

LICENSING SUB COMMITTEE
DATE OF HEARING: 21 SEPTEMBER 2020

DETERMINATION OF A PREMISES LICENCE APPLICATION FOR RULL ORCHARD, NORTHDOWN ROAD, BICKLEIGH, DEVON, EX5 5LN

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 Rull Orchard, Northdown Road, Bickleigh, Devon, EX5 5LN.

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 application has been submitted for a new premises licence for Rull Orchard, Northdown Road, Bickleigh, Devon, EX5 5LN. The following description of the premises is provided in the application:

‘Existing cider production facility housed in a Farm building in a rural location. A serving hatch will allow customers to try and buy ciders and be tutored in the production of cider. We would like to supply alcohol for consumption both on and off the premises. There is a small outside seating area as shown on the plan where tutoring and consumption will take place.

We will also provide a delivery service where we will be delivering the alcohol ourselves, orders will be taken over the telephone or via the website’.

2.0 THE APPLICATION

- 2.1 The application was submitted by Rull Orchard Ltd. In summary, the following has been applied for:

Activity	ON / OFF the premises	Days	Times
Supply of alcohol	For consumption both ON and OFF the premises	Monday - Sunday	12:00 – 20:00
Hours premises open to the public	N/A	Monday – Sunday	12:00 – 20:30

- 2.2 The application form is attached as **Annex 1** and the plan submitted with the application is attached as **Annex 2**.

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, and in summary, the steps they intend to take are as follows:

- No self-service of alcohol on the premises
- Regular collection of glasses / bottles
- The adoption and operation of a 'Challenge 25' Policy
- Safeguards in relation to the ordering and subsequent delivery of alcohol for consumption off the premises.

Full details of these proposals 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 received SEVEN letters / representations concerning the application.

5.3 It should be noted that TWO of these were in support of the application (or 'positive') but they have not been accepted as relevant representations. This is because, in the view of the Licensing Officer, they did not relate to the likely effect of the grant of a licence on the promotion of one or more of the licensing

objectives. As a result, the Sub-Committee should not take them in to account and they are not included in this report bundle.

- 5.4 With regards to the FIVE remaining letters / representations, they were in opposition to the application (or 'negative'). ONE of these representations was not accepted as relevant as it related to the use of the local road and the walking of dogs. As a result, the Sub-Committee should not take it in to account and it is not included in this report bundle.
- 5.5 The remaining FOUR representations contained some issues that are relevant and some that are not (in the view of the Licensing Officer). **Table 1** (below) provides details of who has submitted these representations, along with a very brief note of what is, and what is not considered relevant within their submissions. All of these representations are attached to this report in full (as identified in Table 1). It should be noted that further information (and justification) about what is and what is not considered relevant is provided in section 6 in this report.

Name of party	Issue(s) raised considered relevant	Issue(s) raised not considered relevant
Mrs O Westlake (attached as Annex 3)	Security of site	Traffic and use of nearby narrow road(s) and a possible need for drivers to reverse
Mr David Giles and Ms Diane Beckett (attached as Annex 4)	Noise from the site (including reference to 'numbers of people')	The mere fact that somebody may not 'live' on site The narrow road and 'blind' corners
Mr John Greenslade (attached as Annex 5)	Drink driving Noise from the site	The narrow road and 'blind' corners The information that a 'similar project' has been a failure elsewhere and capacity of the business to produce fruit
Mr Richard Pocock (attached as Annex 6)	Security of site Noise from events with numerous people	The narrow road, traffic and 'blind' corners Increase of rural crime in the area (in general)
Table 1. Brief summary of representations and relevance to licensing		

- 5.6 A map showing the location of the premises in relation to those that have submitted 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 information provided as to why they are considered 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 also 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. Other legislation and processes may apply, such as health and safety and Planning.
- 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 9 of this report.

Overview of issues considered relevant

- 6.6 **Issue 1:** The security of the site and it being a potential 'target' for criminals.

Officer comment: This relates to possible crime on the premises itself and is considered relevant. The applicant can provide Members with more information about this and any safeguards they may have in place, including how alcohol is to be stored. Additionally, the applicant can also provide details of the existing use of the premises (and whether it has included cider production) and if there are any existing concerns regarding crime.

The Police have not submitted a representation with regards to crime and disorder so at the time of writing this report, the Licensing Authority are not aware of any issues prior to the submission of the application.

6.7 **Issue 2:** Noise from the site (which includes reference to the number of people on site and possible events).

Officer comment: The potential for noise is relevant (in terms of public nuisance) but the representations that mention this do not give much information. As a result, any party that has raised the issue of noise is asked to provide further details in their response to the 'Notice of Hearing'. It should be noted that no form of regulated entertainment has been applied for and the Sub-Committee will likely want to know:

- What kind or type(s) of noise parties are concerned about
- What kind or type(s) of events parties are concerned about
- What days / times do parties believe public nuisance will occur (if there are any particular days / times).

6.8 **Issue 3:** Drink driving

Officer comment: This presumably relates to people drinking too much alcohol at the premises and subsequently driving. As a result, this is considered relevant but further information must be provided by the relevant party at the hearing to clarify this representation. This approach is supported by S182 Guidance (Paragraph 9.9) 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'.

The Licensing Officer does not believe that just because a premises can sell alcohol it will result in its customers drink driving. However, that is not to say it could not happen and whether it does or not is largely dependent on the premises having the right processes and management controls in place. The Sub-Committee may wish to explore this at the hearing.

NOTE: It is an offence under the Licensing Act to knowingly sell alcohol, or attempt to sell alcohol, to a person who is drunk. It is also illegal to allow alcohol to be sold to someone who is drunk.

Finally, the premises cannot be held responsible for the actions of a customer who may purchase alcohol for consumption 'off' the premises (in a 'sober' state) and then subsequently drink that alcohol elsewhere later on and commit offences – any such individual is responsible in their own right.

Overview of issues NOT considered relevant

6.9 **Issue 4:** The issue of the local road, its use, blind corners and possible traffic.

Officer comment: The general use of the road is not something that the applicant can control and the Licensing Officer does not believe that these matters should be considered as relevant. People are able to use the road (regardless of whether or not a licence is in place) and each individual is responsible for how they drive and conduct themselves on a highway.

Additionally, some of the representations mention the risk to the general public should they use the road and it should be noted that reference the public safety licensing objective, 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, the Licensing Officer does not believe that the applicant would be responsible for the safety of those that are not actually using the relevant premises.

As mentioned in Paragraph 6.3 of this report, the fact that such issues are not considered as relevant under the Licensing Act does not mean that the issues are not in themselves valid - other legislation and processes may exist to address them. With regards to the local road network, this may be considered via a planning process and further information is provided about planning later in this report (along with the requirement for licensing to avoid duplicating other statutory requirements or other duties or responsibilities placed on the employer by other legislation).

- 6.10 **Issue 5:** The mere fact that someone may not necessarily live on the site.

Officer comment: The Licensing Officer does not know if this is the case but there is no requirement in the Licensing Act for anyone to actually live on (or near) the licensed premises. As a standalone statement, it doesn't link to a licensing objective and so is not considered relevant.

- 6.11 **Issue 6:** Similar project(s) not being successful and the capacity of the business to produce fruit.

Officer comment: The viability of a business (or the need for it) does not relate to the licensing objectives (and the impact of licensable activities on them). For this reason, these issues are not considered to be relevant.

- 6.12 **Issue 7:** General potential for increased rural crime in the locality (which is not linked to the premises, as is the case for issue 1).

Officer comment: The general issue of local rural crime is not considered relevant. 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.

- 6.13 In addition to the points above, TWO representations have made a general point that the applicant has a Personal Licence and can therefore sell alcohol from other premises. This is not a relevant representation but as a point of

clarification, this is not necessarily the case. A Premises Licence is required at the location in which alcohol is 'appropriated to the contract' (i.e. the place where it is identified and specifically set apart for delivery to the purchaser). If this takes place on this premises, then it will require a Premises Licence.

- 6.14 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 site and it being a potential 'target' for criminals.
Issue 2	Noise from the site (which includes reference to the number of people on site and possible events).
Issue 3	Drink driving

Not relevant	
Issue 4	The issue of the local road, its use, blind corners and possible traffic.
Issue 5	The mere fact that someone may not necessarily live on the site
Issue 6	Similar project(s) not being successful and the capacity to produce fruit
Issue 7	General potential for increased rural crime in the locality

7.0 PLANNING CONSIDERATIONS

- 7.1 Members should be aware that various planning issues may be relevant in relation to this premises (including the issues surrounding the local road network). In order to try and clarify the considerations of the Sub-Committee and the separation between planning and licensing, the following sections of Mid Devon District Council Licensing Policy are highlighted:
- 7.2 *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)

- 7.3 *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)*
- 7.4 *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)*
- 7.5 *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)*
- 7.6 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.

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 *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)
- 8.10 *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)
- 8.11 *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)

- 8.12 *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)*
- 8.13 *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)*
- 8.14 *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)*
- 8.15 *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)*
- 8.16 *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)*
- 8.17 *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)*
- 8.18 *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)*
- 8.19 *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)*
- 8.20 *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)*
- 8.21 *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)*
- 8.22 *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/>

- 8.23 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 *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)*
- 9.4 *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)

- 9.5 *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)*
- 9.6 *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 DETERMINATION AND OPTIONS OF THE SUB-COMMITTEE

- 10.1 *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)*
- 10.2 *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)
- 10.3 *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)
- 10.4 *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)
- 10.5 *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

- 10.6 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
 - Rejecting the application
- 10.7 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.
- 10.8 Members have five working days from the conclusion of the hearing to make a decision.

11.0 APPEAL

- 11.1 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.

12.0 THE PROCESS FOR THIS HEARING

- 12.1 The Council have an adopted procedure for hearings and this attached to this report as **Annexe 7**. In so far as is possible and practicable, the Licensing Authority will work in accordance with this procedure.
- 12.2 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).
- 12.3 A practical guide on using Zoom has been produced by Kings Chambers and this is attached as **Annex 8**. 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.
- 12.4 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).
- 12.5 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) / 07967 679939 / 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/>