

**LICENSING SUB COMMITTEE**  
**DATE OF HEARING: 22 OCTOBER 2020**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR PORTERS BAR AND GRILL, 10 HIGH STREET, CULLOMPTON, DEVON, EX15 1AA**

**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 Porters Bar and Grill, 10 High Street, Cullompton, Devon, EX15 1AA.

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 Porters Bar and Grill, 10 High Street, Cullompton, Devon, EX15 1AA. The following description of the premises is provided in the application:

*‘Restaurant and bar, with occasional live or recorded music’*

- 1.2 This particular premises already has a premises licence (Licence No. MDV PR0422). This licence was issued in February 2020 and is held by Mrs Caley Briddick and Mr John Briddick. As noted in Section 6 of this report, these are the same people that have also submitted a representation regarding the current premises licence application.
- 1.3 So the Sub-Committee are aware, Section 2 (3) of the Licensing Act 2003 permits two (or more) authorisations to be in effect at the same premises and in practice, this means that a premises can have multiple licences. Further information is provided about this, and its relevance, later in the report.

## **2.0 THE APPLICATION**

- 2.1 The application for a new premises licence was submitted by Mr William Porter. In summary, the following has been applied for:

<b>Activity</b>	<b>Indoors / Outdoors (or both)</b>	<b>Days</b>	<b>Times</b>
Live music	Indoors	Monday - Sunday	08:00 – 23:00
Recorded music	Indoors	Monday - Sunday	08:00 – 23:00
Supply of alcohol	For consumption both ON and OFF the premises	Monday - Sunday	08:00 – 23:00
Hours premises open to the public	N/A	Monday – Sunday	08:00 – 23:30

- 2.2 In addition to the above standard timings, the application also requests that New Year’s Eve be de-regulated.

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

### **3.0 CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE NOT LICENSABLE**

- 3.1 Many activities that previously required a licence are no longer themselves licensable under the Licensing Act (assuming specific requirements are met). Further details about this can be found here:

<https://www.gov.uk/guidance/entertainment-licensing-changes-under-the-live-music-act>

- 3.2 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

- 3.3 In practice, this means that any conditions on a licence which apply to live and recorded music in these circumstances will be 'suspended' because the activities themselves are not considered licensable.

- 3.4 With regards to this application, and without prejudice to the decision of the Sub-Committee, it would appear that although live and recorded music have been applied for Monday – Sunday, it would not actually be considered 'licensable'. The one exception to this is the de-regulation for New Year's Eve, which would permit live and recorded music to take place beyond 23:00 hours.

- 3.5 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 because premises have an overarching duty to promote the four licensing objectives.

### **4.0 LICENSING OBJECTIVES**

- 4.1 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.**

4.2 The applicant has provided information and proposals on this, and in summary, the steps they intend to take are as follows:

- The adoption and operation of a 'Challenge 25' Policy
- The provision of training for relevant staff working at the premises
- The keeping of an incident log at the premises
- The placement of notices at exits, requesting that patrons leave the vicinity quickly and quietly

4.3 Full details of these proposals can be seen within section M of the application (attached as **Annex 1**).

## **5.0 RESPONSIBLE AUTHORITIES**

5.1 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.

5.2 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

5.3 The Police have discussed the application with Mr William Porter and as a consequence, the following additional conditions have been agreed:

- a) The premises shall install operate and maintain a comprehensive digital colour CCTV system to the satisfaction of the Police and Local Authority.
- b) Steps shall be taken to ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff to ensure that there is no public nuisance or obstruction of the public highway.
- c) The following requirements in relation to online sales of alcohol:

## Ordering

- Alcohol can only be ordered for delivery to a residential or business address and not to a public place.
- Alcohol can only be ordered for delivery to the person placing the order.
- Full address details, including postcode, must be given when placing an online order for alcohol.
- At the time an online order for alcohol is placed a declaration will be required from the person placing the order that the person is over 18 years of age.
- Customers will be reminded that it is a criminal offence for a person under 18 to purchase or attempt to purchase alcohol and that it is also an offence to purchase alcohol on behalf of a person under 18.
- All licence conditions pertaining to the online sale of alcohol must be part of the 'Terms and Conditions' which must be displayed on the website or any other promotional material and expressly brought to the attention of the buyer at the time of ordering in particular the right and obligation of the driver to refuse delivery in specified circumstances

## Delivery

- Drivers will not deliver alcohol to any person anywhere other than at the residential address given when the order was placed.
- Alcohol will only be delivered to the person who placed the order and whose name appears on the credit/debit card.
- Alcohol delivery will be refused if the driver considers the person receiving the delivery to be under the influence of alcohol or drugs.
- If a delivery driver considers the recipient of alcohol to appear under 25, recognised photographic identification will be requested and must be provided evidencing the recipient to be at least 18 years of age before any alcohol is handed over.
- All alcohol delivery drivers will be 18 years or over.

5.4 Reference the requirement for CCTV, the Licensing Team have confirmed with the Police that the following CCTV requirements would be acceptable (in ensuring the CCTV system was 'satisfactory'):

- i. Cover all public areas of the licensed premises, including entry and exit points. This also includes any outside areas under the control of the premises licence holder.

- ii. Record clear images permitting the identification of individuals and in particular enable facial recognition images (a clear head and shoulder image) of every person entering and leaving in any light condition.
  - iii. Continually record whilst the premises are open for licensable activities and during all times when customers remain on the premises.
  - iv. Have a constant and accurate time and date generation.
  - v. Store recordings for a minimum period of 14 days with date and time.
  - vi. Viewable copies of recordings will be provided on request to the police and local authority officers as soon as is reasonably practicable and in accordance with the Data Protection Act 1998 (or any replacement legislation)
  - vii. The CCTV system will be capable of downloading images to a recognisable viewable format.
  - viii. The CCTV system will be fitted with security functions to ensure the integrity of the system and to prevent the tampering with and deletion of images (i.e. password protection).
- 5.5 It should be noted that the hearing should focus on the issues that have led to specific representations and remain 'unresolved'. In this case, the Police have agreed conditions during the relevant 28 day period and for that reason, the Sub-Committee should be mindful of this when making its decision. So they are aware, Mr Paul Butler (Alcohol Licensing Officer, Devon and Cornwall Constabulary) has been the Officer dealing with this matter and it is likely that he will attend the hearing.
- 5.6 With regards to the agreement of conditions relating to the sale of alcohol online, this business activity was not noted on the application form but it is the view of the Licensing Officer that this does not invalidate the application. Sales of alcohol online are covered by the supply of alcohol for consumption OFF the premises, and this was applied for in the application. In this case, it was subsequently picked up by the Police during discussions with the applicant and that is why conditions have been agreed.

## **6.0 OTHER PERSONS**

- 6.1 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).

- 6.2 In this case, the Licensing Authority received THREE representations concerning the application. These are in opposition to the application (or 'negative').
- 6.3 The Sub-Committee should note that although THREE representations were received, not all elements of these representations are considered relevant (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.
- 6.4 In this particular case, the representations are not attached to this report. In accordance with the *Licensing Act 2003 (Hearings) Regulations 2005*, they have however been sent to the applicant and also the Sub-Committee. It should be noted that further information (and justification) about what is and what is not considered relevant is provided in section 7 in this report.

Name of party	Issue(s) raised considered relevant	Issue(s) raised not considered relevant
Mrs Caley Briddick and Mr John Briddick	Alleged illegal trading (i.e. selling alcohol without the required authorisation)  Alleged conduct of applicant and impact on management of premises	Issues concerning the current lease and ongoing litigation  Request for the application to be removed from MDDC website and statement that no other application(s) should be considered
Mr Alan Harbud	Alleged illegal trading (i.e. selling alcohol without the required authorisation)  Alleged conduct of applicant at the premises	Issues concerning the current lease and ongoing litigation
Mr Ben Ballamy	Alleged illegal trading (i.e. selling alcohol without the required authorisation)  Alleged conduct of applicant and impact on management of premises	Issues concerning the current lease
<b>Table 1.</b> Brief summary of representations and relevance to licensing		

- 6.5 Within their representation, Mr and Mrs Briddick have provided details of issues concerning themselves and Mr Porter (the applicant). This information has been provided in support of their representation and they have invited the Licensing Officer to investigate further. So the Sub-Committee are aware, the Licensing Officer has done this and discussed the matter with the Police. The Police have been able to assist the Sub-Committee in this regard by providing further information about the issues highlighted and this will be circulated specifically to the Sub-Committee prior to the hearing.

**IMPORTANT NOTE:** It may become necessary to exclude the public (or any other party) from the hearing (or part of the hearing). This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972.

- 6.6 In addition to this, Mr and Mrs Briddick have also submitted screenshots of what appear to be posts from members of the public on social media (or websites online) and they believe these demonstrate that the applicant has been selling alcohol without the required authorisation. So the Sub-Committee are aware, these screenshots are not attached because they contain personal information that is not considered relevant to this hearing (i.e. they are posts from members of the public). However, a brief summary of the relevant comments is provided below:

- Porters Bar and Grill state they have a fully stocked bar and cocktails (posted on 8 July 2020)
- Person states: *'Came for cocktails'*. Posted on 18 July 2020 but does not appear to give date of visit.
- Porters Bar and Grill state they had (or have) types of beer / cider available (posted on 20 and 21 July 2020)
- Person states: *'All washed down with beautiful cocktails'*. Posted 25 July 2020 and references 'last night' (i.e. 24 July 2020).
- Person states: *'I also ordered a mojito...'* Posted on 26 July 2020 but does not appear to give date of visit.
- Person states: *'Thanks for a great meal last night and for fitting us in last minute! Homemade cider was great and food was awesome'*. Posted 31 July 2020 and references 'last night' (i.e. 30 July 2020).
- Person states: *'my drink was a beer'*. Posted '2 months ago' and the post states that the booking was 31 July 2020.
- Person states: *'really tasty meal and cocktails for my birthday. Billy the owner went out of his way to make it a great safe atmosphere for everyone'*. Posted 5 August 2020 but does not appear to give date of booking



- Person states: *'The only red wine available was Merlot...'* Posted 'a month ago' and does not appear to give date of visit.
- 6.7 Following this allegation a member of the Licensing Team did consider the information available and ultimately, this resulted in no further action being taken at the time. So the Sub-Committee are aware, a letter was sent to Mr Porter, dated 10 September 2020, and this is attached as **Annex 3**.
- 6.8 In making this decision, the relevant Licensing Officer considered:
- Co-operation from Mr Porter and actions to rectify issues
  - The quality of evidence available – for example, although posts mention alcohol this does not necessarily mean it was sold and consumption of alcohol in itself is not licensable. This means that a premises licence or a Temporary Event Notice is not required if customers bring their own alcohol, or if alcohol is genuinely given away.
  - Some of the posts do not mention the relevant dates (and therefore could have been referring to a time when a Temporary Event Notice was in effect)
  - The Councils enforcement Policy and how similar situations have been dealt with previously.
  - The letter includes reference to the relevant legislation (and possible offence(s)) and this would mean that future issues would likely result in a different form of action (i.e. escalation).
- 6.9 The Licensing Officer can confirm that the premises had submitted some Temporary Event Notices during July and August 2020. From reviewing the dates of these and the screenshots submitted (which contain references to dates of visit), it seems to be that a TEN was in place for ONE relevant date (24 July 2020), but not another TWO (30 July and 31 July 2020). This point needs to be assessed in light of the considerations mentioned in Paragraph 6.8 of this report.
- 7.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED**
- 7.1 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.
- 7.2 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](mailto:licensing@middevon.gov.uk). The Sub-Committee can then consider the issue(s) that have been raised at the hearing.

- 7.3 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.
- 7.4 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.
- 7.5 In some paragraphs, S182 Guidance and Mid Devon District Council's Licensing Act Policy is referenced and further information about these documents can be found in sections 8 and 9 of this report.

#### **Overview of issues considered relevant**

- 7.6 **Issue 1:** Alleged illegal trading (i.e. selling alcohol without the required authorisation)

**Officer comment:** This relates to the applicant selling alcohol without the required licence or authorisation. As highlighted above (see Paragraph 6.7 of this report) a Licensing Officer has looked at and dealt with this issue. This ultimately resulted in no further action being taken at the time. The subsequent letter sent to Mr Porter, dated 10 September 2020, is attached as **Annex 3**.

With regards to considering this issue as relevant (or conceivably relevant) It should be noted that the Council's Licensing Act Policy states:

*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).*

The Officer appreciates that this references 'other' statutory requirements and therefore extends beyond the Licensing Act 2003, but believes that the point still applies. Without prejudice to this particular application, if an applicant has previously failed to comply with the relevant legislation then the Sub-Committee considering the issue would need to evaluate the likelihood of non-compliance occurring in the future.

- 7.7 **Issue 2:** Alleged conduct of applicant (and impact on management of premises)

This refers to alleged conduct of the applicant with the implication being that this alleged behaviour indicates the way in which the premises may operate should a licence be granted.

It should be noted that although this is considered conceivably relevant, the Licensing Officer is not discussing the matter in detail within this report. However, all relevant information will be sent to the Sub-Committee for consideration. It is for the Licensing Sub-Committee to consider the specific information provided in this case and its merits, the likelihood of issues occurring and the possible impact on the four licensing objectives.

### **Overview of issues NOT considered relevant**

- 7.8 It is the view of the Licensing Officer that some of the comments made in the representations received extend beyond what is considered relevant under the Licensing Act. Instead, they relate to issues that have occurred between the applicant and those (or some of those) that have objected.
- 7.9 The Licensing Officer believes it is important to highlight the issues that are not considered relevant under the Licensing Act 2003 and what follows is a brief explanation of these points.
- 7.10 **Issue 3 and 4:** Issues concerning the current lease and ongoing litigation, demand for the application to be removed from MDDC website and statement that no other application(s) should be considered for the premises.

**Officer comment:** The Council must ensure that it administers the statutory functions it is responsible for under the Licensing Act 2003. Although a Premises Licence is already in effect for this particular premises, it must be noted that Section 2 (3) of the Licensing Act 2003 permits two (or more) authorisations to be in effect at the same premises. In practice, this means that a premises can have multiple licences.

In addition to this, an applicant does not need to show the Licensing Authority that they have a legal interest in the premises. The Licensing Act requires that the applicant either carries on, or proposes to carry on, a business which involves the use of the premises for licensable activities. For this reason, the issue of current litigation and who has a right to occupy the premises is not considered relevant in this particular case.

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

Relevant	
Issue 1	Alleged illegal trading (i.e. selling alcohol without the required authorisation)
Issue 2	Alleged conduct of applicant and impact on management of premises

Not relevant	
Issue 3	Issues concerning the current lease and ongoing litigation
Issue 4	Request for the application to be removed from MDDC website and statement that no other application(s) should be considered

### **Relevant, vexatious and frivolous representations**

- 7.12 Given the situation with this particular premises (i.e. the current litigation and apparent conflict between the applicant and at least one objector), the Licensing Officer carefully considered the following sections of S182 guidance:
- 7.13 *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)*
- 7.14 *It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise*

*because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate. (Paragraph 9.5)*

- 7.15 *Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate. (Paragraph 9.6)*
- 7.16 *Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review. (Paragraph 9.7)*
- 7.17 *Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub- committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves. (Paragraph 9.8)*
- 7.18 *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)*
- 7.19 The Licensing Officer has considered the contents of the representations and has provided a comment on what is, and what is not, considered relevant. In addition to this, the Licensing Officer also gave consideration to the broader issue of whether or not a representation (or representations) are vexatious. On reflection, the Officer felt that for this particular application, it would have been a borderline case and therefore decided to refer the matter to a Regulatory Sub-Committee. However, it is right that the Sub-Committee are aware of the range of issues that have transpired in this particular case and consider for themselves the merits of representations and decide how much weight to attach to them.

## **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 *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)*
- 8.16 *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)*
- 8.17 *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)*
- 8.18 *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)*
- 8.19 *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)*



- 8.20 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/>

- 8.21 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 *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)*
- 9.4 *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)*

## **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 4**. 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 5**. 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](mailto: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](mailto: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](mailto:tkeating@middevon.gov.uk) OR Simon Newcombe (Group Manager for Public Health and Regulatory Services) / 07967 679939 / [snewcombe@middevon.gov.uk](mailto:snewcombe@middevon.gov.uk)

#### **Circulation of the Report:**

Legal Services / Members of Licensing Sub-Committee / Applicant / Police / 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/>