

REPORT OF THE HEAD OF ENVIRONMENTAL SERVICES

**TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE FOR
THE KING'S HEAD, CULLOMPTON**

REASON FOR REPORT

1. An application has been received for a premises licence for the King's Head, Cullompton, to which a relevant representation has been received. Under the Licensing Act 2003 Mid Devon District Council as the licensing authority must hold a hearing to determine the application.

RECOMMENDATIONS

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

RELATIONSHIP TO CORPORATE PLAN

1. 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 health authority, and the body responsible for child protection.
- 2 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 King’s Head, Cullompton is a public house whose licence has been surrendered and the new lease-holders have applied for a new premises licence. In their application they say “we would like to re-open a public house cum restaurant and small coffee bar. This property is situated at the end of Cullompton High Street backing on to the police station; there is a large council-run car park to one side and off-street parking to the front. The only adjoining building is Ian’s fish and chips to one side and a small lane on the other. Please see attached plan of the building and each room intended use”. The full application and plan is attached as Annexe 1.

2.0 APPLICATION DETAILS

- 2.1 The applicant has applied for exhibition of films from 8am until 10pm from Monday to Saturday and until 8pm on Sundays. It is also applied for between 8am and 2am on Burns Night, Valentine’s Day, St Patrick’s Day, Good Friday, Easter Sunday, St George’s Day, Christmas Eve, Christmas Day, Boxing Day, New Year’s Eve/Day and Bank Holidays.
- 2.2 Live music is applied for from 8am until 11.30pm from Monday to Thursday, from 8am until 00.30am on Friday and Saturday, and from 10am until 10.3pm on Sunday. Further details given are that there will be a “various selection of tribute acts and local bands”. Live music is also applied for between 8am and 2am on Burns Night, Valentine’s Day, St Patrick’s Day, Good Friday, Easter Sunday, St George’s Day, Christmas Eve, Christmas Day, Boxing Day, New Year’s Eve/Day and Bank Holidays.
- 2.3 Recorded music is applied for with the same times as 2.2 above with the additional information that there will be “a wide selection of music from chart history”.
- 2.4 “Anything of a similar description to that falling within (e) {live music} or (f) {recorded music}” is applied for from 6am until 11.30pm from Monday to Thursday, from 6am until 00.30am on Friday and Saturday, and from 10am until 10.30pm on Sunday as well as all the additional days in 2.1 and 2.2 above. Where further details are requested the applicants say “to display sporting events shown on TV”. This is actually not licensable and members are advised to ignore this, particularly as those times are already set out in the proposed times that the premises will be open to the public.

- 2.5 Late night refreshment is applied for from 11pm until midnight from Monday to Thursday, from 11pm until 1am on Friday and Saturday but not on Sundays. Additionally late night refreshment is applied for between 8am and 2am on Burns Night, Valentine's Day, St Patrick's Day, Good Friday, Easter Sunday, St George's Day, Christmas Eve, Christmas Day, Boxing Day, New Year's Eve/Day and Bank Holidays.
- 2.6 The supply of alcohol is applied for from 8am until 11pm from Monday to Thursday, from 8am until 00.30am on Friday and Saturday, and from 8am until 10.30pm on Sunday plus all the additional times already set out above in 2.1.
- 2.7 The hours that the premises are applying to be open to the public are 6am until midnight from Monday to Thursday, from 6am until 1am on Friday and Saturday, and from 10am until 11pm on Sunday. The additional times as set out above are also included. Further detail given by the applicants is that "between 6am and 8am we will only be open to sell coffee and other morning refreshments (no alcohol)".

3.0 LICENSING OBJECTIVES

- 3.1 All applications must state the steps the applicants will take to meet the 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 The general statement given is that "a challenge 21 policy will be in effect on the premises and all staff will be trained accordingly.
- 3.3 For the **prevention of crime and disorder** objective the applicants say that "door staff on at risk assessed functions. An incident log book to be completed and kept on the premises. A log book for the refusal of the sale of alcohol."
- 3.4 There is nothing in the **public safety** objective and the **prevention of public nuisance** objective sets out that "signs will be displayed asking the patrons to leave the pub in a quiet and orderly manner".
- 3.5 For the **protection of children from harm** objective they refer to the challenge 21 policy but also in section K where they are asked to set out how they will deal with any adult entertainment in respect of children they say "If any adult entertainment takes place then it will do so in our function room, this will be closely monitored by licensed doormen ensuring no underage persons are able to gain entrance or get close. No adult entertainment of this kind is anticipated but this is just in case we are asked to do anything for a private function".

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 health authority, the licensing authority and the body responsible for child protection.

- 4.2 A licensing officer acting on behalf of the licensing authority has visited the applicants and given them some advice on a booking form for their function room when it comes into use. The applicants have amended the draft booking form to suit their purposes and it is attached as Annexe 2. It will form a condition of the licence granted in relation to use of the function room.
- 4.3 The police licensing officer has visited three times but has been unable to come to an agreed position with the applicants about conditions that he believes should be on the licence – hence the reason for this hearing. The police objection is attached as Annexe 3.
- 4.4 The applicants have sent this office their response to the objections and a further response from the police licensing officer in an email chain which is attached as Annexe 4.
- 4.5 Reference is made to the closing times of other premises in Cullompton. A table is attached as Annexe 5 for the information of members showing the closing times of premises that trade to midnight and later. It shows Friday and Saturday terminal hours for premises operating from midnight and later but an additional column has been added showing the terminal hour from Monday to Thursday to make the comparison easier.
- 4.6 Members will realise that this is a disagreement about conditions and it is for them to decide how to resolve this disagreement in the light of the licensing objectives.
- 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 No representations on this application have been received from any other persons.
- 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 15 December 2010 and it came into effect on 7 January 2011.
- 6.2 Paragraph 2.7 says the “aim of the licensing process is to regulate the licensable activities so as to promote the licensing objectives. It is the licensing authority’s wish to facilitate well run and managed premises with licence-holders displaying sensitivity to the impact of the premises on local residents”.
- 6.3 The policy also sets out in 2.10 that the overriding principle governing the determination of applications is that “each application will be determined on its merits”.

6.4 The policy looks at conditions in 4.4 where it is stated “the Licensing Authority will avoid imposing disproportionate and over burdensome conditions on premises”.

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 this 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 Having regard to the representation, the licensing authority must take such of the steps as it considers appropriate for the promotion of the licensing objectives and the steps are:

- 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 The Council has adopted a hearing procedure to deal with such applications and a copy is attached as Annexe 6.

9.0 **TIMESCALE**

9.1 The Licensing Sub Committee must determine this application within the period of five working days beginning with the day of the hearing. It is advised that Members make their decision on the day of the hearing, if possible.

9.2 If either the applicants or the responsible authority are unhappy with the decision made (including any conditions imposed, if any) then both parties have a right of appeal to the Magistrates’ Court. That right must be exercised within 21 days of formal notification of the decision.

Contact for any more information	Mrs Marjory Parish (01884) 244619 Licensing Manager
Background Papers	Licensing Act 2003 S.182 Statutory Guidance & MDDC Licensing Policy
File Reference	Licensing/Hearings/King's Head, Cullompton
Circulation of the Report	Applicants Police

Police Representations Kings Head 33/35 High Street Cullompton

This representation is based on the application submitted by the premises for a new Premises Licence. I have had 3 meetings with the applicant Derrick Slack and exchanges of E Mails in order to mediate the application. The following representations do not take into account any verbal agreements during mediation as NO formal agreement was made.

As can be seen from the application the applicants wish to open the premises as a public house come restaurant and small coffee bar. No business plan has been produced to show how the premises will be operated, there is a lot of difference between a Public House and Coffee bar. The premises plan shows distinct areas of noodle/coffee bar (orange) Front Bar Licensed area (red) and Rear Function Room (red) plus a courtyard (blue)

The applicant has marked the coffee/noodle bar to be within the licensed area to allow the ability to serve alcohol within this area. The applicant has not demonstrated what steps they wish to take to protect children from harm i.e those children under 16 years who may use the premises for eating or collecting takeaway noodles whilst unsupervised.

The applicants have asked for non standard times of 0800-0200 on the following nights, Burns Night, Valentines Day, St Patricks Day, Good Friday, Easter Sunday, St Georges Day, Christmas Eve, Christmas Day, Boxing Day, New Years Eve, New Years Day and Bank Holiday.

Clarification is required as to what Bank Holiday defines, will this be all other Bank Holidays recognised in England or Bank Holiday Weekends.

Staying open till 0200 will make these premises the latest opening premises in Cullompton and will impact on Crime and Disorder, issues already arise from persons attending the current latest premises, people will migrate to the Kings Head and be present in the streets later into the night.

The operation of the function room could also undermine the Crime and Disorder Objective, there is not enough supervision of the room. Although not operating at the moment due to refurbishment required it will be included in the licensed area. The provision of a takeaway until 0200 on these nights will contribute to Crime and Disorder as patrons will congregate at the premises to buy hot food rather than disperse, they will also be able to purchase alcohol to take away.

The applicants made a mistake on their application by asking for the supply of Alcohol on a Monday- Thursday till 2300 and closing of 24.00 thus having an hour drinking up time instead of the usual 30 minutes, this could lead to stock piling of drinks and more bottles and glass being in the bar than necessary. Serious injury could be caused in altercations between drinking customers or takeaway customers. The committee may feel they wish to increase the alcohol hours on these days by 30 minutes as the hours cannot be increased by the applicant once submitted.

The Police have grave concerns regarding drinking outside the front of the premises, the location is on a busy road junction in Cullompton with a pedestrian controlled

crossing directly outside. Groups of persons outside the premises could lead to distraction for drivers or confusion as to who is using the crossing, not to mention drunken persons stepping out into the road. The premises have a perfectly adequate courtyard which can be used for smoking and the front of the premises need not be used at all. It was suggested that a condition was placed on the licence that no open glasses or bottles were removed from the premises however the applicants declined this. The local police feel very strongly that persons should not be allowed to congregate outside drinking.

As there is no clear business plan the Police suggest that the following Conditions are placed on the licence in order to promote
The Prevention of Crime and Disorder
The Protection of Children
Public Safety

A condition for the installation of CCTV in compliance with Mid Devon District Councils Policy

Whenever the function room is being used for regulated entertainment after midnight a minimum of 2 SIA registered door staff are employed from 10pm -30 minutes after closing time. The SIA condition offered is unworkable and unenforceable.

No persons will be permitted to take open containers of alcoholic drinks from the premises

All bottles and glasses will be removed from public areas as soon as they are finished with or empty

Alcoholic and soft drinks will be served in plastic or toughened glass

The Police therefore consider this application undermines the stated objectives.

At any proposed hearing the Police will be represented by Mr Barry Sleight and a member of the Police legal team

B Sleight.

LICENSED PREMISES IN CULLOMPTON (midnight and later)

**HOURS OF TRADING FOR ALCOHOL AND LATE NIGHT REFRESHMENT
FRIDAY AND SATURDAY
(as at 14 May 2013)**

Premises	Frid – Sat Alcohol terminal hour	Frid - Sat LNR terminal hour	Frid – Sat Closing time	Mon-Thur Alcohol terminal hour	Mon-Thur Closing time
Bell Inn	01:00	01:00	01:30	Midnight	00.30am
Charcoal Grill	N/A	01:00	01:30		midnight
China Orchids	00:00	N/A	00:00		midnight
Eastern Eye	00:00	00:00	00:00		midnight
Kings Head (applied for)	00.30	01:00	01:00	11pm 2am (BH)	Midnight 2am (BH)
Manor House Hotel	01:30	02:00	02:00	Midnight	00.30am
Market House Inn	00:00	N/A	00:30	Midnight	00.30am
Pony and Trap	01:00 & BH Sun	01:30 & BH Sun	01:30 & BH Sun	Midnight	00.30am
Weary Traveller	02:00 & Xmas Eve	02:30 & Xmas Eve	02:30 & Xmas Eve	Midnight	00.30am
White Hart Inn	01:00	01:00	01:30	Midnight & 2am BH	00.30am & 2.30am BH