

LICENSING SUB COMMITTEE
DATE OF HEARING: 4 MARCH 2019

**DETERMINATION OF A NEW PREMISES LICENCE APPLICATION FOR CLEAVE BARTON,
BICKLEIGH, DEVON, EX16 8RG**

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 Cleave Barton, Bickleigh, Devon, EX16 8RG. As two representations have been received, 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 APPLICATION FOR A PREMISES LICENCE

1.1 The application for a Premises Licence was submitted by Cleave Barton Partnership T/A Valleyside Escapes.

1.2 The application form asks the applicant to provide a general description of the premises. In this case, the following information has been provided:

‘Cleave Barton is the name of the former farm buildings formerly belonging to Millhayes farm, Bickleigh. The main barn was converted into a dwelling in 2001 and the remaining outbuildings currently have commercial use as pottery, artists studios and art gallery and form a single planning unit together with around five acres of agricultural land.

The site is situated just behind the commercial enterprise of Bickleigh Mill with the railway tourist attraction the Devon Railway Centre situated a short distance further to the west.

In May 2018 planning permission was granted for three glamping tents sleeping up to six people each and they are situated in the top field above the main domestic residence. This glamping site is trading under the name of Valleyside Escapes.

Currently, there is a planning application with Mid Devon council to convert two of the outbuildings into two, three bedroom, luxury holiday cottages and a further application is pending submission to the council to convert another outbuilding into an events space predominantly for weddings.

A further outbuilding is currently being converted into a small bar area. (See site map attached).

The primary use of the bar will be a place for guests in the glamping tents to come and purchase alcohol to take back to their tents to consume. We will stock locally produced wines, ciders and ales. The secondary use is during peak times to open the bar to glamping guests and local village residents one or two nights a week. In addition, we will be holding some ‘speciality events’ involving the consumption of alcohol. For example on Saturday September 21 and 28 September we are hosting an ‘apple pressing’ activity at the end of this activity we plan to offer tasting of local cider in the bar’.

1.3 In summary, the application is for the following:

Licensable Activity	Indoors / Outdoors	Days	Times
Supply of Alcohol	For consumption ON and OFF the premises	Mon - Sun	11:00 – 23:00
Opening Hours	N/A	Mon – Sun	11:00 – 23:30

1.4 A copy of the application is attached to this report as **Annex 1** and the accompanying plans are attached as **Annex 2**.

1.5 It must be noted that 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, 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.

2.0 THE LICENSING OBJECTIVES

2.1 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

2.2 The applicant has offered the following conditions as part of the application (which can be seen in Section M of **Annex 1**):

Condition 1

All staff engaged in licensable activity at the premises will receive training and information in relation to the following:

- i. The Challenge 25 scheme in operation at the premises, including the forms of identification that are acceptable*
- ii. The hours and activities permitted by the premises licence issued under the Licensing Act 2003 and conditions attached to the licence*
- iii. Recognising the signs of drunkenness*

- iv. *The operating procedures for refusing service to any person who is drunk, under-age or appears to be under-age, or appears to be making a proxy purchase*
- v. *Action to be taken in the event of an emergency, including reporting an incident to the emergency services*

Training shall be recorded in documentary form and shall be regularly refreshed at no greater than 12 month intervals. Training records shall be made available for inspection and copying at reasonable times upon request of an authorised officer of a responsible authority.

Training records will be retained for at least 12 months.

Condition 2

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.

Condition 3

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.

3.0 RESPONSIBLE AUTHORITIES

3.1 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.

3.2 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

3.3 No representation was received from any Responsible Authority concerning this application.

4.0 OTHER PERSONS

4.1 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*'.

4.2 In this case, the Licensing Authority has received (and accepted in part) two representations. These are attached as **Annex 3** and **Annex 4**. Not all elements of these representations are considered relevant and additional information is provided about this below.

4.3 For Members information, a further representation was received but this was not accepted as valid under the Licensing Act. In brief, this was because it only mentioned that there were already licensed premises in the area and that trade may not be sustainable.

5.0 LICENSING OFFICER COMMENTS

5.1 In order to focus the hearing and aid discussion, the following comments are made in relation to the representations received and the application. It must be noted that these comments do not prevent Interested Parties from providing further information on relevance, should they wish. Additionally, and where relevant, guidance issued under Section 182 of the Licensing Act has been highlighted.

5.2 In summary, it is the view of the Licensing Officer that the representations contain the following relevant considerations:

Location of the premises within a Zone 3 flood area

- 5.3 This has been raised in both representations and relates to the public safety licensing objective. S182 Guidance 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. Physical safety includes the prevention of accidents and injuries...'* (Paragraph 2.7 of S182 Guidance).
- 5.4 At the time of writing this report, the Licensing Officer has contacted the Environment Agency for further information about this and any specific requirements that may apply to the premises. Hopefully an update on the situation can be provided to the Sub-Committee either in advance of the hearing or at the hearing itself.

Potential noise from people using the licensed premises (including when leaving) and potential light pollution

- 5.5 These issues have been raised in one representation and relate to the prevention of public nuisance licensing objective. As this particular application is for a new premises licence, there is no relevant licensing history that can be reviewed. However, what must be considered is the applied for activity (in this case the supply of alcohol) and the likelihood of issues. This is because 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'* (Paragraph 9.4 of S182 Guidance).
- 5.6 The following S182 guidance should also be noted:
- 5.7 *The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.* (Paragraph 2.15)
- 5.7 *Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time...* (Paragraph 2.17)
- 5.8 *Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the*

early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. 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)

5.9 *Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues. (Paragraph 2.20)*

5.10 *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)*

5.11 The following matters have been mentioned in the representations received but are not considered relevant for the Licensing Authority to consider:

- The mere fact that the premises is situated in a conservation area. Nothing in the Licensing Act prevents the issuing of a licence to a premises in such an area.
- The fact that planning permission has not been applied for and / or granted (for further information see Paragraph 6.0 below).
- The concept of 'need' for the premises is not relevant, as is the commercial impact on other premises.
- General road traffic concerns which are not within the control of a licence holder

6.0 PLANNING CONSIDERATIONS

6.1 Members should be aware that various planning issues are outstanding in relation to the premises. In order to try and clarify the considerations of the Sub-Committee, the following sections of Mid Devon District Council Licensing Policy are highlighted:

6.2 *The Licensing Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. (Paragraph 3.20)*

- 6.3 *The Licensing Authority recognises that it is legally permissible for applications for licences to be made before any relevant planning permission has been sought or granted by the planning authority. However the grant of a licence under the Act does not remove the need for applicants to obtain all the necessary planning consents. It should also be noted that grant of a licence in no way means that any planning application would also be granted and vice versa. (Paragraph 3.21)*
- 6.4 *It is strongly recommended that prospective applicants contact the Local Planning Authority in advance of making a licence application in order to check, or seek advice on, any planning consents or any conditions relevant to the use of the premises. It makes operational sense to ensure that planning and licensing are compatible. (Paragraph 3.22)*
- 6.5 *Where, as a condition of planning permission, a terminal hour has been set for the use of the premises for commercial purposes that is different to the licensing hours, the licensee must observe the earlier closing time in order to avoid any breach of planning permission (and vice versa where the licensing hours finish earlier than the planning permission). (Paragraph 3.23)*
- 6.6 Planning have been asked to provide a summary of where they stand in relation to the premises for information purposes only. It must be noted however that they have not made a representation in relation to the Premises Licence application. Once this is received, it will, if appropriate, be circulated to the Sub-Committee. If necessary, an update will also be provided at the hearing.

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's policy came into force on 7 January 2019. The policy must be referred to in its entirety, but in order to assist those reading this report and at the hearing, the following sections are highlighted:
- 7.2 *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 6.3)*
- 7.3 *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. (Paragraph 6.6)

- 7.4 *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 6.7)*
- 7.5 *It should be noted that, when determining an application, the authority is making a judgment 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 6.8)*
- 7.6 *Licence conditions will be tailored to the individual application and only those considered appropriate to meet the licensing objectives will be imposed. Licence conditions will not be imposed where other regulatory regimes provide sufficient protection, for example Health and safety at work, fire safety legislation etc. (Paragraph 6.9)*
- 7.7 *The Licensing Authority will also take into account when making its decision that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour, especially once individuals have left licensed premises and are therefore beyond the direct control of licensees. However, when making a decision, the authority will focus on the direct impact of the activities taking place on the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. (Paragraph 6.10)*
- 7.8 *The 'need' or demand for a licensed premises of any kind or the commercial damage that competition from a new licensed premises would do to other licensed premises in an area will not be matters that the authority will consider when discharging its decision making function. (Paragraph 6.11)*
- 7.9 *In reaching a decision on whether or not to grant a licence, the Licensing Authority, if relevant representations are made, may take account of any non-compliance with other statutory requirements brought to its attention, if these undermine the licensing objectives. This is because any non-compliance with other statutory requirements may demonstrate that the premises are unsuitable for the activities proposed, or that the management of the premises is not adequate to protect the public from harm or nuisance. (Paragraph 6.14)*
- 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 (Paragraph 6.22)*

7.11 *The Authority will pay particular attention to the effect (or potential effect) 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 6.27)*

7.12 *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 6.28)*

7.13 *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 6.29)*

7.14 *When determining the appropriate set of conditions the Licensing Authority will focus primarily on the individual style of the premises and the licensable activities proposed. Consideration should also be given to the following:*

- *The size, nature and style of operation*

- *Whether the premises is part of a multiple operator's chain and therefore more likely to have an operating schedule that is tried and tested*
- *The cumulative effect of conditions in terms of cost and practical implementation*
- *The likely cost of the condition(s) for the operator*
- *Whether a simpler or better way of dealing with a perceived problem could be found*
- *Whether there is an actual risk of undermining an objective, as opposed to a conceivable risk. In the latter case, there is no need for the condition*
- *Whether the condition will be enforceable, if it is not specific or could be considered subjective it may not be enforceable. (Paragraph 6.30)*

Public Safety

- 7.15 *When addressing public safety, an applicant or licence holder should initially identify any particular issues (having regard to their particular type of premises and/or activities), which are likely to adversely affect the promotion of the public safety objective. Such steps as are required to deal with these identified issues may be suitable to include within the applicant's Operating Schedule. (Paragraph 8.11)*
- 7.16 *Consideration should be given to matters to ensure that:*
- *when disabled people are present, adequate arrangements exist to enable their safe evacuation in the event of an emergency*
 - *disabled people on the premises are made aware of those arrangements*
 - *disabled people may have physical and / or mental problems which should be considered (Paragraph 8.13)*

Prevention of public nuisance

- 7.17 *Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include issues around nuisance, noise, disturbance, light pollution, noxious smells, vermin and pest infestations and accumulations of rubbish and litter. (Paragraph 8.16)*
- 7.18 *The Licensing Authority recommends that applicants and licensees apply a higher standard of control to minimise the potential for any public nuisance that may arise from their operation of the premises where:*

- *They are located in a residential or noise sensitive area*
- *They have or are proposing extended open hours (Paragraph 8.17)*

7.19 *The Licensing Authority recognises that beyond the immediate vicinity of the premises the control that a licence holder can exert over its customers diminishes and individuals who engage in ant-social behaviour are accountable in their own right. The licensing regime is not a mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the licence holder. (Paragraph 8.18)*

7.20 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 of S182 Guidance)*

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 of S182 Guidance)*

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 of S182 Guidance)*

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) of S182 Guidance*

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 of S182 Guidance)

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 **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.

ANNEXS TO THIS REPORT

Annex 1	Copy of the Premises Licence application
Annex 2	Copy of the plans
Annex 3	Representation (1)
Annex 4	Representation (2)
Annex 5	Procedure for hearings

Contact(s) for more information:

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

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