

**LICENSING SUB COMMITTEE**

**DATE OF HEARING: 17 DECEMBER 2018**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR TIVERTON WEST END BOWLING CLUB, WEST EXE RECREATION GROUND, WELLBROOK STREET, TIVERTON, DEVON, EX16 5RP**

**Cabinet Member(s):** Cllr Colin Slade (Community Well Being)

**Responsible Officer:** Simon Newcombe, Group Manager for Public Health and Regulatory Services

**Reason for Report:**

An application has been received for a new Premises Licence for Tiverton West End Bowling Club, West Exe Recreation Ground, Tiverton, Devon, EX16 5RP. As representations have been received by Mid Devon District Council, as the Licensing Authority, is obliged to hold a hearing to determine the application.

**Recommendation:**

That this application be decided in accordance with the licensing objectives.

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

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

**Legal Implications:** If there is an appeal against the decision the Council could find itself bearing the costs.

**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.

Although not a requirement under the Licensing Act, this Council also notifies the relevant town or parish council for where the premises are located.

Applicants are also obliged to advertise their applications in two ways – on the premises and in a local newspaper.

## **1.0 THE PREMISES AND ITS HISTORY**

- 1.1 Tiverton West End Bowling Club currently holds a Club Premises Certificate under the Licensing Act 2003. It has held this Certificate since 2005, when the Licensing Act was introduced. The application now being considered is for a new Premises Licence.
- 1.2 A Club Premises Certificate and a Premises Licence are two different forms of authorisation under the Licensing Act. In general terms, a Club Premises Certificate enables a club to provide a range of licensable activities to its members and guests, as well as associate members and their guests (i.e. visiting teams from another recognised club). A Club Premises Certificate, unlike a Premises Licence, does not allow the club to provide licensable activities to the general public.
- 1.3 A Club Premises Certificate has different legislative requirements compared to a Premises Licence. For example, unlike a Premises Licence, a Club Premises Certificate does not require a Designated Premises Supervisor (DPS) to be appointed, meaning that a member or employee of the club does not need to have a Personal Licence.
- 1.4 Given the limitations imposed by Club Premises Certificates, it is not uncommon for clubs in Mid Devon to hold both a Club Premises Certificate and a Premises Licence to enable them, legally, to provide licensable activities to people who are not members or their bona-fide guests.
- 1.5 For information purposes, a copy of the existing Club Premises Certificate is attached as **Annex 1**.
- 1.6 Since the Club Premises Certificate was issued in 2005, there does not appear to be any records of complaints about the premises made to the Licensing Department or Environmental Health (Mid Devon District Council). If any Interested Party has evidence to the contrary, they are requested to provide this information to the Licensing Authority as soon as possible and preferably, before the hearing is due to begin. This will, if necessary, allow time for copies to be made and circulated to all relevant parties (i.e. the applicant and members of the sub-committee).

## **2.0 THE APPLICATION**

- 2.1 The application for a Premises Licence was submitted by Tiverton West End Bowling Club. In summary, the following was initially applied for:

Licensable Activity	Indoors / Outdoors	Days	Times
Plays	Indoors	Mon – Sat	10:00 – 23:00
		Sunday	13:00 – 23:00
Indoor Sporting Events	Indoors	Mon – Sun	10:00 – 23:00
Live Music	Indoors	Mon – Thu	10:00 – 23:00
		Fri – Sat	10:00 – 00:00
		Sunday	10:00 – 23:00
Recorded Music	Indoors	Mon – Thu	10:00 – 23:00
		Fri – Sat	10:00 – 00:00
		Sunday	10:00 – 23:00
Performance of Dance	Indoors	Mon – Thu	10:00 – 23:00
		Fri – Sat	10:00 – 00:00
		Sunday	10:00 – 23:00
Anything similar to live / recorded music and the performance of dance	Indoors	Mon – Thu	10:00 – 23:00
		Fri – Sat	10:00 – 00:00
		Sunday	10:00 – 23:00
Late Night Refreshment	Indoors	Fri – Sat	23:00 – 00:00
Supply of Alcohol	For consumption ON the premises	Mon – Thu	10:00 – 23:00
		Fri – Sat	10:00 – 00:00
		Sunday	10:00 – 23:00
Opening Hours	N/A	Mon – Thu	10:00 – 23:30
		Fri – Sat	10:00 – 00:30
		Sunday	10:00 – 23:30
NOTE: The application also requests that New Year’s Eve be de-regulated for all of the above, with the exception of ‘anything similar...’			

2.2 A copy of the application is attached to this report as **Annex 2** and the accompanying plan is attached as **Annex 3**.

2.3 On 16 November 2018 Joan Kelly, the Secretary of Tiverton West End Bowls Club, emailed the Licensing Team to confirm that the application was being modified to remove both 'Live Music' and 'Recorded Music'. On 25 November 2018 it was also confirmed that the 'Anything of a similar description' activity was also being removed. This is essentially because many activities that previously required a licence are no longer themselves licensable under the Licensing Act (assuming specific requirements are met) (see <https://www.gov.uk/guidance/entertainment-licensing-changes-under-the-live-music-act> for more information). For example, Live Music and Recorded Music is considered 'de-regulated' between 08:00 – 23:00, if it takes place on premises licensed for the supply of alcohol for consumption ON the premises; and in the presence of less than 500 people.

- 2.4 These de-regulations apply to all relevant licensed premises and as the application has been modified to remove these activities, any representations relating to them will no longer be relevant. Without prejudice to the decision of the sub-committee on this application, the recourse for premises which undermine the licensing objectives while taking advantage of these de-regulated activities is via a review of the licence.

### 3.0 THE LICENSING OBJECTIVES

- 3.1 All applicants are required to set out in their application the steps they intend to take to promote the four licensing objectives. These are:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

- 3.2 The applicant has offered the following conditions as part of the application:

- a) Clear and legible notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and to leave the vicinity as quickly and quietly as possible.*
- b) There will be in place a written age verification policy in relation to the sale or supply of alcohol, which will specify a Challenge 25 proof of age requirement. This means that staff working at the premises must ask individuals who appear to be under 25 years of age, attempting to purchase alcohol, to produce identification. The only acceptable identification documents will be:*

- *A photo driving licence*
- *A passport*
- *An identification card carrying the PASS hologram*

*Unless such identification is produced the sale of alcohol must be refused.*

*This policy will include documented steps taken to prevent adults from purchasing alcohol for or on behalf of children under 18.*

- 3.3 In addition to these conditions offered, the application also states that 'We will consider advice from Responsible Authorities'. All of this information can be seen in Section M of the application form (**Annex 2**).

## 4.0 RESPONSIBLE AUTHORITIES

4.1 Responsible Authorities under the Licensing Act are notified of all new Premises Licence applications. 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)
- Licensing Authority
- Planning 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 representation was received from any Responsible Authority concerning this application.

## 5.0 OTHER PERSONS

5.1 The Licensing Act allows 'Other Persons' to make representations provided they are relevant and not considered frivolous or vexatious. To be relevant, a representation must relate to the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives. S182 Guidance (Paragraph 9.4) states that '*... representations should relate to the impact of licensable activities carried on from premises on the objectives*'.

5.2 In this case, the Licensing Authority has received 26 comments in support of the application and 23 against the application. However, it is the opinion of the Licensing Officer that various comments, or aspects of comments, cannot be considered as relevant representations under the Licensing Act. For clarity, and based on the individual merits of this case, a brief overview of these issues and subsequent reasons for non-relevance is provided in Paragraph(s) 6 of this report.

5.3 Given the requirement to issue this report 10 working days before the hearing, it has not been possible to communicate directly with each individual person who has made a representation to discuss what they have specifically commented on. Instead, all Interested Parties (i.e. those that have made a relevant representation) have been sent a copy of this report, along with a Notice of Hearing and the hearing procedure (i.e. **Annex 22**). Any other additional Annexes that Interested Parties wish to see can be accessed on the Mid Devon District Council here:

<https://democracy.middevon.gov.uk/ieListMeetings.aspx?CommitteeId=159>.

## **6.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED**

### **Anonymous letters**

- 6.1 Under the Licensing Act 2003 (Hearings) Regulations 2005, the Licensing Authority must provide copies of all relevant representations to the applicant. S182 Guidance (Paragraph 9.27) states that when providing copies of representations to the applicant, the Licensing Authority may decide to withhold some or all of the person's personal details (i.e. details such as the address of the person that has made the representation). However, S182 Guidance is clear that this should only be done in exceptional circumstances and where it can be justified. In this case, the Licensing Authority has not been provided with names or specific addresses (or both) for some representations.
- 6.2 As a result, there is no way to know if these people are genuine, nor is there any way to keep them informed of matters concerning the application (i.e. by sending them a Notice of Hearing). Accordingly, representations that do not state who they are from and their specific address have not been accepted and these people have not been, nor will they be, considered as Interested Parties.

### **Not relevant under the Licensing Act 2003**

- 6.3 As stated in Paragraph 5.1 of this report, representations must relate to the four licensing objectives and the licensable activities being proposed. In addition, it must be noted that *'licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned'* (S182 Guidance, Paragraph 14.13). Individuals remain responsible and accountable in their own right for their actions.

### **Provision and legality of parking**

- 6.4 A number of representations mention the availability of parking in the surrounding area. The provision of parking in this area is not something that the applicant (nor the existing Club Premises Certificate holder) can control and the Licensing Officer does not believe that this can be considered by the Licensing Authority. Any person may park in the surrounding area and ultimately, they may do so regardless of whether or not the premises have a licence.
- 6.5 Additionally, the legality of parking has been raised and this is an issue where each individual road user is accountable for their actions. For example, if people park on double yellow lines or cause an obstruction, legislation exists to address these issues and it is not considered relevant for the Licensing Authority to consider. If residents

have concerns about illegal parking they should report these to Devon County Council (see here: <https://new.devon.gov.uk/roadsandtransport/parking/>).

- 6.6 Although issues around parking and traffic have not been considered as relevant under the Licensing Act, both issues can be considerations by Mid Devon as the Local Planning Authority (LPA). The LPA are, in themselves, a Responsible Authority and have not made a representation against this application or otherwise raised any concerns. Planning legislation does not contain provisions for the control of whether the building is used for club members or the general public and a change of use would only likely become required if the primary activity was to change (i.e. if activities were unrelated to the use of the club). Ultimately, this is not therefore something that the Licensing Authority should consider. It must be noted that the decision of the Licensing Authority on any application does not relieve the applicant of any planning or building control requirements that may exist.

#### Safety of the general public

- 6.7 Some representations concern the health and safety of the general public (i.e. not people using the licensed premises). This includes comments around traffic, which in itself is not relevant, and the subsequent pollution created. These issues cannot be taken into account by the Licensing Authority. S182 Guidance (Paragraph 2.7) states that *'Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation'*.

#### Perceived need for premises and existing licensed premises

- 6.8 S182 Guidance (Paragraph 14.19) states that the need for licensing premises *'concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions'*.
- 6.9 Additionally, Mid Devon District Council has not adopted a Cumulative Impact Policy. Such a policy can be adopted by an authority to address the 'cumulative impact' of a number of premises within a specific area. For example, this could be where disorder is being experienced, linked to a high number of licensed premises and large numbers of people concentrating in one area.
- 6.10 If adopted, such a policy requires the applicant to demonstrate that the grant of a licence would not undermine the licensing objectives. This would be against a potential presumption of refusal of the application, given the already established and evidenced issues. As such a policy has not been adopted; the assessment of the application should not be framed in this manner.

### **General comments / statements**

- 6.11 Any comments that were not linked to the impact of the proposed licensable activities on the licensing objectives have not been accepted as valid representations. For example, general comments of 'support' for the application do not relate to any of the licensing objectives or indicate how the operation of the premises will impact on the licensing objectives.

### **No longer relevant to this application**

- 6.12 The application by Tiverton West End Bowling Club has been modified to remove the 'Live Music', 'Recorded Music' and 'Anything similar' licensable activities initially applied for. As a result, representations that relate to these activities specifically (i.e. noise from music) will no longer be considered relevant as they do not relate to proposed licensable activities.

### **Designated Public Place Orders (i.e. Alcohol Free Zones)**

- 6.13 The Community Safety Partnership has been asked about this and they have confirmed that the Designated Public Place Orders that were in place across Mid Devon (including West Exe Park) expired in October 2017. In order to have continued with them, the Local Authority would need to have applied for a Public Spaces Protection Orders (PSPO). Having discussed the issue with the Police at that time, a decision was made that there was insufficient evidence to apply for PSPO's. As a result, no such order is in place for West Exe Park.
- 6.14 It must be noted that regardless of this, the Designated Public Place Orders never made it illegal to consume alcohol in the identified area (assuming the individual was 18 or above). Instead, alcohol could be consumed in these areas but an offence would then occur if, on the request of a Police Officer, somebody refused to stop drinking and 'hand over' the alcohol.
- 6.15 Further to the above, it must be noted that the Police have alternative powers to confiscate alcohol from anyone drinking in a public place under the age of 18. They can also be fined or even arrested. In addition to this, it is also against the law to:
- Sell alcohol to someone under the age of 18
  - To buy or try to buy alcohol if you are under 18
  - For an adult to buy or try to buy alcohol for someone under 18
  - To drink alcohol on licensed premises (with the exception of 16 and 17 year olds, when accompanied by an adult, who may drink a beer, cider or wine with a meal)

### **Anti-social behaviour in the park**

- 6.16 A number of representations reference general anti-social behaviour (ASB) within West Exe Park. The representations do not appear to provide any link between Tiverton West End Bowls Club and the ASB occurring. Nonetheless, the Licensing



Officer has contacted the Police to try and get more information about the concerns mentioned.

- 6.17 It must be remembered that the Police have not made a representation in connection with this application (as a Responsible Authority) and as such, cannot be considered an Interested Party. However, given the role Police have in dealing with ASB, it is right that they be made aware of the concerns raised. S182 Guidance (Paragraph 2.1) states that *'Licensing authorities should look to the police as the main source of advice on crime and disorder'*.
- 6.18 The Police have confirmed that there have been 11 logs relating to the park in 2018 (at the time of writing). The majority of these incidents relate to ASB caused by youths. It has also been confirmed by the Police that these incidents are not, or have not been, associated with Tiverton West End Bowls Club.
- 6.19 Accordingly, and as mentioned in Paragraph 6.3 of this report, it must be noted that *'licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned'* (S182 Guidance, Paragraph 14.13). In this case, it appears that any existing issues relating to ASB are not related to the club itself, and would therefore likely be occurring even if the club was not there.
- 6.20 A distinction must therefore be made between existing ASB not associated with the club and the potential impact of people actually using the licensed premises for the applied for licensable activities (i.e. the likely effect of granting a licence on the licensing objectives).
- 6.21 Additionally, it must be noted that the application is only for the supply of alcohol for consumption ON the premises. As a result, members of the public cannot buy alcohol from the premises to consume outside of the licensed area (identified in **Annex 3** as the area highlighted within the red line). People could not therefore purchase alcohol from the premises to then consume in the general park area.

### **Summary of the above**

- 6.22 In order to ensure the above is clear, the list below is a summary of matters that the Licensing Officer believes are not relevant for the Licensing Sub-Committee to consider:
- The provision of parking
  - The legality of parking
  - The perceived need for the premises and existing licensed premises

- The health and safety of the general public (i.e. those not using the licensed premises)
- General comments that are not about the likely effect of the grant of the application on the licensing objectives (i.e. general 'support' or 'non-support' of the application)
- Live Music and Recorded Music (or 'Anything Similar'), as this has been removed from the application
- The previous 'Alcohol Free Zone' (Designated Public Place Order)
- General existing ASB in the park as this has not been linked to the premises and is not considered likely to be linked to the premises

#### **Impact of relevance on the representations received**

- 6.23 In total, 26 representations were received in support of the application.
- 6.24 24 of these were identical notes which expressed support for the application. Although individually signed, they contained no address details. For this reason, and as they are not linked to the likely effect of the grant of the licence on the licensing objectives, they have not been accepted as valid representations.
- 6.25 A further 2 letters were received in support of the application. Although they state that there have been no 'previous' disturbances, they do not give information as to the effect of granting this current application on the licensing objectives. As a result, they have not been accepted as valid representations.
- 6.26 This means that none of the 26 comments in support of the application have been accepted as valid representations. As a result, they have not been included as Annexes to this report.
- 6.27 In total, 23 comments were received against the application during the relevant 28 period. However, one of these was subsequently withdrawn.
- 6.28 Additionally, 2 representations were anonymous, with no names or addresses provided and they have not been accepted as valid representations. Furthermore, 1 representation contained the name of the individual and a street name, but not a specific house number and has not been accepted as a valid representation.
- 6.29 1 representation related to the provision of parking only and this issue itself has not been considered relevant. As a result, the representation is not relevant and has not been accepted as valid.

6.30 Of the remaining 18 representations, 6 are almost identical letters. All of the 18 representations have been included as **Annexes 4 - 21** of this report.

6.31 Although these remaining representations are not necessarily relevant in their entirety, they do contain at least something relevant and have therefore been accepted, at least in part, as valid. It is the Licensing Officers opinion that having removed the issues no longer considered relevant (as set out above), what remains in some representations is vague. For example, some just mention 'noise', without giving specific details of the noise that is likely to occur and cause a public nuisance, should the licence be granted. However, S182 Guidance has been noted and this states that:

*It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it (Paragraph 9.9).*

6.32 Accordingly, it will be important for Interested Parties to 'amplify and clarify' specifically, what their concerns are at the hearing.

6.33 In summary, and in order to assist and aid the focus of the hearing, the points considered relevant are as follows:

Noise from people arriving / departing from the premises and smoking outside

6.34 It must be noted that the premises is located in a public park and the applicant cannot control the behaviour of the general public (i.e. those not actually using their premises). However, in relation to those potentially using the licensing premises, the consideration is relevant and the following two sections of S182 Guidance underline this point:

*In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave (Paragraph 2.19);*

*Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night (Paragraph 2.21)*

### 'Noise'

- 6.35 Some representations mention 'noise' without being specific. As mentioned in Paragraph 6.30, these have been accepted but more information must be provided by those people that have made such representations. This must include details of the type of noise that is of concern and any further relevant information.

### Alcohol related disorder and ASB

- 6.36 Consideration needs to be given to the likelihood of the premises, should a licence be granted, creating new issues (i.e. their own patrons creating problems) or alternatively, specifically worsen any disorder and ASB issues already taking place in the park. The existing issues do not appear to be linked to the existing operation of the premises and those Interested Parties making representations on this will be able to present and expand on the rationale for this representation at the hearing.
- 6.37 It must be noted, however, that that this application is for the supply of alcohol for consumption ON the premises, meaning that alcohol cannot be purchased for subsequent consumption in the general park area or elsewhere.

### **Additional points**

- 6.38 Although the existing ASB in the park does not appear to be associated with this specific premises, this does not mean that the issue of potential underage drinking in the park cannot be looked at by the Licensing Team. For example, some representations mention the 'late night drinking' taking place and assuming those responsible are under 18, the Licensing Team would be keen to find out where this alcohol was being purchased from. If any Interested Party has information on this they can notify the Licensing Team and this will be investigated further.
- 6.39 The above information does not prejudice the rights of any Interested Party in presenting and expanding on any relevant representation they have made during the hearing. For example, if the above summary has missed out part of a relevant representation, this may still be raised and discussed at the hearing.
- 6.40 If any Interested Party has comments or observations to make about the above, i.e. if they believe that issues are relevant under the Licensing Act but have been considered as not being relevant, they are asked to contact the Licensing Team on receipt of this report and provide any information in support of their view. This can be done by emailing [licensing@middevon.gov.uk](mailto:licensing@middevon.gov.uk) or alternatively writing to Licensing, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP.
- 6.41 The Sub-Committee should also be aware that 1 representation was received outside of the 28 day period for representations and as such, has not been accepted.

- 6.42 Some of the representations received state that the club should have placed a notice advertising the application on the gate to the entrance of the park. Under the Licensing Act, this was not a legal requirement.
- 6.43 A map showing the location of the residents who have made representations in relation to the premises will be made available at the hearing to assist members.

## **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 (Licensing) Act to carry out its licensing functions with the aim of promoting the four licensing objectives. (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. (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 (Paragraph 3.4.2)*
- 7.5 *The Authority will require applicants to take appropriate and proportionate measures to promote the prevention of public nuisance objective. (Paragraph 3.4.3)*
- 7.6 *Licensing is about regulating licensable activities on licensed premises, in qualifying clubs and at temporary events under the provisions of the Act. Licensing also involves making judgements about risk; in particular the risk of any adverse effect on the licensing objectives of granting licences and club premises certificates. (Paragraph 4.1.1)*
- 7.7 *The licensing function is only one means of delivering the licensing objectives and should not be seen as a panacea for solving all alcohol- and entertainment-related problems within the community. (Paragraph 4.1.2)*
- 7.8 *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. (Paragraph 4.1.4)*

- 7.9 *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. (Paragraph 5.3.1)*
- 7.10 *The Authority will expect applicants to demonstrate in their applications active steps for the promotion the licensing objectives. When determining an application, a key consideration for the Authority will be the adequacy of measures proposed in the Operating Schedule to promote the licensing objectives having regard to the type of premises, the licensable activities to be provided, the nature of the location and the needs of the local community. It might be that the applicant has considered all of this and decides that no measures will be appropriate to cover promotion of one or more of the licensing objectives but that consideration will need to be made by the applicant. (Paragraph 5.3.2)*
- 7.11 *The Authority will also have regard to wider considerations affecting the residential population, businesses and the amenity of an area. These include alcohol-related violence and disorder, antisocial behaviour, littering, fouling, and noise, particularly late at night and in the early morning. (Paragraph 5.3.3)*
- 7.12 *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. (Paragraph 5.3.4)*
- 7.13 *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 attach less weight to it. (Paragraph 5.3.5)*

- 7.14 *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. (Paragraph 5.3.6)*
- 7.15 *The Authority will pay particular attention to the effect – potential or actual - of licensable activities on those living, working or otherwise engaged in the area concerned and, where relevant representations are received, may attach conditions if it considers it appropriate for the promotion of the licensing objectives. (Paragraph 7.5)*
- 7.16 *Conditions attached by the Authority to Premises Licences and Club premises certificates will relate to matters falling within the control of individual licensees. It is recognised that the licensing function cannot be a mechanism for the control of disorderly behaviour by individuals once they are beyond the direct control of the licence holder. However, the Licensing Authority and Responsible Authorities may take action where it can be established that there is a clear linkage between disorderly behaviour and a specific premises. (Paragraph 7.6)*
- 7.17 *The Authority will not impose inappropriate or over-burdensome conditions on licences. The Authority may, however, if its discretion is engaged, impose conditions where existing legislation does not provide adequate controls and additional measures are considered to be appropriate for the promotion of the licensing objectives. (Paragraph 7.7)*
- 7.18 Members must have regard to the policy when making their decision and copies 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 and various sections have already been referenced in this report. In addition to these points, it includes the following information on conditions:
- 8.2 *Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:*
- *must be appropriate for the promotion of the licensing objectives;*
  - *must be precise and enforceable;*
  - *must be unambiguous and clear in what they intend to achieve;*
  - *should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*

- *must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- *should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- *should not replicate offences set out in the 2003 Act or other legislation;*
- *should be proportionate, justifiable and be capable of being met;*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format. (Paragraph 1.16)*

8.3 *Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided. (Paragraph 10.2)*

## **9.0 DETERMINATION**

9.1 *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. (Paragraph 9.37)*

9.2 *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. (Paragraph 9.38)*

9.3 *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. (Paragraph 9.42)*

- 9.4 *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. (Paragraph 9.43)*
- 9.5 *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... (Paragraph 9.44)*
- 9.6 The Sub-Committee have the following options:
- 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 to specify a Designated Premises Supervisor
  - Rejecting the application
- 9.7 Reasons must be given for the decision and they must set out the matters taken into consideration and why such a decision was arrived at.
- 9.8 Members have five working days from the conclusion of the hearing to make a decision.
- 9.9 An adopted procedure for Hearings is available as **Annexe 22**. This should help guide all parties through the hearing process.
- 9.10 Finally, as there are a number of Interested Parties who have made similar representations, it is requested that they elect one or two people to speak on behalf the group (i.e. all of those that have made relevant representations). It will not be necessary for every Interested Party to present representations that have

themselves already been discussed (i.e. to repeat what has already been stated). However, having had one or two people present the relevant points on behalf of the group, any other Interested Party can still present their relevant representations if they have not already been discussed.

## **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	Copy of existing Club Premises Certificate
Annex 2	Copy of application for a Premises Licence
Annex 3	Plan accompanying application for a Premises Licence
Annex 4 – 21	Copies of representations
Annex 22	Procedure for hearing

### **Contact(s) for more information:**

Tom Keating (Specialist Lead, Licensing) / 01884 244618 / [tkeating@middevon.gov.uk](mailto:tkeating@middevon.gov.uk)

Simon Newcombe (Group Manager for Public Health or Regulatory Services) / 01884 244615 / [snewcombe@middevon.gov.uk](mailto:snewcombe@middevon.gov.uk)

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