice of the review application to the licensee and to the Police and Fire Authority. The Council will also advertise the review and invite comments from other interested parties.

A Committee hearing will be held. The Council may impose extra conditions on the licence. It can also suspend either all or part of the licence for up to three months. In very serious cases it may revoke the licence.

FAQ's

Can the licensing authority make representations on a licence application or ask for a review of a licence?

No (except where a premises is situated in more than one area and a different licensing authority is determining the application) the Act does not give the licensing authority considering the application the power to make representation in relation to the application for a premises licence or request a review of a premises licence.

The same provisions apply in relation to club premises certificates and provisional statements.

Can the licensing authority impose conditions on a premises licence?

If no relevant representations are made, the only conditions that can be imposed are those that are consistent with the applicant's operating schedule and any mandatory conditions provided in the Act. If relevant representations are made, the licensing authority may modify or add conditions to the operating schedule if necessary in order to promote the licensing objectives.

The same provisions apply in relation to club premises certificates and provisional statements.

What are relevant representations?

In brief "relevant representations" is the expression used in the Act for comments including objections on applications etc.

For a representation to be relevant it must:

- Relate to the effect of the grant of the licence on the promotion of the licensing objectives;
- Be made by an interested party or responsible authority;
- Not have been withdrawn;
- Not be 'frivolous or vexatious' or, in the case of a review, 'repetitious' if made by an interested party; or
- If it concerns the premises supervisor be made by a chief officer of police and include a statement explaining the reasons for the objection.

What does frivolous, vexatious or repetitious mean?

Frivolous or vexatious will bear their ordinary meaning. The licensing authority must form a view as to whether a reasonable person would consider the observations frivolous or vexatious.

In the case of a review of the licence, the Act provides that for a ground to be a repetition it must be identical or substantially similar to a ground for review already made. For a representation to be a repetition it is identical or substantially similar to one already considered by the authority before it determined an application, or the representation would have been considered but for the fact that they were excluded representations following a provisional statement. Further, the Act provides that it will be a repetition if a reasonable interval has not elapsed since the earlier application or review.

If the local pub, club, restaurant etc is currently open and causing disturbance is it possible to request a review of the licence?

Yes. At any stage, following the grant of a premises licence, a responsible authority such as the police or the fire authority, or an interested party, such as a resident in the vicinity of the premises, may apply to the licensing authority to review the licence if there are grounds relating to the licensing objectives.

If an interested party, for example, a local resident, residents' association, or local business applies for a review of the licence, the licensing authority must first consider whether the grounds they have put forward are relevant to the licensing objectives and that they are not vexatious, frivolous or repetitious. If the grounds comply with these tests, the licensing authority must arrange a hearing to consider them and any relevant representations made.

Legal

The content of this Fact Sheet is provided as an informative guide only. It is not a full and authoritative statement of the law and does not constitute professional or legal advice. Any statements contained within this guide do not replace, extend, amend or alter in any way the Fylde Borough Council Statement of Licensing policy or any guidance issued in relation to it.

You are strongly advised to seek professional advice regarding your own particular circumstances.

Further Information

Further information on the Licensing Act 2003 may be obtained from the following websites:

Fylde Borough Council at www.fylde.gov.uk/licensing/

The Department for Culture, Media and Sport at www.culture.gov.uk

The Institute of Licensing at www.instituteoflicensing.org

The Licensing Act: www.legislation.hmso.gov.uk/acts/acts2003/20030017.htm

Explanatory Notes for the Act: www.legislation.hmso.gov.uk/acts/en/2003en17.htm

Contact Us:

Licensing Team
Fylde Borough Council
St Annes Town Hall
Lytham St Annes
Lancashire
FY8 1LW

Email: licensing@fylde.gov.uk

Phone: 01253 658658

Fax: 01253 713113

Internet: www.fylde.gov.uk/licensing/



FYLDE BOROUGH COUNCIL

Licensing Act 2003 – Representation Form

1. In what capacity are you making this representation:

- A person living in the vicinity of the premises
- A body representing a person in the vicinity of the premises
- A person involved in a business in the vicinity of the premises
- A body representing a business in the vicinity of the premises

2. Details of Person/Body Making Representation

Mr Mrs Miss Ms Other _____

Surname: Fred	First Names: Moor
Postal address: 18 Sandhurst Avenue Lytham St Annes, Lancs	
Post Code: FY8 2DA	Phone: 01253 728047 Mobile: e-mail: chairman@ashtongardens.org.uk

3. Details of the Premises/Club

Name: Ashton Institute and part of Ashton Gardens	
Postal address: Ashton Gardens, St Annes	
Post Code:	Reference Number (If Known): Not known

4. Which of the Licensing Objectives does your representation refer to?

- The prevention of crime & disorder Public Safety
- The prevention of public nuisance The protection of children from harm

5. What are your concerns?

Please provide full details of your concerns regarding the premises. Please include or enclose any evidence you may have in support of your concerns:

I chair, and write on behalf of, the Supporters of Ashton Gardens. Our Executive Committee represents SOAG members who have property both adjoining and opposite the gardens.

At our meeting on 17th August we considered this application in some detail.

We know from intimate and detailed experience of the problems that already exist in the gardens. Only last month two of our members went in to repaint the Ashton Monument which had become the focus of graffiti. There are regular users of alcohol in the Gardens which the police are doing their best to deal with using their 'Alcohol Restricted Area' powers.

(Continued on separate sheet)


(Please continue on a separate sheet if necessary)

7. Suggested amendments?

Could the licence be amended in any way to remedy your concern? If so, how?

Our comments are set out on a separate sheet

(Please continue on a separate sheet if necessary)

Signature	
Capacity	Chairman, Supporters of Ashton Gardens
Date	18 August 2009

Your representation will be passed to the applicant, to allow them the opportunity of addressing your concerns. Also it will be published in the report available to the Licensing Committee, which will be publicly available.

Please return this completed form to:
The Licensing Team
Town Hall
Lytham St Annes
Lancashire
FY8 1LW

(Continued from form)

From the Blackpool BSafe report, we know of the link between alcohol and crime, and particularly between violent crime and disorder. We know that alcohol reduces civility. We know it can directly affect cognitive and physical function, reducing self control and leaving individuals less capable of negotiating a non-violent resolution to disagreements

From police statistics we know what our members tell us from their own experience, that Ashton Ward has much higher crime rates than the Fylde average for Violence Against the Person (15.5% vs 9%) and Criminal Damage (23% vs 13.3%) and calls to the police on Anti Social Behaviour (74% vs 47%).

We also know that hospital related admissions linked to alcohol are increasing. They have increased by 40% over the last five years, averaging 8% a year and for the most recent figures publicly available by 9.4% over three quarters of a year.

We know of the problems with broken glasses and bottles and grass areas and sand pits and children's and pet's feet.

We also know the Chairman of the Local Strategic Partnership - part of whose role is to seek reduce the above figures, say he could not imagine why, with this application, the Council was seeking to exacerbate the problems they should be helping to solve via the Crime and Disorder Reduction Partnership

We know of the noise and disturbance problems our members in apartments and property adjoining the gardens already experience. As further illustration of this we have appended a letter sent to the Council at the time where a member wrote to complain and set out what had happened. This letter is from a member who had first hand experience of an event held in the gardens. He has since moved away, partly because of the disturbances he and his family suffered from this event, but to his story I can add a personal comment of being disturbed by this particular event, and I live almost half a mile away.

We believe it will prove impossible to control the movement of alcohol from the licensed area into the gardens more generally.

On the brick pavements of the patio, people would be able to drink alcohol, and on the tarmac adjoining, the police will be removing it from them (as they do now) in order to keep the gardens alcohol free. The creation of an island of consumption within an alcohol restricted zone is absolute folly, and cannot but lead to the abandonment of the policing effort as those who have brought cans of their own sit around the steps around the War Memorial, and complain when challenged, that those on the patio or veranda are drinking alcohol with impunity.

We note that the cafe is to be leased. And that despite the Council's promises to 'quality', as well as financially, evaluate potential tenderers, we

know that such a lease will enable the lessee to assign the lease on to others (consent for which the Council would not unreasonably be able to withhold), so there is little comfort that the applicant would be able to guarantee the quality of the service as they suggest. It is quite possible in five years or five months, the lessee will have changed.

For previous examples of this look only to the ill-fated Council leased property first known as the Zanzibar Café on Lytham Esplanade. This became licensed and changed its name to the 'Anchorage' but failed to succeed with its planned upmarket restaurant service and the lease was then assigned to a new owner who opened it as the 'Scruples' nightclub that caused so much trouble for Lytham Residents before it burned down.

Or take the example of 'The Island' which was first conceived twenty years ago as 'Slideworld' a children's play area with ball-ponds, scramble nets and slides. Under the Council's control, that lease gradually morphed into a pub, a casino, a cinema, a Blackpool-style amusement arcade, funfair, and licensed restaurant and now operates in effect as a private-hire nightclub. The council has clearly demonstrated its inability to prevent such changes from taking place, even where it wants to do so, once the lease and license are granted.

And whilst alluding to the integrity and trustworthiness of statements made by the applicant, we recognise it might be their legal right to do so, but we point out that this proposal seeks to abandon the covenant they made when the gardens were acquired. The freehold of the land contains the clause *"The Council hereby covenant with the vendor, and his assigns and as a separate covenant with the mortgagee and his assigns that the Council and its assigns will forever hereafter not use any part of the pieces of land hereby assured or any buildings thereon for the sale of Wines spirits or intoxicating liquors save and except under or by virtue of occasional or temporary licenses from time to time granted by or with the consent of the Licensing authority for the district in which the premises are situated."*

So from our member's first hand experience of the existing levels of criminal damage, crime and disorder, public nuisance, and the public safety of gardens users, together with the demonstrated inability of the applicant to prevent unsatisfactory changes arising, we wish to make objection to the application which we believe will make what is already a difficult problem, even worse.

SUGGESTED AMENDMENTS

(Continued from the form)

ALCOHOL

So far as the requested alcohol license is concerned our view is clear. For the reasons given above, including the exacerbation of criminal damage, crime and disorder, public nuisance, and public safety of gardens users, the status quo should remain, and the whole of the gardens should remain an Alcohol Restricted Area. To do otherwise is to disregard the adverse effect

this will have on neighbours of the gardens, to undermine the role of the police, the Council and others, in enforcing the Alcohol Restricted Area provisions, and it will see the council fail in its duty to prevent both crime and the fear of crime.

ENTERTAINMENT

We are firmly of the view that the gardens should close for public activity at 10:30pm or an hour after sunset whichever comes first, and so far as the entertainment licensing aspect is concerned, we seek the following conditions to prevent and reduce criminal damage, crime and disorder, public nuisance, and the public safety of gardens users:

- The period of the licence externally does not extend beyond 10:30pm or one hour after sunset, whichever comes first,
- The period of the licence internally does not extend beyond 10:30pm
- There will be no amplified sound within the licensed area
- No music or speech will be relayed by external speakers
- No use of fireworks
- No noise from outdoor waste disposal stores at unsocial hours
- No powerful external lighting
- The delivery and collection of goods from the premises shall be restricted to times that will not disturb neighbours and shall not take place in the late evening, at night, or in the early morning when the noise generated could cause a nuisance.
- Bottles, skips and bins containing metal and glass will not be emptied after closing but will be dealt with next day during normal business hours.
- The movement of any external bins and rubbish outside the premises will be prohibited after 10:30pm
- Adequate refuse bins for customer use will be provided within the premises and removed at closing time
- All rubbish produced by the premises will be stored securely in a designated area or a bin with a tight fitting and lockable lid to prevent scavenging and waste from blowing around.
- All soft and other drink containers taken outside the building to be made of soft plastic so as not to risk cuts to children's feet in the toddler and children's play areas and on the grassed areas generally.

LATE NIGHT REFRESHMENT

No grant of license and no takeaways or off sales

(Copy letter from Dr J A Gudgeon follows)

Copy extract of a letter sent to Fylde Borough Council regarding the "Summer Daze" event which took place in Ashton Gardens on Sunday 15/8/04

Above all, there were no extra provisions at all for the vast increase in numbers of people in the park, beyond the tiny toilet block, with the pay-as-you-enter toilets ... about 2 or 3 for each sex. There was a long queue all day outside the women's toilet, but most of the females and virtually all of the males chose to urinate and defecate in the bushes adjacent to the music area, and from their aggressive attitude, we are sure they would still do so even if extra toilets HAD been arranged. I spent the entire afternoon and evening trying to inhibit people from urinating within a few feet of our beautiful garden and our children, but with little success. Every time I showed my face at that side of our garden, I saw between 3 and 8 people urinating either onto the wall of Ashton Gardens, but in full view of this house, or OVER that wall, or in the pathway between, or over the second wall and into our garden. With nearly a thousand people there, mostly drinking, you may be sure that several thousand copious urinations have taken place, mostly within a few feet of this house, and the stench of urine hung heavily over us all the whole day and all night, and is still there now. Hundreds of these people simply urinated right in front of me, either straight into, or just outside our garden, and many of them told me to fuck off, or waved various obscene gestures at me. It was upsetting, humiliating and disgusting beyond belief, and it is a mystery to us why we are taking determined steps to bring large numbers of such people into this town.

The people in attendance were in many cases very undesirable, with endless spiky-haired, rings-through-noses creatures, who would regard urinating under my nose into my garden as great fun. It is inviting disaster for the future of Lytham St. Annes. Residents are slowly wanting to leave, and traditional family tourists are being driven away by such events. The only people attracted IN are a desperately bad influence on this town.

The St. John Ambulance unit was very supportive to our concerns, and equally adamant that the event was extremely undesirable to us. We could find no police presence during the evening, until the very last few minutes, and when we found one policeman at the St. Annes police station, he told us that he had known nothing at all about it until he saw it happening, but on further checking, discovered that the Blackpool Office knew of it, but no message had reached the officers on duty in St. Annes. No other form of security was present at any time. When the police DID arrive at the end, they strongly shared our views that such an event should never have been allowed to take place.

Hundreds of glass bottles were smashed, mostly deliberately, so that all the grassy areas are now covered with glass, and children will not be able to play there again safely, and the scale of that glass is such that this will continue indefinitely. The council have already brought a special machine to try to clear the glass, but it was ineffective, and there are thousands of pieces of glass in the grass now, for ever. A big plastic bin was set alight, and left to burn with flames twelve feet into the air at 10 pm, and nobody did anything about it. The organiser simply drove away at about 10.20 pm leaving the place in a disgusting mess, and commenting that "The Council can clean it up tomorrow". I find it hard to believe that ANYBODY will go round the gardens removing human excrement on that scale! I will never allow my young children to play in Ashton Gardens ever again it is now a "no-go" zone of broken glass, urine and excrement.

The public address system, quite apart from being deafening all day, and churning our music often with nothing but loud drums, was used for endless swearing, and the words "fuck, fucking, fucked, fucker" were shouted over St. Annes with gay abandon all day, with large numbers of children present, aged from babies to 15 year olds. It is hard to understand why any parents either took them there, or allowed them to be present.

Large numbers of youngsters were drinking alcohol all day, and later on, there were endless people very drunk indeed, hardly able to walk, and very intimidating to us, just a few feet away from us, urinating into our garden, under our noses. Although we stood and gazed, in disbelief, we never dared speak a word to any of these frightening people, for fear of our own safety. There was illegal under-age drinking on a vast scale in every section of the park.

By allowing people to stage an event like this in a public park in Lytham St. Annes, the Council is opening the flood-gates to disaster.

The result of this concert was many hundreds of drunken people, screaming, shouting, urinating and defecating at will for ten hours, in the middle of Ashton Gardens, supposedly the Jewel in the Crown of Lytham St. Annes, and with no attempt to provide any facilities to alleviate the situation.

J. A. Gudgeon