

LICENSING SUB COMMITTEE
DATE OF HEARING: 20 JANUARY 2021

DETERMINATION OF A PREMISES LICENCE APPLICATION FOR FRANKIES BAR, 40 HIGH STREET, CULLOMPTON, DEVON, EX15 1AE

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

Responsible Officer: Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing

Reason for Report: An application has been received for a new premises licence for Frankies Bar, 40 High Street, Cullompton, Devon, EX15 1AE.

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 Frankies Bar, 40 High Street, Cullompton, Devon, EX15 1AE. The following description of the premises is provided in the application:

‘This is the old Conservative Club, and is to reopen as a bar / pub, selling alcohol for consumption on and off the premises, along with late night refreshment, and regulated entertainment’.

2.0 THE APPLICATION

2.1 The applicant for this new premises licence is Mr Mark Taylor. It should be noted that the application was completed and submitted on his behalf by Mr Stewart Gibson (of SG Licensing Ltd). In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Recorded music	Indoors	Monday – Sunday	23:00 – 01:30
Anything of a similar description to live music, recorded music and dance (Karaoke specifically noted)	Indoors	Monday - Sunday	23:00 – 01:30
Late night refreshment	Indoors	Monday – Sunday	23:00 – 01:30
Supply of alcohol	For consumption both ON and OFF the premises	Monday - Sunday	10:00 – 01:30
Hours premises open to the public	N/A	Monday - Sunday	10:00 – 02:00

2.2 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 So parties are aware, with regards to live and recorded music, 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 this particular case, this is why the application requests some entertainment activities from 23:00 (and not before).

3.4 Additionally, 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.

3.5 It should 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 identified in the application are as follows:

- Regular training of staff with regards to their responsibilities when selling alcohol
- The operation of CCTV at the premises
- An up to date DPS authorisation sheet, identifying which staff have been given the authority to sell alcohol
- An incident book to be kept
- An accident book to be kept
- A notice at the entrance / exit reminding customers to leave quietly
- The adoption and operation of a Challenge 25 Policy
- A refusals register to be kept

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
- Home Office

5.3 Both the Police and Environmental health have discussed the application with Mr Mark Taylor and as a consequence, have agreed some conditions (and slightly re-worded some others that were initially offered in the application). For clarity, the Licensing Officer has been through these and believes that the final agreed position is attached as **Annex 3**.

5.4 Conditions 1 – 10 of **Annex 3** were those either suggested by the applicant or agreed with the Police.

- 5.5 Conditions 11 and 12 of **Annex 3** were those agreed by the applicant with Environmental Health.
- 5.6 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 and Environmental Health 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.
- 5.7 So the Sub-Committee are aware, the Fire Service did provide an update on the application and have not made a representation. They confirmed that they have spoken to the applicant and would deal directly with them on any necessary fire precaution measures.

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 FIVE representations concerning the application. These are in opposition to the application (or 'negative').
- 6.3 The Sub-Committee should note that although FIVE 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 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 7 in this report.
- 6.5 It is the Licensing Officers view that some of the representations are lacking information. However, Paragraph 9.9 of S182 Guidance 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.'*
- 6.6 As a result, relevant parties will be expected to amplify and clarify their representation at the hearing. Further information on this is also provided in Section 7 of this report.

Table 1. Brief summary of representations and relevance to licensing		
Name of party	Issue(s) raised considered relevant	Issue(s) raised not considered relevant
Miss Charlotte Coonick (Annex 4)	<ul style="list-style-type: none"> • The sale of alcohol could lead to drunk and disorderly / anti-social behaviour • People smoking in the street • Music from the premises could lead to a nuisance in a residential area • Possible safeguarding issues 	<ul style="list-style-type: none"> • The safety of people that are not actually using the premises • People creating issues / committing criminal damage when beyond the direct control of the applicant • Planning permission
Mr Terry Lane (Annex 5)	<ul style="list-style-type: none"> • The late licence could lead to drunk people, smokers and drinkers on the street in a residential area 	N/A
Cullompton Town Council (Annex 6)	<ul style="list-style-type: none"> • Hours beyond 00:01 on Mon – Thu; 01:00 on Fri and Sat; and 23:00 on Sunday could cause disturbance 	N/A
Mr Simon Lewis (Annex 7)	<ul style="list-style-type: none"> • Late licence and music from the premises could lead to a nuisance in a residential area • Additional drinkers in the area may cause issues • Possible safety of customers when leaving the premises 	<ul style="list-style-type: none"> • The safety of people that are not actually using the premises • The mere fact that the applicant already has a premises in the town which means an additional premises is 'not warranted'
Mr Derrick Slack (Annex 8)	<ul style="list-style-type: none"> • Possible disorder with late licence and customers standing on high street (smoking and drinking) • Possible noise late at night 	

- 6.7 It should be noted that the representation from Mr Terry Lane (**Annex 5**) includes some other named individuals. The Licensing Officer has discussed this with Mr Lane and this will only be treated as ONE representation (similar to a petition). All other named individuals had the opportunity to submit a representation in their own right, but have not done so.
- 6.8 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.

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, as they are attached in their entirety.
- 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, or believes anything has been left out, 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.
- 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. Other legislation and processes may apply, such as health and safety and Planning.
- 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 is referenced and further information about this Guidance can be found in section 9 of this report.

Overview of issues considered relevant

- 7.6 **Issue 1:** The sale of alcohol up until the time(s) requested and the possibility of disorderly / anti-social behaviour
- 7.7 **Officer comment:** This is relevant and the Sub-Committee needs to consider the concerns raised in light of the licensing objectives, and balance them

against the conditions offered up by the applicant (and where relevant, agreed with Responsible Authorities).

7.8 S182 Guidance points out that '*Licensing authorities should look to the police as the main source of advice on crime and disorder*' (Paragraph 2.1). It is therefore important that all parties note that the Police have agreed conditions with the applicant (something which those that have made representations would not have been aware of before the circulation of this report). These conditions include the keeping of an incident log and the requirement to take steps to ensure that patrons drinking / smoking outside do so in an orderly manner.

7.9 **Issue 2:** Possible impact of people smoking outside the premises

7.10 **Officer comment:** S182 guidance (Paragraph 8.44) highlights that premises in close proximity to residential properties should consider the impact of matters such as smoking (in terms of a public nuisance) and in this case, and as previously highlighted, the applicant has agreed a condition with the Police which reads:

Steps shall be taken 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.

7.11 The following condition has also been agreed with Environmental Health:

Suitable receptacles will be provided for cigarette litter within the designated smoking area.

7.12 It would be helpful if, prior to the hearing, the applicant could consider how this will be implemented in practice and include in their submission any relevant information, including the location of where patrons are expected to smoke outside.

7.13 **Issue 3:** Music from the premises leading to a nuisance, particularly late at night

7.14 **Officer comment:** The potential for noise is relevant (in terms of public nuisance) but the Licensing Officer does wish to point out / clarify the following:

- The following condition has been agreed between the applicant and Environmental health:

All external doors and windows shall be kept shut at all times when the premises are open/during regulated entertainment. Doors may be opened for normal entrance and egress of people but must be shut immediately after.

- As highlighted in section 3 of this report, a range of licensable activities (including live and recorded music) are, generally speaking, not licensable

between 08:00 and 23:00. As a consequence, representations about these particular activities at this time would not be relevant.

- The application is for recorded music and anything of a similar description to live music, recorded music and the performance of dance. Within the application form, the applicant is asked for a description of the entertainment they wish to provide and 'karaoke' has been stated. In providing further details, the application states that it is to allow '*amateur singing after 23:00 hours, on the premises*'.

- 7.15 On this particular point, and in accordance with S182 Guidance (page 132, note 57) it should be noted that karaoke is '*generally classed as a performance of live music*'. In this case, live music has not been applied for and the Licensing Officer has given this matter consideration prior to the hearing.
- 7.16 Whether or not karaoke is classed as live music, recorded music or something 'similar' is not covered in the Licensing Act itself. As far as the Licensing Officer is aware, it is only S182 guidance that indicates that it is '*generally*' classed as live music.
- 7.17 As the application form specifically states that karaoke is intended, it is felt that the application should be treated as having applied for karaoke and in this sense, and without prejudice to the Sub-Committee's decision, the licence could be conditioned accordingly.
- 7.18 In making this decision, the Licensing Officer has considered the representations received and in doing so, it is noted that some of them have specifically mentioned objecting to 'live' music (implying they believed the application included live music). As a result, it is not felt that these parties have been disadvantaged.
- 7.19 However, it must be noted that this is only the view of the Licensing Officer, and the Sub-Committee, along with their legal representative, may come to a different conclusion. Similarly, if any Interested Party wishes to address this particular matter at the hearing, they will be allowed to do so.
- 7.20 **Issue 4:** Possible safeguarding / protection of children from harm issues
- 7.21 **Officer comment:** This is possibly relevant (in relation to the protection of children from harm) but the Licensing Officer is not entirely sure what the specific concerns are regarding this application. The hearing will allow those who have made such representations to expand on and clarify them.
- 7.22 The Licensing Officer must point out that matters should concern what is in the control of the licence holder and in the vicinity of the premises. Additionally, and specifically with regards to the protection of children from harm, Section 182 Guidance states:

Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out

the steps to be taken to protect children from harm when on the premises. (Paragraph 2.26).

- 7.23 As a consequence, the Licensing Officer believes that the safeguarding concerns raised, insofar as they are understood, do not apply to children being on the actual premises.
- 7.24 Additionally, Section K of the application asks the applicant to state what adult entertainment or services they may undertake at the premises which may give rise to concern in respect of children. This has been completed as 'N/A'.
- 7.25 **Issue 5:** Possible safety of customers when exiting the premises
- 7.26 **Officer comment:** This is relevant and S182 Guidance (Paragraph 2.10) states that *'Licence holders should make provision to ensure that premises users safely leave their premises'*.
- 7.27 However, a distinction must be made between the safety of people as they leave the premises and then the safety of those people once they have left the immediate vicinity of the premises. Once they have left the immediate vicinity, a licence holder (or applicant) cannot be expected to manage the behaviour of customers.

Overview of issues NOT considered relevant

- 7.28 **Issue 6:** The safety of people that are not actually using the premises
- 7.29 With regards to 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.
- 7.30 **Issue 7:** People creating issues / committing crimes (i.e. criminal damage) when beyond the direct control of the applicant
- 7.31 **Officer comment:** S182 Guidance (Paragraph 14.13) states that a Licensing Authorities Policy should make clear that *'licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned'*.
- 7.32 Accordingly, if a customer of the premises leaves and goes on to commit a crime, they are accountable in their own right for this and should be dealt with accordingly, under the relevant legislation.
- 7.33 **Issue 8:** Planning permission

- 7.34 **Officer comment:** Mid Devon District Council are the relevant Planning Authority and are therefore a Responsible Authority under the Licensing Act. It should be noted that the Planning department have not objected to this application. In addition, planning and licensing are separate regimes and therefore, in this particular case, it is not relevant for the Sub-Committee to consider planning issues.
- 7.35 **Issue 9:** The mere fact that the applicant already has a premises in the town which means an additional premises is not warranted
- 7.36 **Officer comment:** S182 Guidance (Paragraph 14.19) states that the need for licensing premises *‘concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions...’*
- 7.37 As a result, the mere fact that the applicant may already have a licensed premises does not in any way preclude him from applying for (or holding) another licence.
- 7.38 In summary, the Licensing Officer believes the following to be potentially relevant / not relevant for the Sub-Committee to consider:

Relevant	
Issue 1	The sale of alcohol up until the time(s) requested and the possibility of disorderly / anti-social behaviour
Issue 2	Possible impact of people smoking outside the premises
Issue 3	Music from the premises leading to a nuisance, particularly late at night
Issue 4	Possible safeguarding / protection of children from harm issues
Issue 5	Possible safety of customers when exiting the premises

Not relevant	
Issue 6	The safety of people that are not actually using the premises
Issue 7	People creating issues / committing crimes (i.e. criminal damage) when beyond the direct control of the applicant
Issue 8	Planning permission
Issue 9	The mere fact that the applicant already has a premises in the town which means an additional premises is 'not warranted'

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 *In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case. (Paragraph 6.19)*
- 8.18 *The Licensing Authority recognises that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when large numbers of people tend to leave licensed premises at the same time. Flexible licensing hours in relation to the sale of alcohol may therefore be considered as a potential means of reducing friction at late night food outlets, taxi ranks and other 'flashpoints' in areas where there have already been incidents of disorder and disturbance. (Paragraph 6.20)*
- 8.19 *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)*
- 8.20 *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)*
- 8.21 *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)*
- 8.22 *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)*
- 8.23 *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)*
- 8.24 *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/>

- 8.25 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
 - 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 9**. 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 10**. 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 will 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 (Corporate Manager for Public Health, Regulation and Housing) / 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/>