

AGENDA ITEM

**LICENSING SUB COMMITTEE
16 May 2014**

REPORT OF THE HEAD OF ENVIRONMENTAL SERVICES

**TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE FOR
HANLON'S BREWERY, HALF MOON VILLAGE**

REASON FOR REPORT

1. An application has been received for a premises licence for Hanlon's Brewery, Hill Farm, Half Moon Village to which relevant representations have been received. Accordingly, Mid Devon District Council as the licensing authority is obliged to hold a hearing to determine the application.

RECOMMENDATIONS

1. That this application is decided in accordance with the licensing objectives

RELATIONSHIP TO CORPORATE PLAN

None

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	If there is an appeal against the decision the Council could find itself bearing the costs
Legal	If the decision is not lawful the Council could find itself subject to appeal or judicial review
Risk Assessment	If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court

CONSULTATION CARRIED OUT WITH:

1. The process for applying for these licences is prescribed by regulations made under the Licensing Act 2003 that require applicants to copy their applications to the “responsible authorities” consisting of the police, fire service, Weights and Measures, body responsible for health and safety (generally Environmental Health), Environmental Health for nuisance, the planning authority, the licensing authority, the Primary Care Trust and the body responsible for child protection.
2. This Council notifies the town or parish council where the event is. For this application we notified Newton St Cyres Parish Council.
3. Applicants are also obliged to advertise their applications in two ways – on their premises so as to be visible to passers-by and in a local newspaper.

1.0 PREMISES

- 1.1 The premises are described by the applicant as “Hanlon’s Brewery is a new building and was erected on farmland in 2013. It is situated off the A377 between Exeter and Half Moon Village. The brewery consists of one detached building of two floors. Approximately $\frac{2}{3}$ of the building is used as a single storey brewery plant with the remaining third being used for offices, stores etc. This section of the building has two floors with the upper floor being designated as a meeting/function room. The meeting/function room will be used for office meetings, social gatherings, brewery tours and a tasting room. Music will be played from this room for social gatherings if required. Alcohol will be served from a bar the maximum capacity is 60 people. Alcohol will also be sold in the form of party kegs and bottled beer to the general public from the brewery warehouse”.
- 1.2 The applicant goes on to say that “The site is relatively remote from residences, the closest being approximately 150-200 metres away”.

2.0 APPLICATION

- 2.1 Recorded music indoors is applied for from 10am until 10pm from Sunday until Thursday and from 10am until 11pm on Friday and Saturday.
- 2.2 The sale of alcohol for consumption on and off the premises is applied for from 9am until 11pm from Monday to Saturday and from 10am until 11pm on Sunday. A full copy of the application is attached as Annexe 1 together with plans.

3.0 LICENSING OBJECTIVES

- 3.1 All applicants are required to set out in their applications how they will meet the four licensing objectives which are:
 - **The prevention of crime and disorder;**
 - **Public safety;**
 - **The prevention of public nuisance; and**
 - **The protection of children from harm**

3.2 In the general description of the premises the applicant states that “Hanlon’s Brewery has a zero tolerance policy regarding anti-social behaviour, alcohol or drug abuse. Any persons behaving in an unacceptable manner will be asked to leave the premises. Any persons so asked to do but refusing will result in police action being requested”.

3.3 In the operating schedule where asked to describe what steps will be taken to meet the licensing objectives two conditions are provided for the **prevention of public nuisance**. “Doors and windows will be closed when any amplified recorded music is played with the exception of entrance and exit pathways to the premises” and “When amplified music is played an employee from Hanlon’s Brewery will walk around the premises to check the level of the music and if it is deemed too loud will turn the music down if need be”.

4.0 **RESPONSIBLE AUTHORITIES**

4.1 The responsible authorities are the police, the fire service, Environmental Health (nuisance and health and safety), the planning authority, Weights and Measures, the Primary Care Trust, the licensing authority and the body responsible for child protection.

4.2 The only responsible authority who commented on the application was Planning who pointed out that the proposed use of the first floor mezzanine was likely to fall outside the scope of the approved planning permission. That is not for consideration at this hearing but is for the applicant to resolve in order to operate lawfully.

5.0 **OTHER PERSONS**

5.1 Since 25 April 2012 any other person may play a role in a number of licensing processes under the Licensing Act 2003. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation of premises licences and club premises certificates regardless of their geographical proximity to the premises. Any representations must be ‘relevant’ in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious.

5.2 A representation is ‘relevant’ if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

5.3 19 copies of an identical letter were received by the Licensing Authority by hand in two batches on the last day for making representations on the application with an anonymous covering sheet requesting that their contact details did not go into the Licensing report. The envelope containing most of the letters also had written on it a request that replies were made through the Parish Council for the parishioners to receive. A copy of the letter is attached as Annexe 2 and a copy of the names and addresses of those who gave them on a copy of that letter is attached as Annexe 3. One copy of the letter only had a signature but no address so has been discounted.

5.4 The Licensing Manager responded to the letter pointing out that such representations may not be kept anonymous unless there is a very real reason to fear an adverse reaction from the applicant. She also made the point that most of the letter was not relevant to the licensing objectives and did not appear to bear a relationship to the application that is on that table. Asking why someone has made an application is not

relevant – applicants are not obliged to give reasons for something that the law allows them to do. A copy of that letter is attached as Annexe 4.

- 5.5 One of the households who signed the letter at Annexe 2 also employed a planning consultant to make a representation on their behalf and they are the Gaskells of the Old Dower House. That letter is attached as Annexe 5.
- 5.6 A further email was sent at 2200 hours on 24 April from Michael Kersey objecting to “any change of music licence at Hill Farm . . . due to the rural nature of our location. During the evening this is a quiet area despite being adjacent to the A377 and we would be unhappy to see this become anything otherwise”. That email was received by Licensing Officers on Monday 28 April and the Licensing Manager emailed asking for the address details. Those were received on 29 April and that representation is attached as Annexe 6.
- 5.7 The Parish Council asked for the hours to be reduced but with nothing else in the email making the representation irrelevant. The Council was asked to give reasons based on the licensing objectives in order to make their objection relevant but nothing further was received.

6.0 LICENSING POLICY

- 6.1 The Licensing Act 2003 requires the Council as the Licensing Authority to formally adopt a policy setting out how it will deal with its duties under the Act. That policy must be reviewed every three years and this Council formally adopted the current policy on 18 December 2013 and it came into effect on 7 January 2014.
- 6.2 In its consideration of nuisance the policy at 3.4.1 states that “public nuisance can include low level nuisance affecting a few people living locally, as well as a major disturbance affecting the wider community. Nuisance is generally attributable to noise (from loud music or noisy customers), vibration, light pollution, noxious smells and litter. Applicants will be required to demonstrate that they have adequate measures in place in their applications to prevent nuisance and disturbance”.
- 6.3 3.4.3 sets out that “the Authority will require applicants to take appropriate and proportionate measures to promote the prevention of public nuisance objective”.
- 6.4 5.3.5 looks at the decision process at a hearing – “When determining an application, the Authority will consider all relevant evidence, both oral and written provided by parties to a hearing. Evidence which is irrelevant will be disregarded. The Authority encourages applicants and persons making representations to attend hearings so that they can give evidence. Where an individual fails to attend the hearing, the Authority will consider their application or representation but may give less weight to it”.
- 6.5 In terms of opening hours the policy says that “the issue of licensing hours will be dealt with on the individual merits of each application”. 6.2 goes on to say that the “licensed hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives”.
- 6.6 Members must have regard to the policy in making their decision and are requested to bring their own copy to the hearing.

7.0 **GOVERNMENT GUIDANCE**

- 7.1 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003, the latest version of which was published in April 2012 to incorporate the changes brought about by the Police Reform and Social Responsibility Act.
- 7.2 Paragraph 9.40 of the Guidance advises that “Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters”.
- 7.3 Paragraph 1.16 states that “Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy”.

8.0 **DETERMINATION**

- 8.1 In considering the application members will be able to take such of the steps below (if any) it considers appropriate for the promotion of the licensing objectives:
- Grant the licence as applied for
 - Grant the licence subject to conditions the authority considers appropriate for the promotion of the licensing objectives
 - Exclude from the scope of the licence any of the licensable activities to which the application relates
 - Reject the application
- 8.2 In reaching their decision Members must carefully consider the application and the representations before them, having due regard to the Council’s own Statement of Licensing Policy and the Government Guidance and, in particular, what is and what is not relevant to the licensing objectives. Whatever decision is made reasons should be given which will set out the matters taken into consideration and why such a decision is arrived at. Members are reminded that any limitations placed on the use of the premises through planning law have no bearing on this application – it must be determined purely on the licensing objectives.
- 8.3 An adopted procedure is attached as Annexe 7, which should help guide all parties through the hearing and ensure all relevant matters are taken into consideration before a decision is made that is reasonable, lawful, and, above all in accordance with the licensing objectives.

9.0 **APPEAL**

- 9.1 Members have five days to make a decision but it is recommended that the application is determined at the hearing if possible.

9.2 If either the applicant or the other persons are dissatisfied with the decision made then all concerned have the right of appeal to the Magistrates' Court within 21 days of the formal notification of the decision.

Contact for any more information	Mrs Marjory Parish (01884) 244619 Licensing & Community Safety Manager or Tom Keating, Licensing Officer
Background Papers	MDDC Licensing Policy, S.182 Guidance to the Licensing Act 2003
File Reference	Licensing/Hearings/Hanlon's Brewery, NSC
Circulation of the Report	Applicants Other Persons

MID DEVON DISTRICT COUNCIL

Licensing Committee

Procedure for Hearings

1. Introduction

The hearing will be conducted in accordance with The Licensing Act 2003 (Hearings) Regulations (2005). The Sub-Committee will follow the procedure set out below at all hearings under the Licensing Act (2003)

2 The Officers

2.1 Each Sub-Committee will comprise of three Councillors of Mid Devon District Council who will hear applications made under the Licensing Act (2003)

2.2 The Committee will be attended by a:

- (a) A Licensing Officer
- (b) Representative of Legal Services
- (c) Representative of Member Services

2.3 The role of the Licensing Officer will be to introduce the application, outline the relevant facts and any issues involved through the presentation of their report

2.4 The role of the representative of Legal Services will be to deal with any questions of law, matters of practice and procedure and where appropriate assist the Sub-Committee in formulating the reasons for its decision. They may ask questions of parties and witnesses in order to clarify the evidence and any issues in the case.

2.5 The role of the representative of Member Services will be to make a record of the proceedings both by way of notes of the evidence given and a minute of the decision reached, inclusive of the reasons for the decision.

3. Procedures at the hearing

3.1 The Chair of the hearing will introduce the members of the Sub-Committee and the Officers present at the hearing.

3.2 The Chair will introduce the matter to be resolved, and will ask the parties present at the hearing to introduce themselves.

3.3 The Chair will outline the procedure to be followed at the hearing.

3.4 Upon the failure of a party to attend the hearing, the Sub-Committee will decide whether to adjourn the matter, or proceed in the party's absence. If the decision is taken to proceed, the party's written application or representation will be taken into account.

3.5 The Sub-Committee will consider whether the hearing should be held in public or private session. The hearing will usually be heard in public except where the Sub-

Committee decide that it is in the public interest for the public to be excluded from a particular hearing, or part thereof or where the Sub-Committee make a resolution that the public and the press be excluded from the hearing, on the basis that either confidential or exempt information is likely to be disclosed.

- 3.6 The Sub-Committee will decide whether to grant any written request made by a party for permission to call a witness at the hearing. Any request may not be unreasonably withheld.
- 3.7 The Sub-Committee will consider any requests to present any new evidence or information that has not already been disclosed to all the parties and the Sub-Committee. The general rule is that the Sub-Committee must not consider information or evidence that was not disclosed to it or to the other parties prior to the hearing taking place, although all parties at the hearing can agree to that extra information being considered on the day of the hearing.
- 3.8 The Sub-Committee will consider any requests to call witnesses and will make a decision on such requests.
- 3.9 The Sub-Committee will consider any requests for permission to ask questions of other parties. The Sub-Committee will consider whether asking questions is required in order for it to consider the case properly. If permission is given to one party to ask questions, it will usually be given to all other parties at the hearing.
- 3.10 The Sub-Committee will decide the length of time that each party will be allowed to present their case.
- 3.11 The hearing will take the form of a discussion to be led by the Sub-committee
- 3.12 The Chair will ask the Licensing Officer to outline the matter before the Sub-Committee.
- 3.13 Where the written evidence or information provided by the applicant, responsible authorities and/or interested parties have raised legal issues or submissions, the Chair may request that any legal representatives present at the hearing and the legal representative of Legal Services address the Sub-Committee on the legal points raised.
- 3.14 The Applicant will make their case first either personally or through a representative. The Applicant may give further information in support of the application, but only in response to a point upon which the authority has given notice that it will want clarification.
- 3.15 Documentary evidence or other information produced by the Applicant may be considered, provided this has been produced prior to the hearing, or if not, with the consent of all the other parties. It may be necessary in some circumstances for the hearing to be put back until later in the day so that parties may consider additional information which is produced at the hearing.
- 3.16 The Applicant may then be questioned by members of the Sub-Committee. Questions will either be directed through the Chairman, or put directly by members with the agreement of the Chairman.

- 3.17 The Applicant may call any witnesses in support of his application, if this has been permitted by the Sub-Committee. The witnesses will address the Sub-Committee, which may then ask any question of the witnesses.
- 3.18 When the Applicant has completed the presentation of their case, the representatives of any responsible authorities who have made relevant representations address the Sub-Committee, and may be questioned by members of the Sub-Committee.
- 3.19 Witnesses may be called by the responsible authorities where permitted by the Sub-Committee. Documentary or other information produced on behalf of the responsible authority may be considered
- 3.20 Thereafter, other persons address the hearing, and they may be questioned by members of the Sub-Committee.
- 3.21 Witnesses who are permitted to be called in support of the submissions of the interested parties are then questioned by members of the Sub-Committee. Documentary or other information produced on behalf of an interested party may be considered
- 3.22 Where the Applicant is a responsible authority or an interested party the licence holder will present their case after the applicant followed by any responsible authorities and then interested parties.
- 3.23 After the conclusion of the evidence, each party may sum up their case, by addressing the sub-committee in the order in which they presented their case.
- 3.24 The Sub-Committee will either leave the hearing room to deliberate or ask all parties to leave the room.
- 3.25 Depending on the nature of the application, a determination of the case may be made either at the conclusion of the hearing or within 5 working days.
- 3.26 Where the case is determined at the end of the hearing the Chairman will read the Sub-Committee's determination aloud together with the terms of the decision made and the reasons for such decision.
- 3.27 The Chairman will thank everyone for their contributions, and closes the meeting, or moves on to the next item on the agenda.

4. After the Hearing

- 4.1 Once the meeting of the Sub-Committee has been concluded, Member Services will prepare minutes of the hearings.
- 4.2 The Licensing Officer will issue a notice to all of the parties involved (whether present at the hearing or not), outlining the decision of the Sub-Committee.