

LICENSING SUB COMMITTEE
DATE OF HEARING: 04 AUGUST 2022

DETERMINATION OF A PREMISES LICENCE APPLICATION FOR THE ELEPHANT ON THE GREEN, 14 ST LAWRENCE GREEN, CREDITON EX17 3LL

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 premises licence to be granted under the Licensing Act 2003 for the Elephant on the Green, 14 St Lawrence Green, Crediton EX17 3LL

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 grant a premises licence for the Elephant on the Green, 14 St Lawrence Green, Crediton EX17 3LL. The following description of the premises is summarised from the application:

‘The premises is a former retail convenience store, which has been renovated during 21/22 to provide around 90m² open-plan ground floor space with pedestrian access to entrances along an enclosed path off the street. The premises includes a small commercial kitchen, two toilets for customer and staff use, and a small enclosed courtyard for customer use at the rear. It is not intended to have a bar, but to be able to serve alcohol principally to accompany meals and at social functions.’

2.0 THE APPLICATION

2.1 The application has been received from Mr Paul Vincent.

2.2 In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Films	Indoors	Monday – Sunday	08:00 – 23:00
Recorded music	Indoors	Monday – Sunday	08:00 – 23:00
Supply of alcohol	For consumption ON the premises	Monday - Sunday	12:00 – 22:00
Hours premises open to the public	N/A	Monday - Sunday	08:00 – 23:00

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

3.0 LICENSING OBJECTIVES

3.1 All applicants are required to set out in their application the steps they intend to take to promote the four licensing objectives. These are:

- **The prevention of crime and disorder**
- **Public safety**
- **The prevention of public nuisance; and**
- **The protection of children from harm**

3.2 The applicant has offered the following conditions as part of the application (which can be seen in Section M of **Annex 1**):

Condition 1

All staff engaged in licensable activity at the premises will receive training and information in relation to the following:

- i. The Challenge 25 scheme in operation at the premises, including the forms of identification that are acceptable*
- ii. The hours and activities permitted by the premises licence issued under the Licensing Act 2003 and conditions attached to the licence*
- iii. Recognising the signs of drunkenness*
- iv. The operating procedures for refusing service to any person who is drunk, under-age or appears to be under-age, or appears to be making a proxy purchase*
- v. Action to be taken in the event of an emergency, including reporting an incident to the emergency services*

Training shall be recorded in documentary form and shall be regularly refreshed at no greater than 12 month intervals. Training records shall be made available for inspection and copying at reasonable times upon request of an authorised officer of a responsible authority.

Training records will be retained for at least 12 months.

Condition 2

There will be in place a written age verification policy in relation to the sale or supply of alcohol, which will specify a Challenge 25 proof of age requirement. This means that staff working at the premises must ask individuals who appear to be under 25 years of age, attempting to purchase alcohol, to produce identification. The only acceptable identification documents will be:

- *A photo driving licence*

- A passport
- An identification card carrying the PASS hologram

Unless such identification is produced the sale of alcohol must be refused.

This policy will include documented steps taken to prevent adults from purchasing alcohol for or on behalf of children under 18.

The premises shall display prominent signage indicating (at any point of sale/at the entrance to the premises) that a Challenge 25 scheme is in operation.

An alcohol sales refusal register shall be kept at the premises and be maintained to include details of all alcohol sales refused. The register will include:

- i. The date and time of refusal*
- ii. The reason for refusal*
- iii. Details of the person refusing the sale*
- iv. Description of the customer*
- v. Any other relevant observations*

The refusals register will be made available for inspection and copying on the request of an authorised officer of a responsible authority.

All entries must be made within 24 hours of the refusal.

- 3.3 In addition the Police Alcohol Licensing Officer (Exeter & Mid Devon) have proposed and agreed with the applicant additional conditions of licence which can be seen in **Annex 2**.

4.0 RESPONSIBLE AUTHORITIES

- 4.1 Responsible Authorities under the Licensing Act are notified of all new premises licence applications. The onus is on each Responsible Authority to determine when they have appropriate grounds to make a representation.

- 4.2 The Responsible Authorities are:

- Police
- Fire service
- Environmental Health (nuisance and health and safety)
- Planning Authority
- Licensing Authority
- Health and Safety Executive
- Weights and Measures
- the body responsible for Child Protection
- the local Director of Public Health

- Home Office

4.3 No representation have been received from the Responsible Authorities, save for the Police Alcohol Licensing Officer discussion with the applicant as detailed in paragraph 3.3 above.

5.0 OTHER PERSONS

5.1 The Licensing Act allows 'Other Persons' to make representations provided they are relevant and not considered frivolous or vexatious. To be relevant, a representation must relate to the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives. S182 Guidance states that '*... representations should relate to the impact of licensable activities carried on from premises on the objectives*' (Paragraph 9.4).

5.2 In this case, the Licensing Authority received representations from TWO parties concerning the application. They are from the following parties:

- Mr Simon Bond (attached as **Annex 4**)
- Ms Marie Ann Hogg (attached as **Annex 5**)

5.3 It should be noted that the two representations essentially cover the same issue. It is the opinion of the Licensing Officer writing this report that some of the comments within these representations cannot be considered as relevant under the Licensing Act. For clarity, and based on the individual merits of this case, a brief overview of these issues is provided in the next section of this report.

5.4 A map showing the location of the premises in relation to local residential properties (including those that have made representations) is attached as **Annex 3**.

6.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE TWO REPRESENTATIONS RECEIVED

6.1 As stated in Paragraph 3.1 of this report, representations must relate to the four licensing objectives and the licensable activities being proposed. The Licensing Officer has considered these aspects as outlined below.

The prevention of crime and disorder

6.2 One representation raised concern with "*no parking facilities (and) fear our driveway could be used and blocked*".

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

- 6.4 With regards to poor parking, this is an issue where each individual road user is accountable for their actions. For example, if people park on double yellow lines or cause an obstruction, legislation exists to address these issues and it is not considered relevant for the Sub-Committee to consider. If residents have concerns about illegal parking they should report these to Devon County Council (see here: <https://new.devon.gov.uk/roadsandtransport/parking/>).

Public nuisance

- 6.5 In relation to the comment “*if people want to drink alcohol why not visit the public house further down the road...*” S182 Guidance (Paragraph 14.19) states that the need for licensing premises ‘*concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions*’. As a result, the mere presence of other licensed premises down the road is not relevant.
- 6.6 In relation to the prevention of public nuisance licensing objective the two representations raised concern regarding the impact of noise on the residential area from the provision of entertainment and people using the premises. Areas for concern raised include the nature of the entertainment, and trading hours with regard to ‘sensitive evening periods’ and use of the outside courtyard.
- 6.7 Firstly it must be noted that ‘licensing law’ is not the primary mechanism for the general control of nuisance 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.
- 6.8 The following S182 guidance should also be noted:
- 6.9 *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)
- 6.10 *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)

- 6.11 *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)*
- 6.12 *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)*

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 along with a Licensing Officer comment.
- 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 (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.
- 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 10 of this report.

Overview of issues considered relevant

- 7.6 **Issue 1:** The potential for noise nuisance arising from the provision of entertainment and people using the premises.

- 7.7 **Officer comment:** The potential for noise nuisance from music is considered to be relevant and the potential for noise nuisance from people outside is considered to be relevant. The Licensing Officer has provided a general overview of the issues concerning this as stated in paragraphs 6.5 – 6.12. However, section 10 of this report must also be noted as live and recorded music is not always licensable.

- 7.8 This means the Sub-Committee are considering the representations of TWO parties detailed in paragraph 5.2. The plan within **Annex 3** also shows the location of these representation's in relation to the premises.

8.0 CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE NOT LICENSABLE

- 8.1 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>

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

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

- 8.3 In practice, this means that conditions should not be placed on an application which relate to live and recorded music in these specific circumstances. Additionally, any conditions on a licence which do apply to live and recorded music will be 'suspended' when the activities themselves are not considered licensable.

- 8.4 In the case of this particular application, and without prejudice to the decision of the Sub-Committee, conditions relating to music would therefore apply to

any bigger events (with more than 500 people) but would not apply for smaller events (assuming the other requirements mentioned in Paragraph 8.2 of this report are complied with).

- 8.5 It must be noted that issues or problems relating to activities which are not considered licensable can still be dealt with via other means. For example, if music is causing a nuisance, Environmental Health can still take action under the Environmental Protection Act 1990 and from a licensing perspective, the licence itself can be reviewed.

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 Prevention of public nuisance
- 9.25 *Public nuisance is not narrowly defined in the 2003 Licensing Act and retains its broad common law meaning. It may include issues around nuisance, noise, disturbance, light pollution, noxious smells, vermin and pest infestations and accumulations of rubbish and litter. (Paragraph 8.16)*

9.26 *The Licensing Authority recommends that applicants and licensees apply a higher standard of control to minimise the potential for any public nuisance that may arise from their operation of the premises where:*

- *They are located in a residential or noise sensitive area*
- *They have or are proposing extended open hours (Paragraph 8.17)*

9.27 *The Licensing Authority recognises that beyond the immediate vicinity of the premises the control that a licence holder can exert over its customers diminishes and individuals who engage in anti-social behaviour are accountable in their own right. The licensing regime is not a mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the licence holder. (Paragraph 8.18)*

9.28 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/>

9.29 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 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>

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 ANNEXES TO THIS REPORT

Annex 1	Copy of the Premises Licence application and plan
Annex 2	Proposed Additional Conditions of Licence
Annex 3	Map showing location of premises

Annex 4	Representation (1)
Annex 5	Representation (2)
Annex 6	Procedure for hearings

Contact for more Information: Jeremy Pritchard (Commercial Team Leader) email: jpritchard@middevon.gov.uk Tel: 01884 244614 or Simon Newcombe (Corporate Manager for Public Health, Regulation and Housing) email: 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/>