



# AIFRIA

Alliance of Folkestone Residents Associations

## Draft Statement of Licensing Policy 2021 - 2026

### 1. Consultation and Review

The Draft Statement of Licensing Policy, is made in Accordance with the provisions of the Licensing Act 2003 and Amended Guidance issued under section 182 of the Licensing Act 2003 by The Secretary of State.

The Opening statement of the policy, provides useful statistics on the area covered by the District Council, including the demographics of the area and the number of Licensed Premises; covering a wide range and variety of establishments including, pubs, bars, clubs, restaurants, hotels, takeaways, barns and vineyards.

Of particular interest to Resident, is the acknowledgement by the Council that, while licensed entertainment can add an economic value to the District, it may come with increased noise, nuisance, crime and disorder, if not properly controlled and therefore, ***“In particular, the Council wishes to minimise any negative impact from licensed entertainment on residential households”***.

The opening statement also defines some thirteen licensable activities and refers to the four Licensing Objectives contained in the Licensing Act 2003.

It goes on to list five other key aims and purposes in the 2003 Act, including, protecting the public and local residents from crime, anti-social behaviour, and noise nuisance, whilst giving the Police and the local authority the power to deal with premises that are causing a problem.

Being fair, the Policy recognises the important role that pubs and other license premises have in the community and therefore sets out the need for a clear regulatory framework that serves the needs of the community and

empowers the local authority to make, and enforce, decisions about the most appropriate licensing strategies to adopt in their local area.

It also recognises that greater community involvement in licensing decisions is one of the key aims of the Licensing Act 2003.

It is worth noting that the Council, acting as the Licensing Authority, must consider the merits of each and every application and may make exceptions to its own policies, where appropriate and in support of the Licensing Objectives but will give its reasons for doing this.

Also, the Statement of Licensing Policy does not undermine the rights of any individual to apply for a licence, or indeed, for any individual to make representations on a licence application, or seek a review.

The Council as licensing authority, has limited discretion for new Premises Licences or variations to Licences but can only act if there is a valid objection by a “responsible authority” e.g. Police, or by “other persons”, including local residents and businesses, within the prescribed time limits.

Failing such representation, the Licensing Authority **must grant all applications** for Premises Licences. **Change of Use is a function of The Planning Department not Licensing**

## **Commentary**

- The Draft policy make some important opening statements, in particular the Council’s attitude towards residential households, noise and anti-social behaviour.
- Reference is also made to the Council’s ability to make and enforce decisions about the most appropriate licensing strategies for the District.
- There is also a recognition that residents should have a greater say in licensing decisions, all of which would be welcome.
- Change of Use is not a Licensing Department function, it is matter for the Planning Department but a Change of Use does not automatically bind the Licensing Department to grant an Alcohol Licence.

## 2. Licensing Process

This Clause deals mostly with the process an applicant must follow to obtain a Premises Licence or variation of an existing Licence. However there are a few points to note.

### Commentary

- Interestingly the Decision making process is dealt with in Paragraph 2.4 and we learn it must be no fewer than 10, and no more than 15, Councillors, acting as the Licensing Committee; or by 3 Councillors acting as the Licensing Sub-Committee; or, by **one** or more officers acting under delegated authority. A table of delegations then follows.
- Within that table it makes plain that a decision on whether a representation is irrelevant, frivolous or vexatious is firmly in the hands of the officers and no one else.
- Given that officers are granted an almost universal ability to determine the vast majority of cases without supervision, it is questionable whether, or not, this is good democratic practise in such a small community and what safeguards are afforded the Residents of the District, when as few as **one officer** can make a decision about any representation, which sees it ignored and **one Officer** can grant an alcohol license under delegated powers.
- It is true that the Draft Policy does give examples of what constitutes frivolous, or vexatious representations and this is welcomed but for the better performance of public bodies “four eyes on”, helps safeguard the employer and employees from undue criticism.
- There are useful reminders on the role of Public Space Protection Orders (PSPOs) and the role of Planning, Licensing and Local Plans and their benefits to local business and residents.
- Paragraph 2.9, is a comprehensive review of Cumulative Impact Policy and the role of a **Cumulative Impact Assessment**. The effect of adopting

a Cumulative Impact Assessment, put simply, allows the Licensing Authority to refuse a new Premises License; or Club Licence; or a material variation of an existing licence, unless it can be demonstrated that the operation of the premises will be unlikely to add to the cumulative impact already being experienced.

- The Folkestone and Hythe District Council have to date, not considered a Cumulative Impact Assessment necessary but in the light of this Policy document, are considering a Cumulative Impact Assessment in respect of the Central areas of Folkestone and Hythe.
- **This is to be encouraged as there is a long history of premises Change of Use that have resulted in licensed cafes, which quickly turn into bars and apply for late night licenses, resulting in unplanned vertical drinking establishments in close proximity, competing for a limited clientele, mostly on Friday and Saturday nights, when safety gives way to expediency.**
- **It cannot be emphasised too strongly, that to protect the centres of our towns and allow the much hoped for regeneration and the implementation of the visionary plans for Folkestone, sanctioning a Cumulative Impact Assessment must be grasped before the remaining vacant premises hold an alcohol license, following a Change of Use.**

### **3. Folkestone Specific Policies**

In this Clause early reference is made to the document, “Good Practice for Licensed Premises” - shown in full in Appendix A. Also, mentioned is made of “Folkestone’s Place Plan” and the desire to encourage applications for creative and cultural venues by not encouraging Vertical Drinking establishments, in order to maintain a balance.

Under Paragraph 3.3, the Council has shown a careful regard to the right to apply for an alcohol licence and the rights of local residents to peace and quiet.

Quite correctly the Council refrains from stipulating fixed hours but takes a step towards recommended advisory hours for Cafes, Restaurants, Public Houses and Nightclubs.

Clearly anyone may apply for different hours, as is their right under the 2003 Act but the Policy encourages licensed premises to consider their environment in relation to public transport, outside areas, or possible, increases in antisocial behaviour and noise.

Under 3.3.2, The Policy makes mention of the Early Morning Restriction Orders (EMROs) and the ability of the Council and the Police to enforce them, particularly, when the problem cannot be attributed to one specific establishment. The entire Council must decide on an EMRO and currently Folkestone and Hythe District Council do not believe any EMRO is necessary, despite multiple complaints of noise and anti-social behaviour along The Leas, The Bayle, the Old High Street, the Harbour and adjacent areas.

Interestingly, The Council have considered, amongst other things, the issue of shops and petrol stations selling alcohol; pre-loading; underage drinking; theft of alcohol; street drinking and the resulting possible increase in public nuisance.

The draft Policy make advisory comments on better layout and presentation of alcoholic products; the use of CCTV cameras and other forms of security and supervision to prevent anti-social behaviour.

Detailed preventative advice is offered as part of the Policy.

Under 3.6, The Policy deals with TENS (Temporary Event Notices) and makes clear that these should be genuine one-off arrangements and not just an excuse by a licensed premises to extend their opening hours.

Under 3.7, Reference is made of the importance of the Operating Schedule and the expectation that applicants will adhere to their Operating Schedule, which must conform to the high standards of behaviour espoused by the Council.

The Draft Policy spells out the details of the Folkestone and Hythe Licensing Forum, which comprises business, residents, police and local authority representation.

Under 3.9, the Policy deals with drinks promotions and drunkenness on Licensed Premises and sets its face firmly against irresponsible behaviour by sellers of alcohol, including discount offers, drinking games, encouragement of binge drinking and sale of alcohol to drunken persons. Further advice is given in Appendix 1.

## **Commentary**

Clause 3, sets out the Council's vision for Folkestone and Hythe and helps applicants understand what is welcome and where additional reasoning is required. It broadly balances the need for well managed entertainment venues with licensable activity, against the need to regenerate the area, while recognising the rights of residents and the public. It is one of the most revealing Clauses and a much more open discourse on the future of the district than hitherto.

## **4. Management of Premises**

Clause 4, deals with the Management of Premises and the Council's expectations, including Licensed Door Supervisors, dispersal policy, operating schedules and risk assessments. It also covers the subject of Takeaway food premises, which have a section on expectations and operational activity, with separate paragraphs for pavement cafes and external areas.

Children and licensed premises get a six paragraph review of requirements, together with further paragraphs dealing with proxy sales, activities for under 18s, safeguarding and the protection of young vulnerable victims.

Clause 4, concludes with Appendix 1, "Good Practice for Licensed Premises and Protocols".

This Appendix is a detailed run through of the four Licensing Objectives and the Council's expectations, guidance and advice; reflecting the full operational detail of licensed premises and similar licensed establishments.

Each Licensing Objective is explored and clear expectations established.

For example, part of the exposition on Licensing Objective 1, deals with training, irresponsible drinking promotions, on trade and off trade, underage sales and proxy purchases, drunkenness, duty of care, preventing conflict, aggression and violence in and around licensed premises and the possession of illegal drugs and weapons and the use of drugs.

Public Safety, Licensing Objective 2, is similarly given a comprehensive statement including, maximum occupancy, safe arrival and departure, fire safety, preventing drug related harm, drink spiking and women's safety schemes.

Licensing Objective 3, Prevention of Public Nuisance, sets out the consideration that must be given to noise and other nuisance, on people living, working or sleeping nearby licensed premises. A long list of advice is set out explaining the issues and what needs to be done to reduce the impact.

Finally, Objective 4, the Protection of Children from Harm, gives a detailed analysis of the issues and the Council's expectations applicable to responsible license holders.

## **Commentary**

In Clause 4, the Council goes along way to explain the need for good premises management and exactly what this should look like.

The expectations are high but only in keeping with the four Licensing Objectives contained in the 2003 Act.

Including Appendix 1, the Clause leaves little in doubt and gives well reasoned argument for the conditions imposed by the licensing process.

The remainder of the document, which extends to 101 pages out of 130, covers the nine Protocols to be adhered to by Applicants, and five further detailed Appendices that cover every aspect not otherwise covered in the rest of the Policy document.

It also helpfully explains the difference between Planning and Licensing Departments and the rules applicable to each and touches on a number of items from, Public Notices, How to make Representations and Hearings of the Licensing Committee, amongst others.

## **Conclusion**

Overall the impression is given that the Council are leaving nothing to chance and while expressing preferences, where this is appropriate, does not shy away from clear and detailed instructions about the process and requirements of a successful licence application.

It is a far more comprehensive document that before and should help in the regeneration of the District and Folkestone in particular.

The Council would find favour with residents if it commissions a **Cumulative Impact Assessment** and is encouraged to look carefully at adopting a limit number, possible only one, **EMRO** in one particularly hard hit part of Folkestone.

It would also be helpful if the Council dropped the use of the term **Night-time Economy** in favour of **Late Night Economy**, as both are used interchangeably in the document and the antithesis towards the words Night-time Economy has already caused a lot of resentment from residents.

Lastly, while the Policy provides a clear steer to those seeking an alcohol licence and mentions enforcement and potential fines for failure to apply licensing condition, it is very light on the means by which this will be enforced and whether or not, the Council will employ staff to supervise licensed premises and maintain an overall watching brief on

anti-social behaviour occurring beyond the immediate vicinity of the licensed premises and between premises that hold late night licenses, where rowdy anti-social behaviour tends to cause the most disturbance to residents.

## **EXECUTIVE SUMMARY**

- The Draft Statement of Licensing Policy 2021-2026 is acknowledged to be the most comprehensive statement on Licensing Policy the Council have made to date and should command wide supported from a large tranche of Folkestone residents.
- It is recognised that, while the Council must work within the terms of The Licensing Act 2003 and cannot limit an applicants rights to apply for an Alcohol Licence, or an Alteration of Conditions, sensible guidance is given to would-be applicants, that helps to promote the four Licensing Objectives and other legislation, including the Human Rights Act 1998 and the Anti-Social Behaviour, Crime and Policing Act 2014.
- To this end, **AFRA** (Association of Folkestone Residents Association) and **LRA** (The Leas Residents Association), urge the Council to conduct a **Cumulative Impact Assessment** for Central Folkestone and the Harbour areas and consider an **EMRO** (Early Morning Restriction Order) to be applied to the Old High Street and adjacent areas, including Payers Park.
- It is strongly recommended that the Council drops the phrase **Night-time Economy** in favour of **Late Night Economy**, to better represent the commercial activity within the Central area of Folkestone.
- It is also **recommended that the Council reconsiders its land use policies** and finds a suitable area that would allow for early morning venues, including dance halls and night clubs, that would avoid conflict with local residents. Park Farm Industrial estate is favoured for this activity and while the local Police have repeatedly rejected this scheme on the grounds of proximity to the Motorway and the ready access to drug distribution, this has not prevented parts of inner Folkestone being targeted by County lines and other drug

related organisations. **It is therefore respectfully suggested that a part of Park Farm Industrial area is designated for night time entertainment.**

- In the Draft Licensing Policy 2021-2026, **the Council clearly sets out its intention to enforce against License holders who failed to observe the terms of their Licence.** The Council will also employ staff to supervise licensed premises and maintain an overall watching brief on anti-social behaviour occurring beyond the immediate vicinity of the licensed premises and between premises that hold late night licenses, where rowdy anti-social behaviour tends to cause the most disturbance to residents. This is to be welcomed by all Folkestone residents as a clear undertaking by the Council.
- However, the question remains as to what level of enforcement the Council will adopt and the precise number of staff and costs associated with this element of the Policy. **It is strongly recommended that the Council considers this aspect of the Draft Policy and publishes an addendum or separate proposals on its enforcement plans.**
- It seems that the Council accepts and endorses the responsibility it has towards residents under the Four Objectives of The Licensing Act 2003 and clearly it has a keen regard for residents across Folkestone. It is therefore recommended that **the Council also highlights its responsibilities under the Human Rights Act 1998 and the Anti-Social Behaviour, Crime and Policing Act 2014** in a similar way. viz. Under Human Rights Act residents have a fundamental human right to;
  - a. The quiet enjoyment of their homes.
  - b. Sufficient sleep to ensure that their health and general well-being is not being compromised due to an imbalance between the promotion and development of businesses and those who live and work in the area.

- c. In the Anti-social Behaviour, Crime and Policing Act 2014 these rights are a **primary consideration** to be made by authorities investigating complaints.
  
- **The Council wishes to set up a Licensing Forum to engage amongst others, with Residential Representatives from designated areas. We are very keen that the Council goes ahead with this proposal and believe it would make a significant contribution to the four Licensing Objectives, if local residents views were part of the process.**