

**REGULATORY SUB COMMITTEE**  
**DATE OF HEARING: 10 AUGUST 2018**

**A HEARING TO DETERMINE AN APPLICATION UNDER THE LICENSING ACT 2003 TO VARY THE PREMISES LICENCE FOR HAYNE BARN, ZEAL MONACHORUM, CREDITON, CREDITON, DEVON, EX17 6DE**

**Cabinet Member(s):** Cllr Colin Slade  
**Responsible Officer:** Simon Newcombe, Group Manager, Public Health and Regulatory Services

**Reason for Report:**

An application has been received to vary the premises licence for Hayne Barn, Zeal Monachorum, Devon, EX17 6DE. The Council has received ONE relevant representation. Accordingly, Mid Devon District Council as the licensing authority is obliged to hold a hearing to determine the application.

**Recommendation:**

That the application is considered and a decision made in light of the Licensing Act and the licensing objectives, Section 182 Guidance and Mid Devon District Council Licensing Policy.

**Relationship to Corporate Plan:** N/A

**Financial Implications:** The potential cost of defending an appeal in the courts.

**Legal Implications:** The applicant or 'other party' has a right of appeal should they be unhappy with the decision.

**Risk Assessment:** If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court.

**Equality Impact Assessment:** No equality issues identified for this report.

**Consultation carried out with:** The process of applying for these licences is prescribed by regulations made under the Licensing Act 2003. The applicant must copy their applications to the "Responsible Authorities" consisting of the Police, Fire Service, Weights and Measures, body responsible for Health and Safety (Environmental Health), Environmental Health for nuisance, the Planning Authority, the Licensing Authority, the local Director of Public Health, the body responsible for Child Protection and the Home Office. If the application is submitted online the Licensing Authority must forward it to all Responsible Authorities.

Additionally, this Council notifies the relevant town or parish council for where the premises is and applicants must also advertise their applications in two ways via a 'notice' – on the premises so as to be visible to passers-by and in a local newspaper.

## **1.0 PREMISES AND HISTORY**

1.1 The premises has had a premises licence under the Licensing Act 2003 since 21 August 2015. The current licence is attached as Annex 1.

1.2 The premises was described in the initial application as *'a 17th century grade 2 listed Threshing Barn with lean-to and a new extension which shall be used for events such as weddings, parties and concerts. The main barn is one room (14 metres x 5 metres in size) with a bar at the south end of the barn. The maximum occupancy of the main room in the Threshing Barn at any one time will be restricted to 135 people in respect of certain areas, parts or floors as specified by building regulations'*.

## **2.0 APPLICATION**

2.1 The application to vary the existing premises licence was submitted on 18 June 2018. It is attached as Annex 2.

2.2 The application describes the variation application as follows:

*To adjust the close time from midnight on a Thursday to 01:30am for the sale of alcohol, late night refreshment, performances of live and recorded music (the difference of 90 minutes). Other than that, no variations are required.*

2.3 In summary, the following licensable activities have been applied for (relating to Wednesday night into Thursday morning):

- Live music: Extend hours from 00:00 until 01:30 (indoors only)
- Recorded music: Extend hours from 00:00 until 01:30 (indoors only)
- Late Night Refreshment: Extend hours from 00:00 until 01:30 (indoors and outdoors)
- Supply of alcohol: Extend hours from 00:00 until 01:30 (consumption on and off the premises).

2.4 The application lists the opening hours for Wednesday into Thursday morning as 00:00 until 01:30. It should be noted that the opening hours of the existing licence are 00:00 – 00:00 (24 hours) and this reflects the fact that guests may be spending the night at the premises, not the fact that licensable activities will be carried out throughout the night. Guests would still therefore be able to spend the night at the premises as no licensable activities would be undertaken.

## **3.0 LICENSING OBJECTIVES AND EXISTING CONDITIONS**

3.1 In a variation application like this, the applicant is requested to list any 'additional' steps they intend to take to promote the four licensing objectives, in light of the variations proposed. The four licensing objectives are:

- The prevention of crime and disorder

- Public safety
- The prevention of public nuisance; and
- The protection of children from harm

3.2 The applicant has stated:

*There should be no variation from the steps we already ensure that are carried out under our present Premises licence.*

3.3 The existing premises licence has a condition relating to noise from regulated entertainment and this condition can be seen in full as Annex 3. The licence holder employed a noise consultant to carry out a noise assessment (as required by the condition) and a copy of the full report will be available at the hearing should any party wish to make reference to it.

3.4 The sub-committee may be particularly interested in the following paragraph of the noise assessment:

*'The results of the ambient sound survey indicate that the typical background sound pressure level at properties on the southern outskirts of Zeal Monachorum, is LA90,T 29 dB and LA90,T 24 dB, during the day and night time periods, respectively'.*

3.5 These figures are the relevant ones to consider in relation to the condition on the premises licence. For clarity, the condition therefore essentially states that noise levels produced from the premises and measured at the external monitoring site identified on the relevant plan (shown in Annex 3) shall not exceed the following:

- 39 dB for more than a 15 minute period between 09:00 and 23:00
- 34 dB for more than a 5 minute period between 23:00 and 09:00

#### **4.0 RESPONSIBLE AUTHORITIES**

4.1 Responsible Authorities under the Licensing Act are notified of all 'full' applications to vary a premises licence. The onus is on each Responsible Authority to determine when they have appropriate grounds to make a representation.

4.2 The Responsible Authorities are:

- Police
- Fire service
- Environmental Health (nuisance and health and safety)
- Planning Authority
- Licensing Authority
- Health and Safety Executive
- Weights and Measures
- the body responsible for Child Protection
- the local Director of Public Health

- Home Office

4.3 No representations have been received from Responsible Authorities for this application.

## 5.0 OTHER PERSONS

5.1 The Licensing Act allows 'other persons' to make representations provided they are relevant. To be relevant, a representation must relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

5.2 In this case the licensing authority received ONE representation from a Mr and Mrs Carey within the statutory 28 day period. In broad terms, it identified the following issues as creating 'excessive noise':

- Music from the premises
- Voices of people as they leave the premises or continue to party outside
- Noise from vehicles

5.3 The representation is attached in full as Annex 4. Mr and Mrs Carey confirmed to licensing that they have not previously made a complaint to Environmental Health as they were hoping '*a satisfactory resolution to the noise issue might otherwise be found*'.

## 6.0 COMPLAINT HISTORY AND ADDITIONAL CONSIDERATIONS

6.1 In light of the representation, Environmental Health would be considered the relevant responsible authority as they would ultimately investigate noise complaints. In this particular case, they would consider the noise from music but not necessarily the noise from people or cars, in so far as it would be unlikely to constitute a statutory nuisance.

6.2 Environmental Health are not a party to the hearing (because they did not make a representation) but have confirmed the following:

*The Hayne noise condition offers residents a high degree of protection. Compliance with the noise condition is more stringent than the sound levels recommended by the World Health Organisation (WHO). The WHO recommends external sound levels in amenity areas as well as internal sound levels for daytime and night time. These levels are detailed as 40 dB (A) within a living room, 30 dB(A) within a bedroom and <50 dB(A) for external amenity areas.*

*Therefore, extending the licensing hours is not of a great concern to Environmental Health as long as the venue complies with the current noise condition.*

6.3 The noise from people and cars is a consideration for the Licensing Authority because it is linked to the prevention of public nuisance licensing objective. It is

important to remember however, that conditions attached to licences must relate to matters which are within the control of the licence holder and relate to what happens at the premises or in its vicinity. The sub-committee may therefore wish to ask the licence holder (i.e. the applicant) what steps are currently taken to help reduce the impact of noise from people leaving. Examples of actions may include a member of staff actively monitoring the outside area or notices being on display requesting people leave quietly.

6.4 Enquires made by the licensing officer indicate that Environmental Health have received ONE complaint about noise from the premises and this was received in August 2015. Specifically, the complaint mentioned the volume of music and noise from partygoers. No further complaints have been received since this date.

6.5 In order to ensure the sub-committee have a complete picture, they should also be aware of the procedure should a complaint be received about a licensed premises because of noise as a statutory nuisance (in relation to regulated entertainment). In the first instance, noise diary sheets would be sent out to the complainant. If these are completed and returned to Environmental Health, they are then reviewed to see if the records indicate a problem. If they do, Environmental Health may then undertake noise monitoring and/or seek to directly witness the situation in order to make a professional judgement as to whether a nuisance is being or is capable of being caused. Should this investigation evidence that statutory nuisance is occurring then that team will:

- Take action under the Environmental Protection Act 1990, which could include serving an abatement notice; and would also work closely with Licensing officers to consider whether to
- Also take action under the Licensing Act 2003, which could include reviewing the premises licence

6.6 In addition to the above, it should also be noted that any breach of a condition on a premises licence is an offence under the Licensing Act which the Licensing Authority can investigate and enforce.

## **7.0 LICENSING POLICY**

7.1 The Licensing Act 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 five years and this Council formally adopted the current policy on 18 December 2013 and it came into effect 7 January 2014. It includes the following:

7.2 The Authority has a duty under s.4 of the Act to carry out its licensing functions with the aim of promoting the four licensing objectives. (Policy Paragraph 3.1)

7.3 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. (Policy Paragraph 3.4.1)
- 7.4 Noise from people entering and leaving licensed premises, particularly late at night or in the early hours of the morning, can be a significant problem. Customers under the influence of alcohol are often less inhibited about their behaviour and may be unaware of the noise they are creating. As background noise levels are lower at night, any noise is more intrusive for residents trying to sleep. (Policy Paragraph 3.4.2)
- 7.5 The central purpose of the licensing function is to promote the licensing objectives through the effective regulation of licensed premises, qualifying clubs and temporary events. The Authority is keen to foster a safe and vibrant leisure economy and will work with applicants and licence holders to encourage and sustain well managed premises which make a positive contribution to the community. The Authority will expect applicants and licence holders to demonstrate that they have given thought to and have in place adequate measures to ensure that the operation of their premises will not have an adverse effect on the quality of life of persons living and/or working in the vicinity of the premises. (Policy Paragraph 4.1.4)
- 7.6 When determining a licence application, the overriding principle adopted by this Authority will be that each application will be determined on its merits. The Authority will have regard to any guidance issued by the Home Office, this Statement of Licensing Policy and any measures it deems necessary to promote the licensing objectives. The Authority may depart from the guidelines in this Policy if it has justifiable and compelling reasons to do so. The Authority will give reasons for any such departure from policy. (Policy Paragraph 5.3.1)
- 7.7 Since the introduction of the Act, the Authority's experience is that the vast majority of complaints about licensed premises are caused by public nuisance, in particular excessive noise from live and recorded music and disturbance caused by customers congregating outside licensed premises. The Authority will expect applicants to have particular regard to these issues and, if considered appropriate, to include in their Operating Schedules adequate and effective steps to control noise and disturbance from their premises. Existing licence holders will also be expected to demonstrate – through the effective management of their premises – that they are taking appropriate and reasonable steps within their control to minimise disorder, antisocial behaviour and public nuisance. (Policy Paragraph 5.3.4)
- 7.8 It should be noted that when determining an application, the Authority is making a judgement about risk. A key purpose of the licensing function is not to respond to crime and disorder, nuisance or public harm once it has happened but to make an informed assessment of the risk of such things occurring if a licence is granted and to take such steps as it considers appropriate to prevent or minimise such risks. (Policy Paragraph 5.3.6)
- 7.9 The licensed hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives. The Licensing Authority may, however, set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area or is necessary to achieve one or more of the licensing objectives. (Policy Paragraph 6.3)
- 7.10 Conditions are crucial in setting the parameters within which premises can lawfully operate. Any contravention of a condition on a premises licence or club premises certificate is a criminal offence so it is essential that conditions are worded clearly, precisely and unambiguously. In addition, conditions must:

- be appropriate, reasonable and proportionate
- be enforceable
- not duplicate other statutory requirements
- be relevant to the particular type, location and character of the premises concerned
- not be standardised
- should be justifiable and capable of being met
- not replicate offences set out in the Act or in other legislation
- be written in a prescriptive format (Policy Paragraph 7.2)

7.11 Members must have regard to the policy when making their decision and a copy of it will be available at the hearing.

## **8.0 GOVERNMENT GUIDANCE**

8.1 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003. The relevant version for this application was published in April 2018. It includes the following:

8.2 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (Policy Paragraph 1.17)

8.3 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits. (Policy Paragraph 9.37)

8.4 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy. (Policy Paragraph 9.38)

8.5 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or

other persons, and representations made by the applicant or premises user as the case may be. (Policy Paragraph 9.42)

8.6 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (Policy Paragraph 9.43)

8.7 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. While 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. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.... The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination. (Policy Paragraph 9.44)

8.8 A copy of S182 Guidance will be available to view at the hearing and the full Policy can also be viewed at <https://www.middevon.gov.uk/business/licensing/licensing-policies/>.

## **9.0 DETERMINATION**

9.1 The Committee must take such steps as it considers appropriate for the promotion of the licensing objectives. This may include:

- Granting the licence as applied for
- Granting the licence subject to appropriate modifications necessary for the promotion of the licensing objectives
- Excluding from the scope of the licence any of the licensable activities to which the application relates
- Refusing the application

9.2 As this is an application to vary the premises licence, the only matters for the sub-committee to consider are those applied for in the variation application.

9.3 Reasons should be given for the decision which set out the matters taken into consideration and why such a decision was arrived at.

9.4 Members have five working days from the conclusion of the hearing to make a decision.

9.5 An adopted procedure for Hearings is available as Annex 5. This should help guide all parties through the hearing process.

## **10.0 APPEAL**

- 10.1 If any party (i.e. applicant or 'other person') is dissatisfied with the decision made then they have the right of appeal to the Magistrates' Court within 21 days of formal notification of the decision.

### **ANNEXES TO THIS REPORT**

Annex 1	Existing premises licence
Annex 2	Application to vary the premises licence
Annex 3	Noise condition
Annex 4	Representation
Annex 5	Hearing procedures

**Contact for more Information:** Tom Keating / 01884 244618 / [tkeating@middevon.gov.uk](mailto:tkeating@middevon.gov.uk)

**Circulation of the Report:** Legal / Regulatory Sub-Committee / Applicant