

LICENSING SUB COMMITTEE
DATE OF HEARING: 15 MAY 2020

DETERMINATION OF A PREMISES LICENCE APPLICATION FOR SAMPFORD PEVERELL RECREATION GROUND AND SPORTS PAVILION, SAMPFORD PEVERELL, TIVERTON, DEVON, EX16 7BU

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 for a new premises licence for Sampford Peverell Recreation Ground and Sports Pavilion, Sampford Peverell, Tiverton, EX16 7BU.

Relevant representations have been received and the licensing authority (Mid Devon District Council) must 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

1.1 The following description of the premises is provided in the application:

There is a sports pavilion with kitchen, a room with tables and chairs, changing room; showers and storeroom.

There is a sports field with a cricket pitch and a football pitch.

There is a multiuse games area which has an enclosed all year round surface big enough for 5 aside football, cricket nets, net ball or any other suitable games.

A tent/marquee would be occasionally erected for serving alcohol separate from any other refreshments when occasional outside events take place this is shown on the plan.

2.0 THE APPLICATION

2.1 The application was submitted by Samford Peverell Recreation Ground and Village Hall Charity.

2.2 In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Live music	Both	Friday – Sunday	10:00 – 23:00
Recorded music	Both	Monday – Sunday	10:00 – 23:00
Supply of alcohol	For consumption both ON and OFF the premises	Monday - Sunday	10:00 – 23:00
Hours premises open to the public	N/A	Monday - Sunday	08:00 – 23:00

- 2.3 The application also includes further details for some activities, such as live music only being played in the summer months outside. Full details can be seen on the application form which is attached as **Annex 1**. The plans submitted with the application are attached as **Annex 2**. They show both the indoor pavilion area and the site plan, which includes the area for licensable activities outdoors.
- 2.4 Samford Peverell Recreation Ground and Village Hall Charity has also applied to 'disapply' the requirement for a Designated Premises Supervisor (DPS). This is an option available to 'community premises' and would make the licence holder (i.e. the 'management committee') responsible for the supervision and authorisation of the supply of alcohol made under the licence. The paperwork for this has not been included within this report bundle but is available on request should Members of the Sub-Committee need it.
- 2.5 Included with the application to disapply the requirement for a DPS was a copy of a booking form to be completed by any third party wishing to hire the premises (should a licence be granted). The Licensing Officer has noticed that the booking form is actually for 'Sampford Peverell Memorial Hall' and does not apply directly to the current application being considered. For example, under the 'conditions of hire', it references incorrect times for music. The applicant should amend this booking form and submit this to licensing (licensing@middevon.gov.uk) as soon as possible and prior to the hearing.

3.0 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; and**
 - **The protection of children from harm.**
- 3.2 The applicant has provided information and proposals on this which can be seen within section M of the application (attached as **Annex 1**).

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)
 - Planning Authority
 - Licensing Authority

- Health and Safety Executive
- Weights and Measures
- the body responsible for Child Protection
- the local Director of Public Health

4.3 No representation was received from any Responsible Authority concerning this application and 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 2 representations against the application. They are from the following parties:

- Mrs Leonie Mackenzie (attached as **Annex 3**)
- Mr Mike Penfold (attached as **Annex 4**)

5.3 It should be noted that the two representations are very similar and essentially cover the same issues. It is the opinion of the Licensing Officer writing this report that some of the comments within these representations 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 the next section of this report.

5.4 A map showing the location of the premises in relation to local residential properties (including those that have made representations) will be sent to Members of the Sub-Committee prior to the hearing.

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 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. 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 application.
- 6.4 Additionally, although something may be considered as being relevant the Licensing Sub-Committee must still then make a decision on the likelihood of the issue occurring and the potential for the licensing objective(s) to be undermined. This is a judgement about the level of risk and will dictate what action, if any, is appropriate and necessary.
- 6.5 In some paragraphs, S182 Guidance is referenced and further information about this Guidance can be found in section 8 of this report.

The prevention of crime and disorder

- 6.6 **Issue 1:** The premises is not designed for the secure containment of cash or alcohol and the addition of licensable activities may lead to an increased risk of crime. It is also noted that damage already occurs at the premises due to 'youth activity'.

Officer comment: It appears that the primary concern here is with crime being directed towards the premises itself. This is considered relevant and the applicant should provide Members with more information about this and any safeguards they may have in place, including how alcohol is to be stored.

With regards to the example of damage already occurring to the premises itself, it must be noted that individuals remain responsible and accountable in their own right for their actions and the licence holder cannot be held accountable for issues that they cannot actually control. This specific example is therefore not considered relevant.

- 6.7 **Issue 2:** The addition of alcohol sales at the premises introduces the opportunity for disorder. At present, those playing sports on site go off site at the end of the match and therefore any alcohol consumption / issues occur elsewhere.

Officer comment: In general terms, the addition of alcohol sales may introduce the 'opportunity' for disorder and this is why the licensing regime exists and why the applicant is expected to provide details of any steps they intend to take to promote the licensing objectives. This issue is relevant but the Sub-Committee must consider the likelihood of such issues occurring and the actual risk of the licensing objective(s) being undermined, as opposed to 'conceivable risk'.

- 6.8 **Issue 3:** The traffic disorder which occurs on Whitnage Road will become worse. It is also noted that there is no dedicated parking at the premises and parking can be poor.

Officer comment: The provision of parking in this area is not something that the applicant can control and the Licensing Officer does not believe that this should be considered as relevant. Any person may park in the surrounding area and ultimately, they may do so regardless of whether or not the premises have a licence.

With regards to poor parking, 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 Sub-Committee 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/>).

Public safety

- 6.9 **Issue 4:** The lack of parking will lead to safety risks to all residents who use Whitnage Road.

Officer comment: 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*'. Accordingly, and because the representation concerns the safety of people who are not using the premises, this is not considered as relevant.

- 6.10 **Issue 5:** The introduction of cash, alcohol and stock on site represent a risk to the safety of those whose property adjoins the premises.

Officer comment: It is not specifically stated why the introduction of these activities may pose a risk to the safety of those living nearby but as mentioned above, the public safety licensing objective concerns the safety of those using the premises so this is not considered as relevant.

The prevention of public nuisance

- 6.11 **Issue 6:** The premises are not suitable as a bar or function room due to its limited size. This would likely lead to people congregating outside creating a noise nuisance.

Officer comment: The potential for noise nuisance from people outside is considered to be relevant.

- 6.12 **Issue 7:** If live or recorded music was being played it would lead to a noise nuisance.

Officer comment: The potential for noise nuisance from music is considered to be relevant. However, section 7 of this report must be noted as live and recorded music is not always licensable.

- 6.13 **Issue 8:** There are already two other licensed premises in the village and this application would spread the area in which public nuisance could occur.

Officer comment: 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'*. As a result, the mere presence of other licensed premises in the village is not relevant.

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.

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.

The protection of children from harm

- 6.14 **Issue 9:** Children and young persons are at risk of hearing and seeing activities associated with licensed premises.

Officer comment: It is not clear from the representations what exactly is meant by 'associated' activities that may put children or young people at risk with regards to this particular application. As a result, this issue is considered as relevant but those that made representations should provide more information about this in their response to the Notice of Hearing, detailing specifically what they believe to be of concern.

It must be noted that the applicant has not provided details of any adult entertainment, services or activities that may give rise to concern in respect of children (which would be required in section K of the application form). This box should have been completed if the premise were going to be used for anything involving nudity or semi-nudity, films for restricted age groups or gambling.

- 6.15 In summary, the Licensing Officer believes the following to be potentially relevant / not relevant for the Licensing Sub-Committee to consider:

Relevant (or potentially relevant but requires more information)	
Issue 1	The security of the premises (including the storage of cash or alcohol) and the addition of licensable activities may lead to an increased risk of crime
Issue 2	The addition of alcohol sales may lead to an increased risk of disorder
Issue 6	People could congregate outside and this could create a noise nuisance
Issue 7	Live or recorded music could lead to a noise nuisance
Issue 9	Children and young person's at risk of hearing and seeing activities associated with licensed premises

Not relevant	
Issue 3	Traffic disorder and parking related concerns
Issue 4	Lack of parking creating a public safety problem for residents
Issue 5	The introduction of cash, alcohol and stock on site creating a risk to the safety of those whose property adjoins the premises
Issue 8	The existence of two other licensed premises in the village and the extended area in which public nuisance may occur

7.0 CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE NOT LICENSABLE

7.1 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).

7.2 Relevant to this application is the provision of live and recorded music and in summary, a licence is not required for these activities if:

- it takes place between 8AM and 11PM; and
- it takes place at an alcohol on-licensed premises; and
- the audience is no more than 500 people

- 7.3 In practice, this means that conditions should not be placed on an application which relate to live and recorded music in these specific circumstances. Additionally, any conditions on a licence which do apply to live and recorded music will be 'suspended' when the activities themselves are not considered licensable.
- 7.4 In the case of this particular application, and without prejudice to the decision of the Sub-Committee, conditions relating to music would therefore apply to any bigger events (with more than 500 people) but would not apply for smaller events (assuming the other requirements mentioned in Paragraph 7.2 of this report are complied with).
- 7.5 It must be noted that issues or problems relating to activities which are not considered licensable can still be dealt with via other means. For example, if music is causing a nuisance, Environmental Health can still take action under the Environmental Protection Act 1990 and from a licensing perspective, the licence itself can be reviewed.

8.0 LICENSING POLICY

- 8.1 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.
- 8.2 *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)*
- 8.3 *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)*
- 8.4 *Where no relevant representations are received, the application will be granted on the terms applied for. Where relevant representations are received, the application will be considered by a Licensing Sub Committee at a hearing... (Paragraph 5.13)*
- 8.5 *Any party to a hearing may expand on their representation but may not introduce new or different representations. (Paragraph 5.14)*
- 8.6 *When determining a licence application, the overriding principle adopted by this authority will be that each application will be determined on its merits. The authority will have regard to any guidance issued by the Home Office, this Statement of Licensing Policy and any measures it deems necessary to*

promote the licensing objectives. The authority may depart from the guidelines in this Policy if it has justifiable and compelling reasons to do so. The authority will give reasons for any such departure from policy. (Paragraph 6.3)

- 8.7 *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)*
- 8.8 *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)*
- 8.9 *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)*
- 8.10 *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)*
- 8.11 *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)*
- 8.12 *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)*
- 8.13 *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)

- 8.14 *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)*
- 8.15 *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)*
- 8.16 *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)*
- 8.17 *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)*
- 8.18 *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)*

- 8.19 *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)*
- 8.20 *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)*
- 8.21 *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)*
- 8.22 *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)*
- 8.23 *Members must have regard to the Licensing Authorities Policy when making their decision and it can be viewed in full here:*

<https://www.middevon.gov.uk/business/licensing/new-statement-of-licensing-policy-licensing-act-2003/>

- 8.24 It should be noted that the Policy contains various Appendices, some of which may be of use to Parties attending the hearing. This includes a 'Pool of Conditions' (<https://www.middevon.gov.uk/media/346400/appendix-c-pool-of-conditions.pdf>) and a 'Code of Good Practice' (<https://www.middevon.gov.uk/media/346401/appendix-d-code-of-good-practice.pdf>).

9.0 GOVERNMENT GUIDANCE

- 9.1 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003. The most recent version of this was published in April 2018 and some relevant sections are highlighted below. The Guidance can be viewed here:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

- 9.2 *Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (Paragraph 1.17)*
- 9.3 *Licensing authorities should look to the police as the main source of advice on crime and disorder. (Paragraph 2.1). As stated previously in this report, the Police have not made a representation and are therefore not party to this hearing.*
- 9.4 *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)*
- 9.5 *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)

- 9.6 *The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). (Paragraph 2.22)*
- 9.7 *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)*

10.0 PRE-HEARING DISCUSSION AND FURTHER INFORMATION PROVIDED BY THE APPLICANT

- 10.1 In line with the Council’s Licensing Policy, the Licensing Officer has made efforts to see if an agreement between parties can be made prior to the hearing. However, at the time of writing this report, it does not seem like this will be possible.
- 10.2 Both representations indicate that if the application was to cover just ONE fundraising event per year then they would not have any objection. However, it has become clear that this was not the sole intention of the application and as a result, the applicant was not willing to agree to limit the use of the licence to just ONE event.
- 10.3 In order to clarify how the premises may be used the Licensing Officer asked the applicant to provide an overview of the fundraising event that takes place, as well as what else the premises may be used for. Mr Ian Adlington, Chairman of Sampford Peverell Recreation Ground and Village Hall Charity, has provided the following information.

‘The largest event is the CLIC Sargent event due to take place on 19th July. This year the organisers expect 750 runners and walkers who will finish at the Recreation Ground. Some will have their families meeting them there so there could be excess of 800 people for this event. There will be a festival during the

rest of the day with various stalls, entertainment and a beer tent which will be organised and run by the Globe Public House. This event is very well managed by the event organisers. For example there will be traffic marshals, parking provided at the Station Road car park and each stall holder has to provide proof of insurance.

We have not been approached by anyone else for a large event on the field but we would envisage that there could be a maximum of one or two more large events such as a Village Fete or a Church Fete and we would expect no more than 200 people.

We would expect organisers of this kind of event to have an event plan and we would agree to notify Responsible Authorities in advance.

The Cricket Club will have 18 league games this year and would like to be able to serve beers. They will usually include six barbecues during the year.

The Pavilion has a social room which is a little over five square meters in area. Our risk assessment would only allow a maximum of 35 people using the room. Consequently the Pavilion will not be rented out for any functions or events but will be used for serving alcohol at cricket matches or barbecue times'.

- 10.4 It is important to note that this information was not necessarily provided by the applicant as possible conditions to be placed on the licence, but was supplied in response to a general request for information about the use of the premises.
- 10.5 Prior to considering any specific conditions, it is important that the Sub-Committee carefully assess the types of events that may occur, the likelihood that such events will undermine the licensing objectives (in line with the representations received) and the action(s) they believe to be appropriate and necessary to promote the licensing objectives.
- 10.6 If the Sub-Committee believe that an event (or particular type of event) will not undermine the licensing objectives, then it is a good indication that no action is needed. Conversely, if the Sub-Committee believes that an event (or particular type of event) will undermine the licensing objectives, then it is a good indication that some form of action is needed, such as the addition of conditions, which may include limiting / prohibiting those types of events. More information about the determination process follows in the next section of this report.

11.0 DETERMINATION AND OPTIONS OF THE SUB-COMMITTEE

- 11.1 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)

11.2 *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)*

11.3 *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)*

11.4 *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)*

11.5 *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

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

- Granting the licence as applied for
- Granting the licence subject to appropriate modifications necessary for the promotion of the licensing objectives

- Excluding from the scope of the licence any of the licensable activities to which the application relates
- Refusing to specify a Designated Premises Supervisor (or in this case, refusing to include the alternative licence condition enabling the management committee to authorise the supply of alcohol if they are not satisfied with the management of the premises)
- Rejecting the application

11.7 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.

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

12.0 APPEAL

12.1 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.

13.0 THE PROCESS FOR THIS HEARING

13.1 The Council have an adopted procedure for hearings and this attached to this report as **Annexe 5**. In so far as is possible and practicable, the Licensing Authority will work in accordance with this procedure.

13.2 As a result of the current Coronavirus (COVID-19) pandemic, one of the most significant changes for this hearing is that it will be conducted using the video-conferencing platform 'Zoom' (as opposed to being held in a meeting room at the Council offices).

13.3 A practical guide on using Zoom has been produced by Kings Chambers and this is attached as **Annex 6**. The Licensing Authority request that all parties install and familiarise themselves with this system at least 48 hours prior to the hearing. A link which will take you to the meeting is provided in the agenda section of this report bundle. If there are any issues (or if you are unable to attend the hearing) you should notify the licensing team (licensing@middevon.gov.uk) as soon as possible.

13.4 In theory, attendees can, with the consent of all parties, produce documentary information at the hearing. In practice, and because of how the hearing is now being held, this may be difficult and the Licensing Authority is requesting that if any party has documentary information they wish to provide or rely on, this be sent to the licensing team (licensing@middevon.gov.uk) with their response to the Notice of Hearing (which must be submitted 5 working days before the hearing).

13.5 In addition, and to try and ensure the hearing runs as smoothly as possible, the following points should be noted and followed during the hearing:

- Parties should ensure that they are in a private, quiet space where they will not be disturbed. Other occupants of the household should be reminded not to interrupt the participant during the hearing. The door to the room in which the participant is based should be closed and, if possible, locked.
- Other noise sources should be silenced including telephones, mobile phones, tablet devices, Amazon Echo & Google Home devices, door bells, dishwashers etc.
- Participants should organise their workspace carefully in advance. Clear it of anything that is not related to the hearing.
- Attendees should, if possible, ensure that they have a plain wall as a background.
- Ensure that you are well lit by natural or artificial light. Avoid sitting with your back to a window or other light source. This can result in only your silhouette appearing on screen.
- Parties should attend the hearing alone, unless they are sat together with another attendee. The room should be one that has a good Wi-Fi/internet connection and has good lighting.
- Participants should dress in a similar manner to the way they would dress if attending a traditional hearing.
- No food should be eaten during a remote hearing. A glass of water or coffee / tea should suffice for refreshment.
- Parties should remain seated during the hearing.
- Parties should check that their microphone, camera and sound settings are working. This should preferably be done as early as possible. This will allow any technical issues to be raised and dealt with without the need to delay the hearing. A computer or other device's in-built camera, microphone and speaker will usually suffice.
- Avoid setting your device to the highest volume, since this is likely to cause feedback when you are speaking.
- Participants should log in at least 15-20 minutes before the hearing starts to confirm that they are having no technical difficulties.
- In case of a technological problem concerning the internet or Wi-Fi connection, you should have a telephone on hand. You should ensure that the number for this phone is provided to the licensing team in your response to the Notice of Hearing.

- If there is a technical failure that cannot be fixed, then the hearing may have to be adjourned.
- Parties should mute their audio when they are not speaking. A failure to do so may disrupt the hearing.
- When it is your turn to speak, remember to unmute your microphone. Speak directly into the microphone.
- Parties should keep their video cameras on at all times if possible. They should be aware that many video-platforms will show your entered name and (if chosen) picture if the camera is turned off. Parties should check their name is correct and their picture is appropriate.
- When speaking, maintain eye contact with the camera. This will ensure you appear to be looking at your audience.
- Ensure that you are clearly visible by maintaining a reasonable distance from the camera, to show your head and upper body. Too close and your image may blur and fill the screen, too far and you will appear distant and detached from the hearing.
- Be mindful that the camera records a wider area than one sees on one's own screen.
- Remember that others are watching even if you cannot see them. In cases involving multiple participants, thumbnail video images may appear on screen, but these thumbnails often move off screen to allow participants to see the face of the person talking, or the document being shared. Observers may also be present. As such, often there are people present at the hearing who are not visible.
- Oral submissions should be structured, relevant to the issues, and not repetitive. Concentrate on the substance. Brevity and precision are key. Aim to present your case in a low-key, courteous and measured way.
- In a remote hearing, a brief delay typically occurs between the video image of the person speaking and their voice being heard by the court/tribunal and witness. This connection delay may lead participants to believe a person has finished speaking before they have, in fact, done so and is liable to result in participants inadvertently speaking over one another.
- Do not interrupt. Let a speaker finish before speaking. Be especially careful not to interrupt another speaker.
- After each party is finished speaking the video hearing should always revert back to the Chair to invite the next speaker. No one should speak without being invited to do so by the Chair.

Contact for more Information: Tom Keating (Specialist Lead, Licensing) / 07967 179666 / tkeating@middevon.gov.uk OR Simon Newcombe (Group Manager for Public Health and Regulatory Services) / 01884234615 / snewcombe@middevon.gov.uk

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/>