

LICENSING SUB COMMITTEE
DATE OF HEARING: 10 OCTOBER 2019

DETERMINATION OF AN APPLICATION TO VARY THE PREMISES LICENCE FOR THE MANOR HOUSE HOTEL, 2-4 FORE STREET, CULLOMPTON, DEVON, EX15 1JL

Cabinet Member(s): Cllr Dennis Knowles, Cabinet Member for Community Well-being

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

Reason for Report: An application has been received to vary the Premises Licence for The Manor House Hotel, 2-4 Fore Street, Cullompton, Devon, EX15 1JL. As 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.

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.

Relationship to Corporate Plan: Not applicable

Impact on climate change: Not applicable

Additional information relevant to this application: 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 The Manor House Hotel has held a Premises Licence since 2005, which was when the Licensing Act 2003 first had effect. A copy of the current Premises Licence is attached as **Annex 1** (ref. MDV PR0178).
- 1.2 The premises have had a number of licence holders and Designated Premises Supervisors (DPS) since 2005. The current licence holder (and DPS), Mrs Shayne Baker, has held the licence since July 2018.
- 1.3 Since July 2018, the Licensing Authority cannot find any complaints about the licensed premises on file. However, representations that have been received in relation to the current variation application have mentioned recent issues with the premises. As a result, the Licensing Authority request that if any party to the hearing has evidence to suggest that complaints have been made to the Local Authority about the premises (that are relevant to their representation and this matter) they provide these to the Licensing Team with their response to the Notice of Hearing, before the hearing. 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 PRE-APPLICATION ADVICE AND THE APPLICATION

- 2.1 The application to vary the Premises Licence was submitted by Mrs Shayne Baker. Due to an issue with the original newspaper notice advertising the application, the application was 're-submitted' on 15 August 2019, meaning that the 28 day period for representations started again, running from 16 August 2019 until 12 September 2019.
- 2.2 All parties should be aware that Mrs Shayne Baker used the Mid Devon District Council pre-application advice service for this application.
- 2.3 The pre-application advice service was first introduced in 2017 and offers applicants assistance with things like the completion of forms, guidance on conditions and discussion with Responsible Authorities about the application. It is important to note that the advisory service ends once the application has been submitted and it does not in any way effect the Sub-Committees deliberations or the outcome of the hearing.
- 2.4 It can be confirmed that the Officer that provided Mrs Shayne Baker with pre-application advice has had no further involvement with this case, following the submission of the application.

2.5 In summary, the application seeks to vary some of the times permitted by the licence, remove / replace all current non-mandatory conditions, and amend the plan for the premises, reference the use of the rear outside space in relation to alcohol consumption and smoking. In order to assist all parties, **Table 1** summarises the existing times permitted by the licence, along with any new times being applied for. Variations are typed in italic and bold.

| Licensable activity / opening hours | Day(s) | Current | Applied for |
|-------------------------------------|--------------------|---------------|----------------------|
| Films (indoors) | Monday to Thursday | 08:00 – 00:00 | N/A |
| | Friday | 08:00 – 01:30 | N/A |
| | Saturday | 08:00 – 01:30 | N/A |
| | Sunday | 08:00 – 23:30 | N/A |
| | NYE | Deregulated | N/A |
| Live music (indoors) | Monday to Thursday | 10:00 – 00:00 | 10:00 – 00:00 |
| | Friday | 10:00 – 01:30 | 10:00 – 01:30 |
| | Saturday | 10:00 – 01:30 | 10:00 – 01:30 |
| | Sunday | 10:00 – 23:00 | 10:00 – 00:00 |
| | NYE | Deregulated | Deregulated |
| Recorded music (indoors) | Monday to Thursday | 10:00 - 00:00 | 08:00 – 01:00 |
| | Friday | 10:00 – 01:30 | 08:00 – 03:00 |
| | Saturday | 10:00 – 01:30 | 08:00 – 03:00 |
| | Sunday | 10:00 – 23:00 | 08:00 – 00:00 |
| | NYE | Deregulated | Deregulated |
| Entertainment similar (indoors) | Monday to Thursday | 10:00 - 00:00 | 10:00 – 00:00 |
| | Friday | 10:00 – 01:30 | 10:00 – 01:30 |
| | Saturday | 10:00 – 01:30 | 10:00 – 01:30 |
| | Sunday | 10:00 – 23:00 | 10:00 – 00:00 |
| | NYE | Deregulated | Deregulated |
| Late night refreshment | Monday to Thursday | 23:00 – 00:30 | 23:00 – 01:30 |
| | Friday | 23:00 – 02:00 | 23:00 – 03:30 |
| | Saturday | 23:00 – 02:00 | 23:00 – 03:30 |
| | Sunday | 23:00 – 23:30 | 23:00 – 00:30 |
| | NYE | N/A | Deregulated |
| Alcohol ON and OFF | Monday to Thursday | 08:00 – 00:00 | 08:00 – 01:00 |
| | Friday | 08:00 – 01:30 | 08:00 – 03:00 |
| | Saturday | 08:00 – 01:30 | 08:00 – 03:00 |
| | Sunday | 08:00 – 23:00 | 08:00 – 00:00 |
| | NYE | Deregulated | Deregulated |
| Opening hours | Monday to Thursday | 08:00 – 00:30 | 08:00 – 01:30 |
| | Friday | 08:00 – 02:00 | 08:00 – 03:30 |
| | Saturday | 08:00 – 02:00 | 08:00 – 03:30 |
| | Sunday | 08:00 – 23:30 | 08:00 – 00:30 |
| | NYE | Deregulated | Deregulated |

Table 1: Existing times permitted by licence compared to times being applied for.

- 2.6 A copy of the application is attached to this report as **Annex 2**. A copy of the plan accompanying the application can be seen as **Annex 3**.
- 2.7 As this is a variation application, the Sub-Committee are only considering those issues for which a variation is sought. They are not to review and amend the existing entitlements 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 As stated above, this application includes the removal and replacement of all existing, non-mandatory conditions of the licence (i.e. Annex 2 and 3 to the current licence). The specific conditions now being offered can be seen in section M of the application (attached to this report as **Annex 2**). In addition to the conditions offered, the applicant has also stated in this section that they will consider any advice from Responsible Authorities.
- 3.3 The conditions offered on the application appear to be largely based on the Mid Devon District Council '*Pool of licensing conditions*' document, which can be viewed in full here - <https://www.middevon.gov.uk/business/licensing/new-statement-of-licensing-policy-licensing-act-2003/>. The Sub-Committee should be aware, however, that this does not mean they cannot, if deemed appropriate, amend the conditions that have been offered (specific information about the options of the Sub-Committee can be seen in Paragraph 9.6 of this report).

4.0 RESPONSIBLE AUTHORITIES

- 4.1 Responsible Authorities under the Licensing Act are notified of all new and full variation applications. The onus is then on each Responsible Authority to determine when they have appropriate grounds to make a representation. They are not required to justify the non-submission of a representation.
- 4.2 The Responsible Authorities are:
- Police
 - Fire Service
 - Environmental Health (Public Health and Regulatory Services - 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. As a result, they are not party to the hearing.

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 states that '*... representations should relate to the impact of licensable activities carried on from premises on the objectives*' (Paragraph 9.4).

5.2 In this case, the Licensing Authority has received 5 representations against the application. They are from the following parties:

- Cullompton Town Council (attached as **Annex 4**)
- Mr Nigel Cooper (attached as **Annex 5**)
- Mrs and Mr Inman (identical letters submitted and attached as **Annex 6**)
- Mr Paul Falkingham (attached as **Annex 7**)
- Mr Paul Scoble (attached as **Annex 8**)

5.3 As part of Cullompton Town Council's representation they have submitted a letter that they had received from members of the public reference the application. It has been signed by fifteen people and is therefore considered a petition but some of the names are difficult to read and addresses have not always been provided. In addition, there does not appear to be a lead author. Paragraph 5.21 of the Councils Licensing Policy applies and states:

Any petitions received will be treated as one representation from the person sending it in, supported by the other signatories. Petitions will not be treated as individual representations from everyone who has signed them.

5.4 As it has been addressed to, and submitted by Cullompton Town Council, it has been treated as additional information provided with their representation, as opposed to a representation in its own right.

5.5 It is the opinion of the Licensing Officer writing this report that various comments, or aspects of comments within the representations received cannot be considered as relevant under the Licensing Act. For clarity, and based on the individual merits of this case, a brief overview of these issues is provided in section 6 of this report.

6.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED

6.1 In order to assist the Licensing Sub-Committee, the general topics that have been raised in the representations received are summarised below and noted as either being relevant or not relevant. This section of the report does not seek to reproduce the representations in full, as they are attached to this report.

6.2 It must be noted that what follows is the view of the Licensing Officer based on the information available at the time of completing this report. If any Interested Party has comments or observations to make about what follows, i.e. if they believe that issues are relevant under the Licensing Act but have been considered as not being relevant, or if something relevant has not been included, 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 or alternatively writing to Licensing, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP. The Sub-Committee can then consider the issue(s) that have been raised at the hearing.

6.3 It must be noted that just because something has not been considered as relevant in the information that follows, this does not mean that the issue itself is not deserving of attention. It just means that it is not an issue that the Licensing Sub-Committee should consider with regards to their decision on this specific application.

Issues that are not considered relevant:

Conduct of individuals once they are beyond the direct control of the premises

6.4 This issue has been raised in relation to the petition submitted by the Town Council (attached as **Annex 4**). Specifically, it mentions people banging on doors (of local residences) and people urinating in the street, but no information has been provided to connect this to any particular premises.

6.5 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 therefore remain responsible and accountable in their own right for their

actions and the licence holder cannot be held accountable for issues that are outside of their control.

The 'need' (and demand) for the premises to apply for this licence

- 6.6 This issue has been raised in the representation received by Mrs Veronica and Mr John Inman (attached as **Annex 6**).
- 6.7 Section 182 Guidance states *'There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" 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 or for its statement of licensing policy'*. (Paragraph 14.19)
- 6.8 Accordingly, the fact that someone believes that the premises (or what has been applied for) is not 'needed', must not be considered as relevant by the Licensing Sub-Committee.
- 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.

Resources of other parties (i.e. the Police and Street Pastors)

- 6.11 This issue has been raised by Mrs Veronica and Mr John Inman (**Annex 6**) and Mr Paul Falkingham (**Annex 7**).
- 6.12 The applicant cannot be held responsible for the resources of other bodies. In this case, the Police and Street Pastors have been mentioned as potentially being effected by the application but the applicant has no control over this particular issue. In theory, if it was relevant, there may come a point when all licensed premises had to close much earlier than they would like, not necessarily because of actual issues being caused, but because other parties had restricted resources.
- 6.13 This is not to say that potential issues linked to the licensing objectives and relevant to the application cannot be addressed. The consideration is what (if anything) is required on the part of the applicant to promote the licensing objectives. For example, if later times are being applied for, is it appropriate

and necessary to increase / extend the provision of Security Industry Authority (SIA) door supervisors to ensure the promotion of the licensing objectives?

- 6.14 It must also be noted that although the Police have been mentioned, they themselves have not made a representation on this application. Additionally, Street Pastors do not appear to have made a representation, unless they are represented by one of the parties that have made a representation without being explicitly named.

Compliance with other regulatory regimes that are / were not the responsibility of the licence holder / applicant

- 6.15 This issue has been raised by Mrs Veronica and Mr John Inman (**Annex 6**) and Mr Paul Falkingham (**Annex 7**).
- 6.16 The licensing regime is principally concerned with the regulation of licensable activities (as defined by the Licensing Act 2003) and does not exist to duplicate the requirements of other legislation. Section 182 Guidance states that licence conditions *'should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation'* (Paragraph 1.16).
- 6.17 However, the Licensing Authority can, potentially, take account of any non-compliance with other statutory requirements that are brought to its attention, if they 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 of Mid Devon District Council's Licensing Policy).
- 6.18 This is a decision that needs to be made on a case by case basis and as some of the comments made in representations raise compliance issues with other regulatory regimes, the Licensing Officer believes that it is right to provide further information.
- 6.19 Mid Devon District Council's Private Sector Housing Team (Public Health and Regulatory Services) have recently taken enforcement action in relation to the use of the hotel, which is on the second floor and above the licensed premises. This action was taken because the hotel was not actually being used for that purpose, but rather permanent residential accommodation (i.e. it was the occupier's main home). Various failings were subsequently identified with the accommodation and the owner, Mr Roshan Sivlal, was subsequently found guilty of a number of offences under the Housing Act 2004.
- 6.20 This matter was considered as a 'residential' issue, and separate to the commercial activities of the pub. Mrs Shayne Baker was not implicated and the plan of the licensed premises provided with this application (attached to this report as **Annex 3**) does not include the accommodation upstairs. For this reason, the issue is not considered as relevant to the current application.

- 6.21 In order to try and clarify this assessment further, it may be helpful to provide a hypothetical example, whereby non-compliance with another statutory regime would be considered as relevant. If the Fire Service had raised concerns of non-compliance with the licensed premises under their own regulations, and provided notification of this to the Licensing Authority, that would likely be considered as a relevant consideration. This is because it links directly to the safety of those using the licensed premises and would be in the control of the licence holder.

The safety of the general public (i.e. those not using the premises)

- 6.22 This issue has been raised by Mrs Veronica and Mr John Inman (**Annex 6**) and Mr Paul Falkingham (**Annex 7**).
- 6.23 Section 182 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’*. (Paragraph 2.7)
- 6.24 In addition, and as noted previously, the licence holder cannot be held accountable for the behaviour of individuals once they are away from the licensed premises. Neither can they be held accountable for the behaviour of those not using the premises in the first place, nor if a member of the public decides to ‘intervene’ (as one representation suggested), and such individuals would remain accountable for their actions in their own right.
- 6.25 This is not to dismiss the issue, but is to say that the licence holder cannot be held accountable for the potential actions of a member of the public. However, they can be held accountable for things that may be relevant and as an example, the employment of SIA door supervisors and the effective management of customers immediately outside the premises (including dispersal) could help to ensure issues either do not occur in the first place, or if they do, are dealt with by those trained to deal with them. The consequence of this may be that it reduces the probability of members of the public feeling like they need to ‘intervene’.

Issues that are considered relevant:

- 6.26 It is important to note that what follows is a brief overview of what the Licensing Officer thinks is relevant for the Licensing Sub-Committee to consider. It would then be for the Licensing Sub-Committee to decide how much weight to attach to the information / evidence provided by those that have made relevant representations at the hearing.

Prevention of public nuisance

- 6.27 Section 182 Guidance states that *‘Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in*

appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health'. (Paragraph 2.16)

6.28 The issue of public nuisance has been raised in all of the representations that have been received. They highlight that issues would occur later in the evening / earlier in the morning should the application be granted.

6.29 In summary, they relate to the following:

- The close proximity of the premises to residential properties (and therefore the potential impact this will have on nearby residents)
- Noise from people (including those immediately outside the premises)
- Noise from bottles being deposited into bins at the rear of the premises
- Litter in and around that location, including broken glass outside the premises (although the sub-committee must consider how this has been linked to the premises).

Prevention of crime and disorder

6.30 Similarly to above, the issue of crime and disorder has been raised, in part, in all of the representations that have been received and the potential for issues later in the evening / earlier in the morning should the licence be granted.

6.31 In summary, they relate to the following:

- Anti-social behaviour in and around the premises (with examples of groups congregating, increased requirement to refuse entry to people and a 'brawl' outside the premises on 31 August 2019).
- The provision of door staff to ensure the orderly dispersal of patrons

Public safety

6.32 As highlighted in section 6.22 – 6.25 of this report, some of the public safety issues raised in representations do not appear to be relevant. However, there is a potentially relevant link to public safety for some aspects of representations. For example, broken glass immediately outside the premises could cause an injury to those using the premises (i.e. when entering and leaving).

6.33 The representation from Mr Paul Scoble (attached to this report as **Annex 8**) makes a general point that longer hours (if permitted by the licence) may increase the risk of disorder, which may increase the risk to public safety.

- 6.34 The Licensing Officer believes that although additional information is required to fully explain what is meant by this and the potential risks to public safety, there is potential relevance. This is in line with Section 182 Guidance which states: *'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)
- 6.35 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.

Additional information

- 6.36 No Responsible Authorities have made a representation and they are not therefore party to the hearing.
- 6.37 Some of the representations mention the closing times for other licensed premises in the area. As a result, the following table (**Table 2**) provides a summary of the times permitted by the licences of premises in that area. This does not necessarily mean that these premises are utilising these times and they only represent the standard opening hours, they do not cover permitted extensions for specific occasions, such as bank holidays and New Year's Eve.

| Premises Name | Terminal hour for alcohol | | Premises closing time | |
|---------------------|---------------------------|----------|-----------------------|----------|
| | Friday | Saturday | Friday | Saturday |
| Bell Inn | 01:00 | 01:00 | 01:30 | 01:30 |
| Kings Head | 00:30 | 00:30 | 01:00 | 01:00 |
| Market House | 01:00 | 01:00 | 01:30 | 01:30 |
| Pony and Trapp | 01:00 | 01:00 | 01:30 | 01:30 |
| Weary Traveller | 02:00 | 02:00 | 02:30 | 02:30 |
| White Hart | 01:00 | 01:00 | 01:30 | 01:30 |
| Manor (current) | 01:30 | 01:30 | 02:00 | 02:00 |
| Manor (applied for) | 03:00 | 03:00 | 03:30 | 03:30 |

Table 2: Summary of the existing times permitted by local premises licensed under the Licensing Act 2003.

- 6.38 A map showing the location of the premises in relation to local residential properties (potentially including some of those that have made representations) 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 the current Policy came into effect on 7 January 2019. It must be considered in its entirety, but in order to help proceedings, the following information is highlighted in advance of the hearing.
- 7.2 *In carrying out its licensing function the Licensing Authority must promote the following four licensing objectives:*
- *The prevention of crime and disorder*
 - *Public Safety*
 - *The prevention of public nuisance*
 - *The protection of children from harm (Paragraph 2.2)*
- 7.3 *It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as a “cure all” for solving all problems within the community... (Paragraph 3.2)*
- 7.4 *Any petitions received will be treated as one representation from the person sending it in, supported by the other signatories. Petitions will not be treated as individual representations from everyone who has signed them. (Paragraph 5.21)*
- 7.5 *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)*
- 7.6 *The authority will expect applicants to demonstrate in their applications active steps for the promotion of 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. (Paragraph 6.4)*
- 7.7 *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 and noise, particularly late at night and in the early morning. (Paragraph 6.5)*
- 7.8 *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)

- 7.9 *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)*
- 7.10 *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)*
- 7.11 *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)*
- 7.12 *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)*
- 7.13 *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)*
- 7.14 *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)*

- 7.15 *The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When the authority's discretion is engaged consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or Other Persons on the basis of the licensing objectives. (Paragraph 6.15)*
- 7.16 *In general, applications for licensed premises located in residential areas wishing to open beyond 23.00, and those operating a beer garden or outside area beyond 21:00, will be expected to have a higher standard of control included within their operating schedule to address any potential public nuisance issue. (Paragraph 6.16)*
- 7.17 *Where representations are received, stricter conditions relating to noise control may be appropriate and necessary in sensitive locations such as residential areas. (Paragraph 6.17)*
- 7.18 *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)*
- 7.19 *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)*
- 7.20 *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)

7.21 *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)*

7.22 Members must have regard to the Licensing Authorities 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 where relevant. In addition, it includes the following information:

8.2 *A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded*

history of problems at premises to support their representations, and in fact this would not be possible for new premises. (Paragraph 9.4)

9.0 DETERMINATION AND OPTIONS OF THE SUB-COMMITTEE

- 9.1 *Section 182 Guidance states that: '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)*

Options of the Sub-Committee

- 9.6 By virtue of Section 35 (3) and (4) of the Licensing Act 2003, the Sub-Committee must, having regard to any relevant representations, take such steps it considers appropriate for the promotion of the licensing objectives. These steps are:
- To grant the variation, as applied for;
 - To modify the conditions of the licence (conditions are modified if any of them is altered or omitted or any new condition is added);
 - To reject the whole or part of 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 attached to this report as **Annexe 9**. 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.

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Circulation of the Report:

Legal Services / Members of Licensing Sub-Committee / Applicant / Other Parties (as per the Licensing Act)

List of Background Papers:

- Licensing Act 2003 - <https://www.legislation.gov.uk/ukpga/2003/17/contents>
- Section 182 Guidance - <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- Mid Devon District Council Licensing Act Policy - <https://www.middevon.gov.uk/business/licensing/new-statement-of-licensing-policy-licensing-act-2003/>