

LICENSING SUB COMMITTEE
DATE OF HEARING: 3 APRIL 2023

LICENSING UPDATE

Cabinet Member(s): Dennis Knowles, Cabinet Member for Community Wellbeing

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 to be granted under the Licensing Act 2023 for the Smeatharpe Stadium, Clayhidon, EX14 4SP.

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 any town or parish council in Mid Devon for where the premises are located.

1.0 THE PREMISES

- 1.1 An application has been submitted to grant a premises licence for Smeatharpe Stadium, Clayhidon, EX14 4SP. (The application and Map **Annex A & B**). The following description of the premises is provided from the application:

“SMEATHARPE STADIUM IS A BANGER AND STOCK CAR RACE TRACK. I WOULD LIKE TO LICENCE THE MAIN STADIUM WITHIN THE RED BOUNDRY MARKED ON THE MAP PROVIDED”

The location is a decommissioned Second World War airfield in a remote location within the Blackdown Hills, area of outstanding natural beauty. The nearest village of Smeatharpe is approximately 1 mile away. (see **Annex C**)

The area for which the applicant has applied to sell alcohol is within the stadium and is double fenced. One fence at the perimeter of the premises and a second fence around the stadium itself which the applicant has marked in red on their map.

There are two bars that the application applies to license within the stadium area. The two locations are marked on the applicant’s map.

2.0 **THE APPLICATION**

- 2.1 The application has been received from Mr Mark Pearce.
- 2.2 In summary the applicant has applied for a licence to supply alcohol between 11.00 am and 11.30 pm.
- 2.3 After discussions with the Police and the Licensing Authority the applicant has consented to restrict the application to 10.30pm rather than 11.30 pm and to have a condition placed on the licence that the bar will only operate while there is a motor racing event taking place at the stadium.
- 2.4 The Licensing Authority has received three relevant representations in relation to this application and they are contained at **Annex D**.
- 2.5 Entertainment activities taking place at Smeatharpe stadium such as the racing of vehicles are not regulated activities for the purposes of the Licensing Act 2003.
- 2.6 In 2022 the premises has been operating with the use of Temporary Event Notices (TENs). In that year 12 were applied for and granted.

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 identified a number of steps they intend to take to satisfy the licensing objectives in their operating schedule.*
- 3.3 *The statutory guidance states that it is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention and be appropriate and proportionate for the promotion of the licensing objectives.*
- 3.4 *The Licensing Authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.*
- 3.5 *Full details of the applicant's operating schedule can be seen within section M of the application, attached as Annex A.*

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 (Trading Standards)*
 - *the body responsible for Child Protection*
 - *Director of Public Health*
 - *Home Office*

- 4.3 *No representation have been received from the Responsible Authorities*

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 communication from TEN parties concerning the application.*
- 5.3 *Of these SEVEN were ruled out as not being a relevant representation for either: not directing their comments to one or more of the licensing objectives, or not providing an address or wishing to remain anonymous*

6.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED

- 6.1 *In the opinion of the Licensing Officer various comments, or aspects of comments, cannot be considered as relevant representations under the Licensing Act.*
- 6.2 *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. There has been some communication with each of the three interested parties to clarify points in relation to the application. All Interested Parties (i.e. those that have made a relevant representation) have also been sent a copy of this report, along with a Notice of Hearing and the hearing procedure.*

Not relevant under the Licensing Act 2003

- 6.3 *As stated in Paragraph 5.1 of this report, representations must relate to the four licensing objectives and the licensable activities being proposed.*
- 6.4 *The statutory guidance (S182 Guidance, Paragraph 14.13) states that 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’. Individuals remain responsible and accountable in their own right for their actions.*
- 6.5 *In this context where comments have been made regarding noise and light pollution arising from the motoring events taking place at the stadium they have been considered not relevant since the motoring events are not licensable and outside the control of the Licensing Act and the applicant.*

Area of Outstanding Natural Beauty and Planning Restrictions

- 6.6 *Many of the representations made reference to the planning restrictions and the fact that the premises is located in an area of outstanding natural beauty.*
- 6.7 *The Planning restrictions do not allow more than 17 motoring events per year. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.*

6.8 “Need” concerns the commercial demand for another licensed premises in a location 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.

6.9 Mid Devon Licensing Policy (Page 15 paragraph 3.20) states the following; The Licensing Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency.

6.10 There is no specific mention in the Mid Devon Licensing Policy that would impact on the application because the premises is located in an area of outstanding natural beauty, although paragraph 6.5 (page 37) states;

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.

6.11 And at paragraph 8.17 (page 49)

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*

Road safety and drink driving

6.12 There was a generic concern expressed that allowing a licence for a premises to sell alcohol in such a remote location would encourage drink driving and increase the problems of road safety.

6.13 S182 Guidance (Paragraph 2.10) states that ‘Licence holders should make provision to ensure that premises users safely leave their premises’.

6.14 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.

6.15 Should a premises be shown to be failing to take action or even encouraging drink driving by its patrons the Police or the Licensing Authority could take action against the Designated Premises Supervisor. The Police have actively engaged with this application and shared no concerns regarding potential drink driving issues.

6.16 It is also true that the Mid Devon Licensing Policy recognises that;

“The Licensing Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. The Licensing Authority will therefore continue to work in partnership with its neighbouring authorities, the police, the fire authority, the Council’s Environmental Health Department, the Community Safety Partnership, local businesses and local people towards the promotion of the objectives as outlined.”

Relevant representations

- 6.17 *Some of the details arising from the remaining three representations are unclear. Despite further exchanges with the Interested Parties Officers have not been able to clarify exactly what the objection in their representation relates to.*
- 6.18 *The Licensing Sub-Committee hearing may allow the relevant party to expand on and clarify the various specific points made.*
- 6.19 *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’*

7.0 LICENSING POLICY

- 7.1 *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.*
- 7.2 *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)*
- 7.3 *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)*
- 7.4 *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)*
- 7.5 *Any party to a hearing may expand on their representation but may not introduce new or different representations. (Paragraph 5.14)*

- 7.6 *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)*
- 7.7 *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)*
- 7.8 *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)*
- 7.9 *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)*
- 7.10 *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)*
- 7.11 *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)*
- 7.12 *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)*

- 7.13 *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)*
- 7.14 *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)*
- 7.15 *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)*
- 7.16 *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)*
- 7.17 *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)*
- 7.18 *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)*
- 7.19 *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)*

- 7.20 *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)*
- 7.21 *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)*
- 7.22 *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)*
- 7.23 *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)*
- 7.24 *Members must have regard to the Policy when making their decision and it can be viewed in full here: [Statement of Licensing Policy Licensing Act 2003 \(middevon.gov.uk\)](http://middevon.gov.uk)*
- 7.25 *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' ([Appendix C - Pool of Conditions \(middevon.gov.uk\)](http://middevon.gov.uk)) and a 'Code of Good Practice' ([Appendix D - Code of good practice \(middevon.gov.uk\)](http://middevon.gov.uk)).*

8.0 GOVERNMENT GUIDANCE

- 8.1 *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 December 2022 and some relevant sections are highlighted below. The Guidance can be viewed here: [Revised Guidance issued under section 182 of the Licensing Act 2003 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)*
- 8.2 *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)*
- 8.3 *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)*
- 8.4 *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)*

9.0 **DETERMINATION AND OPTIONS OF THE SUB-COMMITTEE**

- 9.1 *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)*
- 9.2 *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)*

9.3 *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)*

9.4 *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)*

9.5 *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

9.6 *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*

9.7 *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.*

9.8 *Members have five working days from the conclusion of the hearing to make a decision.*

10.0 **APPEAL**

10.1 *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.*

11.0 **THE PROCESS FOR THIS HEARING**

11.1 *The Council have an adopted procedure for hearings and this is attached to this report as **Annex E**. In so far as is possible and practicable, the Licensing Authority will work in accordance with this procedure.*

Contact for more Information: Alan Drake, Specialist Licensing Officer 01884 234618 adrake@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:

The Licensing Act 2003

The Licensing Act 2003 (Hearings) Regulations 2005

The Local Government Act 1972

Section 182 Guidance

Mid Devon District Council Statement of Licensing Policy