

**LICENSING SUB COMMITTEE**  
**DATE OF HEARING: 28 MARCH 2022**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR THE SIP  
SHED & POST OFFICE, CROSSWAY HOUSE, UPLOWMAN, DEVON, EX16 7DP**

**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 the Sip Shed & Post Office, Crossway House, Uplowman, Devon, EX16 7DP

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 to vary a premises licence for the Sip Shed & Post Office, Crossway House, Uplowman, Devon, EX16 7DP. The following description of the premises is provided from the previous application:

*‘Attractive detached period cottage, situated in centre of sought after Mid Devon village, currently home to the local post office. The applicants are keen to promote good quality local produce and provide fun and educational tasting experiences. They would also stock and promote low and no alcohol products.*

*The premises currently open for the sale of alcohol between the hours of 09:00 and 21:30 and close to the public at 22:00*

*Within these times the following applies.*

*The premises licence MDV PR0442 covers the current post office for off sales only Monday to Sunday 09:00 – 19:00. The post office is indicated on the plan in yellow.*

*The Sip Shed (in the current dining room) is used to host cocktail, gin, wine and other tasting events and demonstrations for a limited number of people. Alcohol is for sale for consumption on and off the premises Monday to Sunday 11:00 – 21:30 with a premises closing time of 22:00 – the area used for this activity is indicated in blue on the plan.*

*There is also a mail order element to the business. The area used for the packing and dispatch of alcohol operates from the dining room and is shown in blue on the plan. Parcels are dispatched via the post office or via other couriers.*

*The applicant has applied for removal of condition 12 that states “there shall be no consumption of beverages from the premises in an outside area which is under the control of the license holder and in the immediate vicinity of the premises. This includes both the front and rear garden areas of the property. Note this condition does not restrict the licence holder’s ability to use outside areas (including gardens) for their own personal use”.*

*The variation is to allow creation of a licensed café to the garden area to the front of the business due to popular demand and create a new Sip Shed tasting room.*

*There is no change to internal capacity.*

The applicant has applied to increase trading hours to the Post Office and Sip Shed in line with customer demand with the addition of on sales, as well as off sales, to the Post Office.

Removal of condition 12 is to allow creation of a licensed café to the front of the property and to allow for the creation of a new Sip Shed tasting room converted from the garage.

Demand is cited from a proven local target market which is heavily female 30-50 year olds.

## 2.0 THE APPLICATION

2.1 The applicant to vary this premises licence is Sip Shed Ltd.

2.2 In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Removal of condition 12	The of consumption of beverages in an outside area under the control of the licence holder  <i>(condition 12 currently applies)</i>	Monday - Sunday	09:00 – 23:30
Supply of alcohol Post Office area	For consumption both ON and OFF the premises  <i>(currently off sales only)</i>	Monday - Sunday	09:00 – 23:00
Supply of alcohol Sip Shed area	For consumption both ON and OFF the premises  <i>(condition 12 currently applies)</i>	Monday - Sunday	11:00 – 23:00
Hours premises open to the public		Monday - Sunday	09:00 – 23:30  <i>(current hours 09:00 – 21:30)</i>

2.3 The application form is attached as **Annex 1** and the plan submitted with the application is attached as **Annex 2** and a further map showing the proximity of neighbouring properties in show as **Annex 3**

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

3.1 So all parties are aware, 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>

### **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 is satisfied with the current conditions attached to the premises licence, other than condition 12, and has not provided any additional information and proposals on this other than to take advice from the responsible authorities. A copy of the existing licence and conditions is attached as **Annex 5**.

4.3 Full details of this submission can be seen within section L and 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 No representation have been received from the Responsible Authorities other than Devon & Somerset Fire & Rescue Service and a general requirement for the responsible person to carry out a fire risk assessment, record the significant findings and take appropriate action.

## **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 representations from FORTY THREE parties concerning the application, as summarised:

- NINE representations were in opposition to the application (or ‘negative’).
- THIRTY FOUR representations were in favour to the application (or ‘positive’)

6.3 However, it is the opinion of the Licensing Officer that various comments, or aspects of comments, cannot be considered as relevant representations under the Licensing Act. For clarity, and based on the individual merits of this case, a brief overview of these issues and subsequent reasons for non-relevance is provided in Section 7 of this report.

6.4 Given the requirement to issue this report 10 working-days before the hearing, it has not been possible to communicate directly with each individual person who has made a representation to discuss what they have specifically commented on. Instead, all Interested Parties (i.e. those that have made a relevant representation) have been sent a copy of this report, along with a Notice of Hearing and the hearing procedure.

## **7.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED**

### **Not relevant under the Licensing Act 2003**

7.1 As stated in Paragraph 4.1 of this report, representations must relate to the four licensing objectives and the licensable activities being proposed. Although THIRTY FOUR representations were in favour if the application, however all were considered not relevant to the four licensing objectives. In addition, it must be noted that ‘licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or

authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of the holistic approach to the management of the evening and night-time economy in town and city centres” (S182 Guidance, Paragraph 14.13). Individuals remain responsible and accountable in their own right for their actions.

### **Provision and legality of parking**

- 7.2 A number of representations mention the availability of parking in the surrounding area. The provision of parking in this area is not something that the applicant can control and the Licensing Officer does not believe that this can be considered by the Licensing Authority. Any person may park in the surrounding area and ultimately, they may do so regardless of whether or not the premises have a licence.
- 7.3 Additionally, the legality of parking has been raised and this is an issue where each individual road user is accountable for their actions. For example, if people park and cause an obstruction or a hazard, legislation exists to address these issues and it is not considered relevant for the Licensing Authority to consider. If residents have concerns about illegal parking they should report these to Devon County Council (see: <https://new.devon.gov.uk/roadsandtransport/parking/>).
- 7.4 The Devon & Somerset Fire & Rescue Service, as a responsible authority, have made no representations as regard to any difficulty with access for emergency vehicles.
- 7.5 Although issues around parking and traffic have not been considered as relevant under the Licensing Act, both issues can be considerations by Mid Devon as the Local Planning Authority (LPA). The LPA are, in themselves, a Responsible Authority and have not made a representation against this application or otherwise raised any concerns.

### **Safety of the general public**

- 7.6 Some representations concern the health and safety of the general public (i.e. not people using the licensed premises) and includes comments around additional traffic and parking. This is not relevant and cannot be taken into account by the Licensing Authority as defined by 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’. General road traffic concerns are not within the control of a licence holder and are not considered relevant.

### **No longer relevant to this application**

- 7.7 The application is to remove condition 12 to allow creation of a licensed café to the front of the property and to allow for the creation of a new Sip Shed tasting room converted from the garage. As a result, representations that relate to the rear of the premises being used is not valid (i.e. excessive noise

and light pollution) and will no longer be considered relevant as they do not relate to proposed licensable activities.

### **Relevant under the Licensing Act 2003**

- 7.8 The following matters relate to NINE representations in objection to the application which do relate to one of the four licensing objectives, either wholly or in-part.

#### **Anti-social behaviour**

- 7.9 A number of representations made reference to the potential for what can be termed as general anti-social behaviour (ASB) as a result of the increased drinking hours or customers wandering on the road between the Sip Shed and the licensed Redwoods Inn, located opposite and within 15 meters.
- 7.10 It must be remembered that the Police have not made a representation in connection with this application (as a Responsible Authority) and as such, cannot be considered an Interested Party. However, given the role Police have in dealing with ASB, it is right that they be made aware of the concerns raised, s182 Guidance (Paragraph 2.1) states that '*Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP)*'.
- 7.11 The Police have confirmed (at the time of writing) there have been no records of ASB relating to the Redwoods Inn.
- 7.12 As mentioned in Paragraph 7.1 of this report, it must be noted that 'licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned' (S182 Guidance, Paragraph 14.13).

#### **Fire safety**

- 7.13 One representation made reference to there being no consideration for fire safety associated with the premises.
- 7.14 As mentioned in Paragraph 5.3 of this report, the Devon & Somerset Fire & Rescue Service, being the Responsible Authority for Fire Safety, made no representation to this application other than a general requirement for the responsible person to carry out a fire risk assessment, record the significant findings and take appropriate action and as such cannot be considered an Interested Party.

## **Toilet facilities**

- 7.14 A number of representations made reference to a lack of toilet facilities for the increased number of customers and concern this could lead to customers relieving themselves elsewhere.
- 7.16 This authority has adopted standards under Section 20, Local Government (Miscellaneous Provisions) Act 1976 to require certain sanitary facilities to be provided and maintained for the use of the public in any “relevant place” where they are expected to assemble. This provision includes premises for “the sale of food or drink to members of the public for consumption at the place” and remains the primary legislation for the enforcement of toilet provision rather than licensing law.
- 7.17 In relation to customers relieving themselves elsewhere, as stated in Paragraph 7.1 of this report, it must be noted that ‘licensing law is not the primary mechanism for the general control of 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’.

## **Potential noise from people using the licensed premises (including when leaving) and potential light pollution and tobacco smell pollution**

- 7.18 These issues have been raised in a number of representations and relate to the prevention of public nuisance licensing objective. As this application is to vary an existing premises licence, it should be noted that there is no relevant complaint history that can be reviewed. However, what must be considered is the applied for activity (in this case the of consumption of beverages in an outside area and extended hours) and the likelihood of issues. This is because 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*’ (Paragraph 9.4 of S182 Guidance).
- 7.19 The following S182 guidance should also be noted:
- 7.20 *The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. (Paragraph 2.15)*
- 7.21 *Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept*



*closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time... (Paragraph 2.17)*

- 7.22 *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)*
- 7.23 *Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues. (Paragraph 2.20)*
- 7.24 *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)*

### **Protection of Children from Harm**

- 7.25 A number of representations made reference to “children use the outside area for a tuck shop when leaving school” and the potential for children to be exposed to inappropriate language and behaviour.
- 7.26 The following S182 Paragraph 2.22 guidance should be noted “*The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives.*”.

### **Ensuring safe departure of those using the premises**

- 7.27 A number of representations made reference collectively to customers leaving the premises on to an unlit and unrestricted road or with no pavements.

## **8.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED**

- 8.1 In order to assist the Licensing Sub-Committee, the general topics that have been raised in the representations received are summarised below along with a Licensing Officer comment. This section of the report does not seek to reproduce the representations in full, as they are attached in their entirety.
- 8.2 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](mailto:licensing@middevon.gov.uk). The Sub-Committee can then consider the issue(s) that have been raised at the hearing.
- 8.3 It must also be noted that just because something has not been considered as relevant (or potentially relevant), 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.
- 8.4 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.
- 8.5 In some paragraphs, S182 Guidance is referenced and further information about this Guidance can be found in section 9 of this report.

#### **Further consideration of specific issues considered relevant**

- 8.6 **Issue 1: Possible safety of customers when exiting the premises**
- 8.7 **Officer comment:** This is considered relevant and S182 Guidance (Paragraph 2.10) states that '*Licence holders should make provision to ensure that premises users safely leave their premises*'.
- 8.8 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.
- 8.9 **Issue 2: Impact on peaceful enjoyment of neighbouring property as a result of the use of the garden**
- 8.10 **Officer comment:** This is considered relevant as stated in Paragraph 7.17 – 7.27 of this report

- 8.11 It has been confirmed that the rear garden area will not be used for the consumption of alcohol that has been purchased at the premises. To this end, a relevant condition to include specific reference to the rear garden could be imposed. For example, and without prejudice, it could state:

*There shall be no consumption of beverages purchased from the premises in an outside rear garden area which is under the control of the licence holder and in the immediate vicinity of the premises. .*

- 8.12 If any party has any comments on this (or any suggestions for amendments) they can be raised and discussed at the hearing.

### 8.13 **Issue 3: Possible protection of children from harm issues**

- 8.14 **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 the relevant party to expand on and clarify this specific point and in such cases, it should be noted that 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'.*

- 8.15 This means the Sub-Committee are considering the representations of NINE parties as listed below and detailed in **Annex 4**.

1. Submitted by Mr and Mrs Baugh
2. Submitted by Mr and Mrs Burge
3. Submitted by Mr and Mrs Clark
4. Submitted by Mr Hayman
5. Submitted by Mr and Mrs Milner
6. Submitted by Ms Mary Moore, Chair Uplowman Parish Council
7. Submitted by Mr and Mrs Willis
8. Submitted by Mr Kingston
9. Submitted by Ms Simmons

## 9.0 **LICENSING POLICY**

- 9.1 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.

- 9.2 *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)*
- 9.3 *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)*
- 9.4 *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)*
- 9.5 *Any party to a hearing may expand on their representation but may not introduce new or different representations. (Paragraph 5.14)*
- 9.6 *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)*
- 9.7 *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)*
- 9.8 *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)*
- 9.9 *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)*
- 9.10 *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)*

- 9.11 *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)*
- 9.12 *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)*
- 9.13 *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)*
- 9.14 *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)*
- 9.15 *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)*
- 9.16 *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)*
- 9.17 *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)*
- 9.18 *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)*

9.19 *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)*

9.20 *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)*

9.21 *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)*

9.22 *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)*

9.23 *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)*

9.24 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/>

9.25 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>).

## **10.0 GOVERNMENT GUIDANCE**

10.1 Members are also obliged to have regard to the Guidance produced under S182 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>

10.2 *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)*

- 10.3 *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)*
- 10.4 *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)*

## **11.0 DETERMINATION AND OPTIONS OF THE SUB-COMMITTEE**

- 11.1 *Section 182 Guidance states that: 'As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits'. (Paragraph 9.37)*
- 11.2 *In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*
- *the steps that are appropriate to promote the licensing objectives;*
  - *the representations (including supporting information) presented by all the parties;*
  - *this Guidance;*
  - *its own statement of licensing policy. (Paragraph 9.38)*



- 11.3 *Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. (Paragraph 9.42)*
- 11.4 *The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (Paragraph 9.43)*
- 11.5 *Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters... (Paragraph 9.44)*

#### Options of the Sub-Committee

- 11.6 The Committee must take such steps as it considers appropriate for the promotion of the licensing objectives. This may include:
- Granting the licence as applied for
  - Granting the licence subject to appropriate modifications necessary for the promotion of the licensing objectives
  - Excluding from the scope of the licence any of the licensable activities to which the application relates
  - Rejecting the application
- 11.7 Reasons must be given for the decision and they must set out the matters taken into consideration and why such a decision was arrived at.
- 11.8 Members have five working days from the conclusion of the hearing to make a decision.

#### **12.0 APPEAL**

- 12.1 If any party (i.e. applicant or 'other person') is dissatisfied with the decision made then they have the right of appeal to the Magistrates' Court within 21 days of formal notification of the decision.

### **13.0 THE PROCESS FOR THIS HEARING**

- 13.1 The Council have an adopted procedure for hearings and this attached to this report as **Annex 6**. In so far as is possible and practicable, the Licensing Authority will work in accordance with this procedure.
- 13.2 As a result of the current Coronavirus (COVID-19) pandemic, one of the most significant changes for this hearing is that it will be conducted using the video-conferencing platform 'Zoom' (as opposed to being held in a meeting room at the Council offices).
- 13.3 A practical guide on using Zoom has been produced by Kings Chambers and this is attached as **Annex 7**. 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.
- 13.4 In theory, attendees can, with the consent of all parties, produce documentary information at the hearing. In practice, and because of how the hearing is now being held, this 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](mailto:licensing@middevon.gov.uk)) with their response to the Notice of Hearing (which must be submitted 5 working days before the hearing).
- 13.5 In addition, and to try and ensure the hearing runs as smoothly as possible, the following points should be noted and followed during the hearing:
- Parties should ensure that they are in a private, quiet space where they will not be disturbed. Other occupants of the household should be reminded not to interrupt the participant during the hearing. The door to the room in which the participant is based should be closed and, if possible, locked.
  - Other noise sources should be silenced including telephones, mobile phones, tablet devices, Amazon Echo & Google Home devices, door bells, dishwashers etc.
  - Participants should organise their workspace carefully in advance. Clear it of anything that is not related to the hearing.
  - Attendees should, if possible, ensure that they have a plain wall as a background.

- Ensure that you are well lit by natural or artificial light. Avoid sitting with your back to a window or other light source. This can result in only your silhouette appearing on screen.
- Parties should attend the hearing alone, unless they are sat together with another attendee. The room should be one that has a good Wi-Fi/internet connection and has good lighting.
- Participants should dress in a similar manner to the way they would dress if attending a traditional hearing.
- No food should be eaten during a remote hearing. A glass of water or coffee / tea should suffice for refreshment.
- Parties should remain seated during the hearing.
- Parties should check that their microphone, camera and sound settings are working. This should preferably be done as early as possible. This will allow any technical issues to be raised and dealt with without the need to delay the hearing. A computer or other device's in-built camera, microphone and speaker will usually suffice.
- Avoid setting your device to the highest volume, since this is likely to cause feedback when you are speaking.
- Participants should log in at least 15-20 minutes before the hearing starts to confirm that they are having no technical difficulties.
- In case of a technological problem concerning the internet or Wi-Fi connection, you should have a telephone on hand. You should ensure that the number for this phone is provided to the licensing team in your response to the Notice of Hearing.
- If there is a technical failure that cannot be fixed, then the hearing may have to be adjourned.
- Parties should mute their audio when they are not speaking. A failure to do so may disrupt the hearing.
- When it is your turn to speak, remember to unmute your microphone. Speak directly into the microphone.
- Parties should keep their video cameras on at all times if possible. They should be aware that many video-platforms will show your entered name and (if chosen) picture if the camera is turned off. Parties should check their name is correct and their picture is appropriate.
- When speaking, maintain eye contact with the camera. This will ensure you appear to be looking at your audience.

- Ensure that you are clearly visible by maintaining a reasonable distance from the camera, to show your head and upper body. Too close and your image may blur and fill the screen, too far and you will appear distant and detached from the hearing.
- Be mindful that the camera records a wider area than one sees on one's own screen.
- Remember that others are watching even if you cannot see them. In cases involving multiple participants, thumbnail video images may appear on screen, but these thumbnails often move off screen to allow participants to see the face of the person talking, or the document being shared. Observers may also be present. As such, often there are people present at the hearing who are not visible.
- Oral submissions should be structured, relevant to the issues, and not repetitive. Concentrate on the substance. Brevity and precision are key. Aim to present your case in a low-key, courteous and measured way.
- In a remote hearing, a brief delay typically occurs between the video image of the person speaking and their voice being heard by the court/tribunal and witness. This connection delay may lead participants to believe a person has finished speaking before they have, in fact, done so and is liable to result in participants inadvertently speaking over one another.
- Do not interrupt. Let a speaker finish before speaking. Be especially careful not to interrupt another speaker.
- After each party is finished speaking the video hearing should always revert back to the Chair to invite the next speaker. No one should speak without being invited to do so by the Chair.

**Contact for more Information:** Simon Newcombe (Corporate Manager for Public Health, Regulation and Housing) / 07967 679939 / [snewcombe@middevon.gov.uk](mailto: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/>