

# **Licensing Act 2003 - Statement of Licensing Policy**

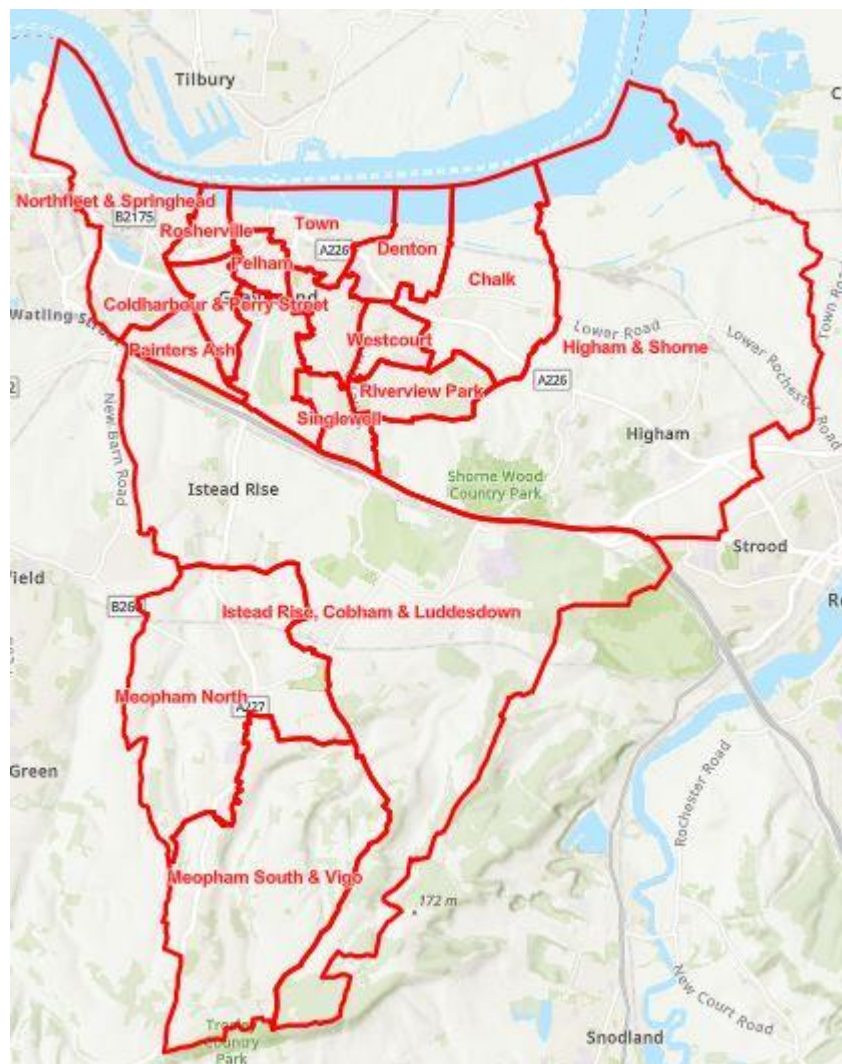
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## Introduction to Gravesham

1. Gravesham Borough Council is situated in the County of Kent, which contains 12 District Councils and 1 Unitary Authority. The Council maintains a 'Community Profile' in order to provide an outline of the Gravesham borough and an overview of the local community.
2. The Bi-annually reviewed profile outlines various statistics that have been reached based on the research and analysis of key data information that has been collected from a wide range of stakeholders including central and local government, partner agencies and a series of independent bodies.
3. [Gravesham's Community Profile is available to view online.](#)
4. You can find statistics for Gravesham on the [Office for National Statistics Website.](#)
5. [The Local Government Boundary Commission](#) holds accessible maps which show our ward and borough boundaries.



## **Legal Background**

6. The Licensing Authority is required to publish a Statement of licensing policy. This policy has been prepared and published in accordance with the provisions of the Licensing Act and the Guidance issued under section 182 of the Licensing Act.
7. The Licensing Act requires that Licensing Authorities consult with other responsible authorities and representatives of licensees of all types, together with representatives of local residents and businesses. The Licensing Authority will have regard to the views of these persons in the determination of this policy and its periodic review.
8. The Licensing Authority will monitor the effect of this policy throughout the period it covers, we will also consider any changes in legislation and should the need arise carry out a review prior to the prescribed 5 years.

### **General Principles**

9. When determining an application, the overriding principle will be that each application will be determined on its own merits, having regard to the need to promote the four licensing objectives, this policy and the guidance issued under section 182 by the Secretary of State. Should the need arise the Licensing Authority will provide clear and cogent reasons for departing from this principle.
10. The Licensing Authority adopts the overall approach of encouraging the responsible promotion of licensed activities. However, in the interests of all its residents and visitors, it will not tolerate irresponsible or unauthorised licensable activity and failure to protect those visiting licensed premises. Following relevant representations the council will refuse applications, restrict hours and activities or impose conditions where it is appropriate to do so to promote the licensing objectives and/or use effective enforcement to address premises where there are problems, in partnership with key agencies.

### **Human Rights**

11. The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a Convention right. The Council will have regard to the following relevant provisions of the European Convention on Human Rights:
  - i) Article 6 that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
  - ii) Article 8 that everyone has the right to respect for his home and private life.
  - iii) Article 1 of the first protocol that every person is entitled to the peaceful enjoyment of his or her possessions.

### **Equalities**

12. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations with different people when carrying out their activities. The Licensing Authority will expect applicants and

licensees to be familiar with the contents of any codes of practice issued by the government under the Equality Act 2010 and show this knowledge through the design and layout of their premises and their operating schedule.

## **Scope of Policy Statement**

13. Gravesham Borough Council is the Licensing Authority under the Licensing Act 2003. The Licensing Authority is responsible for granting premises licences, club premises certificates, and personal licences and the acceptance of temporary event notices in the Borough of Gravesham in respect of licensable activities.
14. The licensable activities as specified in the Licensing Act 2003 are:
  - i) Sale by retail or supply of alcohol.
  - ii) Regulated entertainment.
  - iii) Late night refreshment.
15. Please see the Council's website for [a more detailed list of licensable activities](#). This list also explains that there are several activities that are exempt of the Licensing Act 2003.
16. This policy is to aid everybody on the application process, will be used as part of the decision-making process and covers: -
  - i) new applications
  - ii) provisional statements
  - iii) transfers
  - iv) designated premises supervisor changes
  - v) variations
  - vi) temporary event notices
  - vii) personal licences
  - viii) reviews of premises licence or club premises certificates

## **Licensing Objectives**

17. In carrying out its licensing functions, the Licensing Authority will promote the licensing objectives set out in the Licensing Act. These are:
  - i) The prevention of crime and disorder
  - ii) Public safety
  - iii) The prevention of public nuisance
  - iv) The protection of children from harm
18. To achieve these objectives, the Licensing Authority will use its full range of powers and engage all relevant responsibilities including its planning controls, transport controls, crime and disorder policies and powers. The Licensing Authority will enter into appropriate partnership arrangements, working closely with the Police, the Fire Authority, local businesses, community representatives and local people in meeting these objectives.

## **Personal Licences**

19. The Licensing Authority recognises it has little discretion regarding the granting of personal licences. In general, provided an applicant has a qualification accredited by the Secretary of

State or a certified equivalent, has the relevant proof of the right to live and work in the UK and does not have certain serious criminal convictions, the application is required to be granted.

20. If an applicant has a relevant conviction the police may oppose the application, in which case a hearing will be held.

### **POLICY 1**

21. At the hearing the Panel will consider carefully whether the refusal of the person's application would be in compliance with the licensing objectives. It will consider the seriousness and relevance of the disclosed conviction(s), the period that has elapsed since the offence(s) were committed and any mitigating circumstances. The Licensing Authority will refuse the application if it is satisfied that granting it would not promote the licensing objectives.

### **REASON**

22. Prevention of crime is both an objective of the Licensing Act 2003 and an important responsibility of the Licensing Authority under the Crime and Disorder Act 1998. A person holding a personal licence should be properly qualified and be able to assist the action against crime.

## **Removal of the requirement for a Designated Premises Supervisor in a Community Premises**

23. The management committee of a community premises such as a church hall, village hall or community hall or other similar building can now 'opt out' of the requirement to have a designated premises supervisor when they either apply for a new premises licence or for the variation of an existing premises licence to include the sale/supply of alcohol. Also the management committee of a community premises with an existing premises can apply to vary the premises licence to remove the requirement for a designated premises supervisor without altering anything else.
24. Only the Chief Officer of Police can object to this application on the grounds of crime and disorder.

### **POLICY 2**

At a hearing the Panel will consider the opinion of the Police, the supporting documentation that the applicant submitted with their application and whether the grant of a premises licence to include a condition allowing the supply of alcohol without a designated premises supervisor would undermine the Licensing Objectives.

### **REASON**

The Licensing Authority needs to be confident that the management of the community premises can promote all the Licensing Objectives, but in this case, particularly the prevention of crime and disorder.

## Temporary Event Notices (TEN)

25. The Licensing Act provides for licensable activities to take place by way of a TEN, for events of less than 500 people at a time, with each event lasting for no more than 168 hours, following the notification of such events to the Authority. Only the Police and Environmental Health can object to a TEN if they are of the opinion the event is likely to undermine the licensing objectives.
26. Where the TEN is in order, the relevant fee paid, the event falls within the prescribed limits and there has been no objection from the police or environmental health based on any of the four licensing objectives, the Local Authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically).
27. If the Licensing Authority receives an objection notice from the police or environmental health that is not withdrawn, it must, in the case of standard TEN only, hold a hearing to consider the objection (unless all parties agree that this unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice.
28. If the notice is in connection with licensable activities at licensed premises, the Licensing Authority may also, at the time of a hearing, impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user that includes a statement of conditions and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the Licensing Authority must give a counter notice.
29. If the Licensing Authority receives an objection notice in relation to a Late TEN from the police or environmental health, that is not withdrawn, the Licensing Authority will issue a counter notice, which prevents the event from taking place.
30. The Licensing Authority must check that [the limitations](#) set down in the Act are being observed and intervene if they are not.

## Operating Schedule

31. When applications for a new premises licence or club premises certificate, or a provisional statement or variation of these licences are submitted the applicant is required to produce an operating schedule. In completing the operating schedule, applicants should set out in some detail how they intend to run the premises to promote the four licensing objectives.
32. There can be little doubt that a well-managed licensed venue can benefit the local community. However, there is a risk of local residents being disturbed, particularly if the venue is open late at night because people leaving the premises can be a significant problem in the early hours. Customers may be less inhibited about their behaviour and may be unaware of the noise they are creating. The possibility of these risks will need to be considered when an application is being completed.

33. The Licensing Authority has produced an [Example of Good Practice for Licensed Premises and a pool of example conditions](#) to assist applicants in completing their operating schedules.

### **POLICY 3**

The Licensing Authority will expect all applicants to have regard to this statement of licensing policy, the examples of good practice and pool of example conditions. They are to make a positive commitment to preventing problems from occurring at their premises. Applicants will be expected to have particular regard to:

- i. Their premises, i.e. are there any risks or hazards.
- ii. The layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate.
- iii. Their customers, e.g. are they young, old, disabled, able-bodied, impaired by drink or drugs etc.
- iv. Any risk posed by the applicants proposed licensable activities, e.g. what noise will emanate from these activities, will lights or other effects be used.

They must consider how the above could have a negative effect on the four licensing objectives, and then provide sufficient measures to prevent problems occurring. They could look into any local initiatives which may help mitigate potential risks e.g. local crime reduction initiatives, street pastors etc.

A failure to provide sufficient detail in the operating schedule can increase the likelihood of objections, which in turn could lead to licensing panel hearings.

### **REASON**

A proactive and preventative approach is a key aspect of good management at licensed premises. It is the responsibility of the applicant to satisfy the Licensing Authority that they are aware of the possibility of issues at their premises and provide resolutions. This will not prevent the Licensing Authority or any of the responsible authorities in recommending amendments or additions to the operating schedule.

### **Consultation**

34. The Licensing Act 2003 prescribes the consultation process. It provides details of who the Licensing Authority can consult with on each type of application. Some applications do not go out to public consultation but are reviewed by relevant responsible authorities.
35. The Licensing Authority will advertise all new premises licence and club premises certificate applications and applications to vary or review existing licences on the Licensing Authority website.
36. The grant of a licence could have a significant impact on the lives or businesses of those living or working in the area around the premises for which a licence is sought. It is only right, therefore, that all those likely to be affected by an application are made aware of it and of the opportunity to make representations.



37. Any person, body, business or responsible authority is able to make a representation, either in support or objection, of an advertised application.
38. Representations must be relevant. To be relevant the representation will need to show what the impact these proposed activities will have on at least one of the four licensing objectives.
39. Representations must be as detailed as possible so that any issues can be considered and addressed appropriately by the applicant.
40. Representations based on vague references to what may or may not happen if the licence is granted, will almost certainly be considered 'frivolous' and not be considered relevant.
41. A representation submitted based on local competition would not be relevant and may be considered 'vexatious' by the Licensing Authority and therefore not accepted.
42. Representations that are founded in whole or in part on stereotypical comments that are based on nothing more than the race, religion, sex or sexuality of any group of people will be treated as vexatious and not considered relevant representations.
43. The Licensing Authority will review every representation on its own merit and come to a balanced decision as to the relevance of it.

## **Responsible Authorities**

44. Responsible authorities are public bodies that are entitled to make relevant representations to the Licensing Authority as mentioned in the consultation section of this policy Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.
45. The Licensing Act 2003 prescribes the responsible authorities as listed below:
  - i) The chief officer of police
  - ii) The fire authority
  - iii) The health and safety authority
  - iv) The local planning authority
  - v) The environmental health authority
  - vi) Bodies recognised as being responsible for protection of children from harm
  - vii) Trading standards officers
  - viii) Licensing Authority
  - ix) Local health bodies
  - x) The Home Office (Immigration Enforcement)
46. The responsible authorities will seek to liaise with applicants to achieve a satisfactory outcome for all involved wherever possible.

## **POLICY 4**

Where an applicant considers that representations may be likely, it is recommended that they discuss the proposal with the responsible authorities prior to submitting their application.

Applicants are not required to seek the views of responsible authorities before formally submitting their application but co-operation with them, local residents and businesses is encouraged before submission of the application to minimise the scope for disputes.

## **REASON**

Once an application has been lodged, there are statutory timescales imposed upon the application and determination process, which restrict the opportunity for responsible authorities, local residents, businesses and the applicant or their representative to have the relevant discussions, liaison and mediation.

47. You will see from the list above that the Licensing Authority is consulted as a responsible authority. Should the need arise, the Licensing Authority will ensure that different responsibilities are allocated to different officers so that the officers acting as the responsible authority will not be involved in the licensing application process.
48. Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so to promote the licensing objectives in exceptional circumstances.
49. Heath bodies may hold information, which other responsible authorities do not, but which would assist a Licensing Authority in exercising its functions. For example, drunkenness can lead to accidents and injuries from violence, resulting in attendances at emergency departments and the use of ambulance services. Such information would be relevant to the public safety objective and in some cases the crime and disorder objective.

## **Weight of Police Evidence**

50. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations.

## **POLICY 5**

The Licensing Authority will accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

## **REASON**

51. In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective.

## **Protection of Children**

52. The Licensing Authority will not normally impose conditions requiring or prohibiting the admission of children to any premises, believing this should remain a matter of discretion for the licence holder. However, on some occasions it may be deemed necessary.

### **POLICY 6**

Should the Licensing Authority deem it appropriate, conditions may be imposed restricting the access of children to licensed premises. While in some circumstances it may be necessary to impose a complete prohibition, the Licensing Authority may in other situations consider imposing requirements as set out in the pool of example conditions.

### **REASONS**

53. These policies are designed to allow flexibility for the licensee to ensure that, where appropriate, licensed premises are suitable for children but to ensure they are adequately protected.
54. In addition, Gravesham Borough Council will use all statutory functions to ensure the protection of children from harm with particular emphasis on the sale of alcohol to underage persons.

## **Determination of Applications**

55. As stated previously, in determining a licence application, the overriding principle adopted by the Licensing Authority is that each application will be determined on its individual merits. The process adopted for determination will be as prescribed in the Licensing Act 2003 regulations.
56. When making decisions on new and existing licences and fulfilling their licensing responsibilities, the Licensing Authority is required to demonstrate that its decisions are “appropriate” and “proportionate” to promote the licensing objectives. In determining whether an action or step is “appropriate” for the promotion of the licensing objectives, the Authority will make an assessment of what action or step would be suitable to achieve that end. The Authority will base its decision on factors limited to the promotion of the licensing objectives. However, it will also assess the evidence on risks and benefits either for or against a determination.
57. The Authority will aim to consider the potential burden of restrictions on licensable activities as well as potential benefit in terms of promoting licensing objectives, wider issues such as, other conditions already in place to mitigate potential negative impact on the promotion of licensing objectives and the track record of the business in deciding what is proportionate.

## **Conditions**

58. Licence conditions will depend on the individual application and will be imposed where appropriate to meet the licensing objectives.

59. Licence conditions will not be imposed where the Licensing Authority is satisfied that other regulatory regimes provide sufficient protection to the public e.g. Health and safety at work and fire safety legislation.
60. When considering and applying conditions, such conditions should be clear, appropriate and enforceable. Conditions will be focused on matters that are within the control of the individual licence holder.
61. [Suggested example conditions](#) have been produced to assist applicants, responsible authorities and other persons when proposing and determining conditions for a premises licence or club premises certificate, but all should ensure that the conditions apply specifically to the premises and meet the criteria of clarity, appropriateness and enforceability.
62. Our suggested example conditions are neither exclusive nor exhaustive. They do not restrict applicants, responsible authorities or other persons in proposing additional or alternative conditions. Nor do they restrict the Licensing Authority, when determining contested applications, from imposing any reasonable condition on a licence that it considers appropriate for the promotion of the licensing objectives under the Licensing Act 2003.
63. All premises licences or club premises certificates granted by the Licensing Authority shall be subject to the [statutory mandatory licensing conditions](#). The Government's view is that, in general, there should not be standard conditions, some of which might be inappropriate to individual premises. Instead, conditions should depend on the premises and activities concerned, with a view to ensuring that the licensing objectives are achieved.

## **Location of Premises and Licensing Hours**

64. The Licensing Authority considers that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example, the risk of residents' sleep being disturbed by patrons leaving licensed premises is greater at 02.00 than at 23.00. Residents have a reasonable expectation that their sleep will not be unduly disturbed between the hours of 23.00 and 07:00.
65. Flexible licensing hours for the sale of alcohol can help to ensure that concentrations of customers leaving premises simultaneously are avoided. This can help to reduce the potential for disorder and disturbances. Licensing hours should not inhibit the development of a thriving and safe evening and night-time economy. This is important for investment, local employment, tourism and local services associated with the night-time economy. Providing customers with greater choice and flexibility is an important consideration but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.
66. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.
67. If it is found appropriate to restrict hours in an area where it is believed that this will prevent noise and disruption late at night, then each application will be approached on its own

individual merits taking into account the applicants operating schedules where they seek to address these issues by way of conditions.

68. In all cases, the granting of a licence will depend on the impact of an activity, particularly on local residents or late-night businesses. Consideration will be given to relevant matters including, but not limited to, the level of noise and vibration, litter, people coming and going, queuing and any potential for criminal activity or disorder.

## **Consideration of the Impact of Licensed Activities**

69. When considering whether any licensed activity should be permitted, the Licensing Authority will assess the likelihood of it causing unacceptable adverse impact, particularly on local residents and businesses, by considering the following factors amongst other relevant matters:

- i) the type of use
- ii) the proposed hours of operation
- iii) the means of access to and exit from the premises by patrons

70. In reaching its decisions, the Licensing Authority acknowledges the difficulty a licence holder has in preventing anti-social behaviour by individuals once they are beyond the direct control of that licence holder. However, it will also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in anti-social activities to the detriment of nearby residents or businesses.
71. Furthermore, it will also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the borough. The aim of the Policy is, therefore, to achieve a holistic and balanced approach to these difficult issues.

## **Cumulative Impact Assessments**

72. Cumulative impact is not mentioned specifically in the Licensing Act 2003 but means the potential impact on the promotion of the licensing objectives by having a significant number of licensed premises concentrated in one area.
73. This Licensing Authority does not currently have any cumulative impact areas.
74. While no policies are currently in place, the Licensing Authority will keep potential areas of saturation (areas where there is evidence that no further licensed premises can be accommodated), under review.
75. The Licensing Authority may, in its own right or, on receipt and consideration of relevant representations from any responsible authority or interested party that indicate that saturation has been reached, consider introducing a special policy to control any cumulative impact on the licensing objectives arising in an area.
76. The absence of a special policy does not prevent any responsible authority or interested party from making representations on any application for grant or variation of a relevant authorisation on the grounds that the premises may give rise to, or otherwise contribute to cumulative impact.

## **Early Morning Restriction Orders**

77. This Licensing Authority does not currently have in place an Early Morning Restriction Order.
78. Early Morning Restriction Orders (EMRO) are designed to address recurring problems such as high levels of alcohol related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol related anti-social behaviour which is not directly attributable to specific premises.
79. The Licensing Authority would need to be satisfied that the request for an EMRO is appropriate for the promotion of the licensing objectives, for a specified period between 12 midnight and 6am, in relation to a particular area; which may be the whole or part of the local authority area and that they have sufficient evidence to support the need.

## **Late Night Levy**

80. This Licensing Authority does not currently have a Late Night Levy in place.
81. The late night levy is a power for licensing authorities to introduce a charge for premises that have either a late alcohol licence or a late alcohol and late night refreshment licence.
82. The Licensing Authority is expected to consider the need for a levy with the Chief Officer of Police and Police Crime Commissioner ("PCC") for the police area in which it is proposed the levy will be introduced. However, the final decision on whether or not to implement the levy will be left entirely at the discretion of the Licensing Authority, who will make the decision based on the situation in their local area.
83. Local residents can use existing channels and forums to put forward views and call for the implementation or not of the levy in their area.
84. In the areas that a levy has been introduced the fee will be collected annually and the revenue will be split between licensing authority and the police.
85. The levy is a power and some licensing authorities will not consider that it is appropriate to exercise it. The Licensing Authority may wish to decide whether or not it believes it has a viable proposal to introduce the levy before incurring the costs of the formal consultation process. It is recognised that some licensing authorities may not have a large number of premises, which are licensed to sell alcohol during the late-night supply period.

## **Suspension for non-payment**

86. The 2003 Act requires a Licensing Authority to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due. However, this does not apply immediately if the payment was not made before or at the time of the due date because of an administrative error, or because the holder disputed liability for the fee before or at the time of the due date. In either case, there is a grace period of 21 days. This period is intended to allow the Licensing Authority and the licence or certificate holder an opportunity to resolve the dispute or error. If the dispute or error is not resolved during this 21-day period, the licence or certificate will be suspended.

A premises licence or certificate that has been suspended does not have effect to authorise licensable activities. However, it can for example be subject to a hearing or in the case of a premises licence, an application for transfer.

87. The licence will only be reinstated when the outstanding fee has been paid.
88. Formally, the holder who held the licence at the time it was suspended owes the debt. However, it may be more likely in practice that the new holder will actually make the payment.
89. In the case of a licence or certificate where more than one payment year has been missed, payment of the outstanding fee in relation to each year will be required to reinstate the licence.
90. Invoices are issued by the Council's Finance Department and payment is due on the date the premises licence was granted. Should payment not be received we will contact the licence holder or make a visit to the premises to advise the licence holder of failing to pay the annual fee and issue a notification of intension to suspend. Should payment not be received within 21 days then the licence or certificate will be suspended.
91. The fees are set by Government with the aim of recovering the licensing authorities cost of administering, inspecting and ensuring compliance with this legislation and the associated guidance.

## **Smoking**

92. The Health Act 2006 in relation to smoking in enclosed spaces came into force on 1 July 2007. From that date it became illegal to smoke or to fail to prevent smoking in a smoke-free place.
93. The Licensing Authority is aware that there is no legal requirement for a licensed premises to provide an outside smoking area, but we may take into consideration the possible effect of people leaving licensed premises to smoke when determining licence applications.

## **POLICY 7**

Should an applicant decide to provide an outside smoking area they are expected to have considered the following:

- i. Location for a designated smoking area.
- ii. How many customers to permit in the smoking area at any one time.
- iii. How to mitigate noise from the smoking area.
- iv. Times the smoking area can be used.
- v. Provision of bins.

## **REASON**

The Licensing Authority recognises the effect the smoking ban has had on issues around public nuisance including noise and litter. The Licensing Authority expects the licensees to manage this effectively.

## Adult Entertainment and Sexual Entertainment Licences

94. Not all establishments where there are displays of a sexual nature will fall under the definition of 'sexual entertainment venue', but where they do the Licensing Authority has a separate policy for applications for this type of venue in this borough and applicants should refer to that [policy for guidance](#).
95. Under the Licensing Act 2003 entertainment of a sexual nature is known as 'Relevant Entertainment'

### POLICY 8

Where the exemption of obtaining a Sexual Entertainment licence applies, but the licence holders are considering providing relevant entertainment, they will be expected to implement measures to actively promote the four licensing objectives. In particular, the Licensing Authority encourages measures that will protect children and vulnerable adults from moral, physical or mental harm.

### REASON

This is to ensure that children and vulnerable adults are suitably protected from types of entertainment that could cause them harm.

## Gaming machines within licensed premises

96. The Gambling Act 2005 became effective in 2007. The Licensing Authority has a [separate policy](#) for applications that come under this legislation. This authority will have due regard to the contents of the document in so much as its relevance and bearing on the licensing policy.
97. The Gambling Act 2005 gives an automatic entitlement, of up to two gaming machines of category C and D, to the holders of premises licences that are licensed for the sale of alcohol at a bar. Notification must be given to the Licensing Authority together with the appropriate fee.
98. This notification will cease to have effect when the premises licence:
- i) Is transferred to another person/s or company
  - ii) Lapses
  - iii) Is surrendered
  - iv) Is suspended
  - v) Is revoked

Under these circumstances a new notification must be given to the Licensing Authority and the appropriate fee paid.

99. Where the intention is to make more than 2 machines available, an application must be submitted for a permit with the appropriate fee and an annual fee will be payable. This permit may be transferred with the premises licence.



100. The Council may restrict the number of machines on premises if it appears that the licensing objectives under either the Licensing Act 2003 or the Gambling Act 2005 are not being promoted.
101. Licensed member's clubs and miner's welfare institutes may apply for Club Gaming and Club Machine permits. An application must be submitted with the appropriate fee and an annual fee will need to be paid.
102. Commercial clubs e.g. snooker clubs and night clubs cannot avail themselves of these permits

## **Planning**

103. Any premises for which a licence is required should normally have an authorised use under the Town and Country planning legislation.
104. Applicants for premises licences or club premises certificates in respect of permanent commercial premises will be reminded of the need to secure the necessary planning consents, if not already obtained, before carrying on their licensable activities. An application for any variation of a licence would not relieve the applicant of the need to apply for planning permission or building control consent where appropriate.
105. This is to avoid unnecessary duplication and, thereby, comply with Home Office guidance. Licensing applications will not be a re-run of the planning process and will not cut across decisions taken by the local planning authority. However, there could be occasions when a licence is refused for licensing reasons where an authorised planning use exists. The granting of a licence does not guarantee the granting of planning permission or vice versa.

## **Enforcement**

106. The Council has adopted an Enforcement and Prosecution Policy in respect of the Licensing Act 2003. This sets out our approach to enforcement and our commitment to effective partnership working with the other responsible authorities under the Act.

It can be found as Appendix 2 of this document.

## **Persistent Sales to Children**

### **POLICY 9**

Enforcement action will be taken if a premises is found to be persistently selling alcohol to children.

Persistently selling alcohol to children is defined as when a licence holder is found to be selling alcohol to children two or more times within a three-month period.

Where persistent sales of alcohol to children have occurred at premises, responsible authorities should consider applying for a review of the licence.

## REASON

The aim is to deliver tough action against those persistently selling alcohol to children. Responsible authorities should consider taking steps to ensure that a review of the licence is routine in these circumstances. In determining the review, the Licensing Authority should consider revoking the licence if it considers this outcome is appropriate.

## Spiking and Sexual Harassment

107. Spiking is when someone puts drugs or alcohol into another person's drink or body without their knowledge or consent.
108. Sexual harassment is making unwelcome and inappropriate sexual remarks or physical advances.

## POLICY 10

Applicants must consider what preventative measures they will put in place to reduce the occurrence of spiking and or sexual harassment in their premises, for example:

- i. Joining a local partnership scheme. For example, [Pubwatch](#), [Best Bar None](#), [Street Pastors](#), [Safe Places](#).
- ii. Ensuring staff are fully trained on how to deal with such a situation.
- iii. Engagement in relevant initiatives, such as:
  - a. The Welfare and Vulnerability Engagement Initiative. (WAVE)
  - b. Ask for Angela
- iv. Providing anti-spiking products to their customers
- v. Established and reliable relationships with local taxi and private hire firms to ensure safe means of door to door transport home.

Enforcement action will be taken if a premises is found to be persistently failing to protect their customers.

## REASON

Reports of spiking and sexual harassment are on the increase, both as individual actions and in connection with each other. It is everyone's responsibility to try and stop these incidents from occurring at all, but if they do, to provide support to the victims and to report it to the relevant authorities.

More advice is provided in the Council's [Good practice guidance](#)

## Reviews

109. Responsible authorities, councillors, businesses or members of the public can trigger a review of a premises licence or club premises certificate but any review must relate to one or more of the licensing objectives and an evidentiary basis for a review is required to be presented to the Council.
110. The Licensing Authority encourages, where possible and appropriate, responsible authorities to give early warning to licence holders of any concerns about problems identified at

premises and of the need for improvement. The Licensing Authority generally expects evidence of engagement to be presented as part of the review process where this is appropriate.

111. The Licensing Authority will arrange a hearing on receipt of an application for review by a responsible authority or interested party.
112. Where reviews arise and the Licensing Authority determines that the premises is being used to further crimes, revocation of the licence, even in the first instance, should be seriously considered where it involves:
  - i) Use of licensed premises for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crimes.
  - ii) Use of licensed premises for the sale and distribution of illegal firearms
  - iii) Evasion of copyright in respect of pirated films and music
  - iv) Underage purchase and consumption of alcohol
  - v) Use of licensed premises for prostitution or the sale of unlawful pornography
  - vi) Use of licensed premises for unlawful gaming
  - vii) Use of licensed premises as a base for organised criminal activity
  - viii) Use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks
  - ix) Use of licensed premises for the sale of smuggled tobacco or good
  - x) The use of licensed premises for sale of stolen goods
  - xi) Prolonged and/or repeated instances of public nuisance
  - xii) Where serious risks to public safety have been identified and the management is unable or unwilling to correct those risks
  - xiii) Where serious risks of harm to children have been identified
  - xiv) Permitting drunkenness and for encouraging binge drinking
113. No more than one review will normally be permitted within any 12-month period on substantially similar grounds except in exceptional and compelling circumstances or where it arises following a closure order.

## **Discharge of Functions**

114. A list of the scheme of delegations approved by members is attached as **Appendix 1** (this may be amended from time to time in line with the Council Constitution and/or changes in any relevant legislation).

## **Recommended delegation of functions**

### **Functions dealt with at Sub Committee**

Application for a personal licence if a police objection is made.

Application for personal licence with unspent convictions.

Application for premises licence/club premises certificate if a relevant representation is made.

Application for provisional statement if a relevant representation is made.

Application to vary premises licence/club premises certificate if a relevant representation is made.

Application to vary designated premises supervisor if a police objection is made.

Application for transfer or premises licence if an objection is made.

Applications for interim authorities if an objection is made.

Application to review premises licence/club premises certificate.

Decision to object when Local Authority is a consultee and not the relevant authority considering the application.

Determination of a police/environmental protection objection to a temporary event notice.

Determination to revoke or suspend a personal licence following conviction of a relevant offence.

### **Functions dealt with by Officers**

Application for a personal licence when no police objection is made.

Application for premises licence/club premises certificate when no relevant representation is made.

Application for provisional statement when no relevant representation is made.

Application to vary premises licence/club premises certificate when no relevant representation is made.

Application for a minor variation to a premises licence/club premises certificate.

Application to vary designated premises supervisor when no police objection is made.

Request to be removed as designated premises supervisor.

Application for transfer or premises licence when no objection is made.

Applications for interim authorities when no objection is made.

Decision on whether a complaint is irrelevant frivolous vexatious etc.

## **Licensing Enforcement and Prosecution Policy**

### **Aim**

This policy is intended to enforce the law fairly and firmly, in a consistent and transparent way and in accordance with the four licensing objectives:

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

The council will assist and advise wherever appropriate, but proportionate action will be taken against those who breach the provisions of the legislation.

This policy should be read in conjunction with the [Regulators Code](#).

### **Purpose of policy**

This policy is designed to:

- Ensure consistency of approach and enforcement in respect of licensing issues.
- Provide officers with guidelines to enable them to make reasoned decisions regarding enforcement.
- Inform the public and proprietors of businesses of the principles by which enforcement action is determined and subsequently taken.

### **Underlying principles of the policy**

Enforcement needs to be fair but firm and effective. The following principles underpin this approach:

#### **A. Helpfulness**

The Council will deal courteously and efficiently with all individuals, organisations and businesses that it comes into contact with. Staff will identify themselves by name and provide telephone numbers and emails for quick and easy contact.

#### **B. Openness**

Information and advice will be provided in plain language and details of charges etc. will be made readily available. Translation services will be made available where practicable to assist customers who do not have English as their first language.

#### **C. Transparency**

Transparency is important in maintaining public confidence in the council's regulatory capacity. The council will help those being regulated, and others to understand what they need to do and how it may be achieved. The council will also make its own role in the matter clear.

The council will explain carefully (and if necessary, in writing) why the action is necessary, who must carry it out and by what date it must be carried out. A clear distinction will be made between a legal requirement, a request and best practice.

The council will give every reasonable opportunity for discussion before formal enforcement action is taken unless urgent action is necessary in the public interest or to prevent the destruction of evidence that would compromise the council's case. In such circumstances the council will give a written explanation of its reasons for taking immediate action and this will be done as soon as possible after the event.

The council will give written notice of any rights of appeal against enforcement action at the time that action is taken.

#### **D. Proportionality**

Proportionality means relating enforcement actions to the risks. Enforcement action will be proportional to the degree of harm/risk, the seriousness of any breach and to the particular circumstances of the case.

#### **E. Consistency**

The council and its officers will act in a fair and consistent manner. Council Officers whilst exercising their professional judgement in individual cases will do so within a framework based on consistency and fairness in action. However, the council recognises that consistency does not mean uniformity and officers of the council are required to take professional decisions that take account of a wide variety of situations and circumstances. Officers will take account of national and local standards and guidance and be aware of this policy.

There will be specific circumstances when the council will share an enforcement role with the police or other agencies. When this happens, the same degree of consistency and fairness will be applied.

#### **F. Targeting**

Reactive work will be led by changes to licences, risks, complaints and intelligence. Businesses and individuals who persistently break regulations will be dealt with using the full range of powers and sanctions available.

#### **G. Complaints procedure**

The council has a formal complaints procedure, although many complaints may appropriately be dealt with by a senior manager within Regulatory Services and/or the Communities and Inclusive Growth Directorate. Information regarding the formal complaint's procedure may be obtained by calling Customer Services on 01474 33 70 00 or through the council's website [www.gravesham.gov.uk](http://www.gravesham.gov.uk)

In addition to the council's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government maladministration, and details of this are also available from Customer Services.

## **Complaints and requests for service**

All complaints and requests for service made in relation to premises, persons and the Licensing Act 2003 (excluding licence applications) will be dealt with in accordance with departmental service standard procedures. For complaints we deem to be of an urgent nature, our first response will ordinarily be within 24 hours (during normal working hours). For non-urgent matters our first response will ordinarily be within 5 working days.

## **Liaison with other regulatory agencies**

To enforce the licensing legislation the council will work actively with:

- Kent Police
- Kent Fire and Rescue Service
- Home Office Immigration
- Trading Standards
- Child Protection
- Health and Safety Executive
- Maritime and Coastguard Agency
- Security Industry Authority

This will necessitate the sharing of information in relation to those persons involved in licensing and relevant premises based on the requirements of the Licensing Act 2003 and other relevant legislation.

There are various statutory provisions that enable the council to exchange relevant information with other bodies. These provisions will be used as appropriate.

This enforcement policy in no way restricts other regulatory bodies from carrying out enforcement under their own regulatory powers. When the council and another enforcement agency both have powers to take enforcement action, – the council will liaise with the other body to ensure that:

- Action is effectively coordinated.
- Proceedings are for the appropriate offence.
- Inconsistencies are avoided.

## **Licensing Visits**

Council officers will make licensing visits to premises and clubs and may on occasion be accompanied by other regulatory agencies. Both the council and the other relevant agencies firmly believe that working together and with the business is the primary method to achieve the licensing objectives but will take appropriate enforcement action if necessary.

The Licensing Authority arranges their visits following the grant of a new, varied, transferred or amended licence, or when a complaint or enquiry is received with regards to a premises/club, but may also carry out general compliance monitoring visits as deemed fit.

## **Enforcement Action/Options**

The initial contact between council and Business or Licensees will normally be informal, with the provision of advice, guidance and support.

Enforcement action can include the following to achieve compliance:

- i) Verbal or written advice.
- ii) Verbal or written warning.
- iii) Statutory Notice.
- iv) Review of premises licence or club premises certificate.
- v) Simple Caution.
- vi) Closure notices under Section 19 of the Criminal Justice and Police Act 2001. (as amended by the Licensing Act 2013)
- vii) Prosecution.

The individual circumstances of the breach of the legislation will determine the level of enforcement.

All actions will be considered in accordance with the requirements of the Human Rights Act 1998 and considered on its individual merits.

When prosecution is being considered, the relevant enforcement bodies will, on a case-by-case basis, decide which the lead authority to prosecute the offence will be.

Regard will be taken of the Code of Practice made under Section 10 Prosecution of Offences Act 1985 and issued by the Crown Prosecution Service. Due consideration will be given to any guidance and/or advice issued by Government, Local Authority Association and other professional and technical bodies. Statements will be provided as regard to evidence from one agency to another as necessary. Before deciding whether to prosecute the following factors will be considered:

- i) The nature, seriousness and effect of the alleged offence.
- ii) If there is sufficient, reliable and admissible evidence that the offence has been committed.
- iii) The history of the business/person concerned.
- iv) Any explanation offered by the alleged offender.
- v) The willingness of the business/individual to prevent a reoccurrence of the problem and the level of co-operation with Council officers, Police and/or other agencies.
- vi) Whether it is in the public interest to prosecute.
- vii) The realistic prospect of conviction.
- viii) Whether any other action (including a formal caution) would be more appropriate or effective.
- ix) The views of any complainant, witness and other parties with an interest in a prosecution and their willingness to cooperate.
- x) The deterrent effect on the offender and others.

Prosecution will only be instigated following review of the matter by the Regulatory Services Manager (or above) in consultation with legal services.

The council takes a proactive stance towards the proper regulation of, and enforcement of the provisions of this legislation. The council will normally take the lead on issues including:



- i) Noise
- ii) Production and display of relevant licences and documents
- iii) Unauthorised licensable activities in relation to the provision of regulated entertainment
- iv) Breaches of conditions of premises licences
- v) Breaches of requirements under temporary events notices
- vi) Exposing and keeping of alcohol on premises for unauthorised sale

Other breaches of the Act will be dealt with either directly or jointly as indicated above. The council will give full cooperation to any other agency in carrying out their investigations.

### **Closure Notices/Orders**

The Criminal Justice and Police Act 2001 includes powers relating to the closure of premises where there is an unauthorised sale of alcohol.

In this context, unauthorised sale means either the sale or supply of alcohol without a Premises Licence or a Club Premises Certificate under the Licensing Act 2003, or where there is a Licence or Certificate in force where the conditions of that licence/certificate are not being complied with. These provisions only relate to alcohol sales or supplies and do not apply to entertainment or provision of hot food, which are also licensable activities under the Licensing Act 2003.

The legislation makes these powers available to police officers and to duly authorised local authority officers.

### **Departures from the enforcement and prosecution policy**

Agreed departures from the policy will be rare and the reason will be documented in each case, following review by the Regulatory Services Manager or above.

### **Review of policy**

The council will review this enforcement policy at least every 5 years in line with the review of the licensing policy statement, or when changes in legislation or centrally issued guidance make this necessary.