

LICENSING SUB COMMITTEE

DATE OF HEARING: FRIDAY 26 APRIL AT 1.30PM

DETERMINATION OF A PREMISES LICENCE VARIATION APPLICATION FOR GENERAL SIR REDVERS BULLER, 37 HIGH STREET, CREDITON, DEVON, EX17 3JP

Cabinet Member(s): David Wulff, Cabinet Member for Community & Leisure

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

Reason for Report: An application has been received to vary the premises licence for General Sir Redvers Buller, 37 High Street, Crediton, Devon, EX17 3JP.

Relevant representations have been received and the Licensing Authority (Mid Devon District Council) must hold a hearing to determine the application.

RECOMMENDATION: That this application be decided in accordance with the licensing objectives.

Financial Implications: The potential cost of defending an appeal in the courts.

Legal Implications: If there is an appeal against the decision the Council could find itself bearing the costs.

Risk Assessment: If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court.

Equality Impact Assessment: No equality issues identified for this report.

Relationship to Corporate Plan: Not applicable

Impact on climate change: Not applicable

Additional information relevant to this application: The process of applying for these licences is prescribed by regulations made under the Licensing Act 2003. The applicant must copy their applications to the "Responsible Authorities" consisting of the Police, Fire Service, Weights and Measures (Trading Standards), 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 An application has been submitted to vary the premises licence for General Sir Redvers Buller, 37 High Street, Crediton, Devon, EX17 3JP.
- 1.2 The General Sir Redvers Buller has held a premises licence since 2005, which was when the Licensing Act 2003 first had effect. A copy of the current Premises Licence is attached as **Annex 1** (Licence no. MDV PR0099).
- 1.3 From November 2005 to November 2023, this premises licence was held by 'JD Wetherspoon PLC'. In November 2023, the licence was transferred to 'Clarkan Trading Ltd'. They remain the current licence holder and have submitted the application to vary the licence which is now being considered.
- 1.4 The Licensing Authority is aware that the premises may have changed its name and requests that the Licence holder confirms if this is the case by emailing details to licensing@middevon.gov.uk.

Previous complaints and compliance issues

- 1.5 Since Clarkan Trading Ltd has held the licence, the Licensing Authority is unable to find any complaints about the premises on file, prior to the submission of the variation application on 4 March 2024. If any party has made complaints or experienced issues **prior** to the variation application being submitted on 4 March 2024, they should provide details of these to the Licensing Team with their response to the Notice of Hearing. This will allow, if necessary, time for copies of information to be made and circulated to all relevant parties (i.e. the applicant and members of the Sub-Committee).
- 1.6 The Sub-Committee should be aware that some of the parties that have submitted representations against the application have mentioned issues with the premises as a result of an event held on 29 March 2024.
- 1.7 This event was held under a Temporary Event Notice (TEN) which was submitted on 13 March 2024 to enable the sale of alcohol and the provision of regulated entertainment on 29 and 30 March 2024 from 17:00 to 00:00. The Premises User had stated on the TEN that it was to cover live music indoors for a total of 150 people.
- 1.8 So Interested Parties are aware, a TEN is a 'notice' and is submitted by a person to authorise licensable activities on a temporary basis. It is not an application and assuming the statutory provisions are complied with and no representations are made by the Police or Environmental Health, TENs cannot be refused by the Licensing Authority.

2.0 THE APPLICATION

2.1 The application seeks to vary the licence by adding some licensable activities and removing a particular licence condition. In order to assist all parties, **Table 1** summarises the existing activities / times permitted by the licence, along with new activities / times being applied for. This table does not include extensions permitted by the licence for specific days (i.e. New Year's Eve, St Patrick's Day and Good Friday).

| Licensable activity / opening hours | Day(s) | Current times | Times applied for |
|---------------------------------------|--------------------|----------------|-------------------|
| Plays (indoors) | Monday to Sunday | Not on licence | 10:00 – 00:30 |
| Live music (indoors) | Monday to Sunday | Not on licence | 10:00 – 00:30 |
| Live music (outdoors) | Monday to Sunday | Not on licence | 10:00 – 21:00 |
| Recorded music (indoors and outdoors) | Monday to Sunday | Not on licence | 07:00 – 00:30 |
| Performance of dance (indoors) | Monday to Sunday | Not on licence | 10:00 – 00:30 |
| Entertainment similar (indoors) | Monday to Sunday | Not on licence | 10:00 – 00:30 |
| Late night refreshment | Monday to Thursday | 23:00 – 00:30 | No change |
| | Friday | 23:00 – 01:00 | |
| | Saturday | 23:00 – 01:00 | |
| | Sunday | 23:00 – 00:30 | |
| Alcohol ON and OFF | Monday to Thursday | 09:00 – 00:30 | No change |
| | Friday | 09:00 – 01:00 | |
| | Saturday | 09:00 – 01:00 | |
| | Sunday | 09:00 – 00:30 | |
| Opening hours | Monday to Thursday | 07:00 – 01:30 | No change |
| | Friday | 07:00 – 02:00 | |
| | Saturday | 07:00 – 02:00 | |
| | Sunday | 07:00 – 01:30 | |

Table 1: Existing times permitted by licence compared to times being applied for.

- 2.2 The application includes a request to remove the following condition from the licence:

'The premises shall operate in accordance with the document 'J D Wetherspoon PLC Overview of Operations', which will only be changed or amended after consultation and with the agreement of the Licensing Authority'.

- 2.3 The application form is attached as **Annex 2**. A copy of the existing plan for the premises can be seen as **Annex 3**.
- 2.4 As this is a variation application, the Sub-Committee are only considering those issues for which a variation is sought. They are not to review and amend the existing entitlements of the licence.

3.0 CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE NOT LICENSABLE AND IMPACT ON CURRENT LICENCE / APPLICATION

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

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

- 3.2 So parties are aware, with regards to live and recorded music, a licence is not required for these activities if:

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

- 3.3 A licence is also not required to:

- put on unamplified live music at any place between the same hours; or
- put on amplified live music between 08.00 and 23.00, in a workplace that does not have a licence, provided that the audience does not exceed 500.

Indoor area of the premises

- 3.4 In this case, the inside area of the ground floor forms part of the 'licensed area' (as per the existing plan - **Annex 3**) and it is therefore likely that live and recorded music can take place here, in line with paragraph 3.2 above, without the need to vary the licence.

Outdoor area of the premises

- 3.5 Although the beer garden is included in the existing plan of the premises (**Annex 3**) it has not been included within the 'perimeter of licensed area', as highlighted on the plan with a red line. A note on the plan states:

'All public areas of the premises can be used for recorded music, late refreshment and for the supply and consumption of alcohol'.

- 3.6 This is somewhat confusing in the sense that recorded music was not actually permitted by the licence but the plan indicated all public areas of the premises could be used for it.

- 3.7 As it was not included within the specific red line demarking the licensed area, the Licensing Officer is of the view that the beer garden does not, under the existing plan, form part of the licensed area.

- 3.8 This is an important point because it means that although alcohol can be consumed in the beer garden, it cannot be sold there. As a result, it may not benefit from the exemptions for certain entertainments, as highlighted in paragraph 3.2 above.

- 3.9 However, if it is not part of the licensed area (and therefore not licensed) it could still potentially benefit from the workplace exemption which permits live music, not recorded music, in accordance with paragraph 3.3 above. This is based on the permissions of the existing licence – as noted in paragraph 3.12 below, this may change as a consequence of the current variation application.

- 3.10 The Revised Guidance issued under section 182 of the Licensing Act 2003 (S182 Guidance) has some particularly relevant information on this issue:

'Beer gardens are often included as part of a premises licence or club premises certificate. Live amplified music that takes place in a beer garden is exempt from licensing requirements, provided the beer garden is included in the licence or certificate applying to the relevant licensed premises, and the performance takes place between 08.00 and 23.00 on the same day before an audience of 500 people or fewer'. (Paragraph 16.42)

'Where a beer garden does not form part of the relevant licensed premises and so is not included in plans attached to a premises licence or club premises certificate, it is nevertheless very likely that it will be a workplace. Paragraph 12B of Schedule 1 to the 2003 Act says that a performance of live music in a workplace that does not have a licence (except to provide late night refreshment) is not regulated entertainment if it takes place between 08.00 and 23.00 on the same day in front of an audience of no more than 500 people. Note that the exemption in paragraph 12B does not apply to the playing of recorded music'. (Paragraph 16.43)

'However, a licensing authority may, where justified, impose a licence condition that relates to the performance of live music in an unlicensed beer garden being

served by any associated premises licence or club premises certificate. Provided such a condition is lawfully imposed, it takes effect in accordance with its terms'. (Paragraph 16.43)

3.11 Although the applicant has applied for live and recorded music outdoors as part of the variation application, they have not submitted an additional plan of the premises to show where this would be. In Part 3 of the application, the applicant states that live music would be in the beer garden so presumably, this is the outdoor area in which regulated entertainment would take place but the applicant is asked to confirm this in their response to the Notice of Hearing.

3.12 It is important to clarify this point because if the entertainment is proposed to take place in the beer garden, it is essentially extending the red line around this area for live and recorded music (but not the sale of alcohol). As a result, the workplace live music exemption would no longer appear to apply, as per Section 12B, Schedule 1 of the Licensing Act 2003. This is because the place where the performance would be provided (i.e. the beer garden) would then be 'licensed'* under the Licensing Act 2003.

*Note: The workplace exemption in Section 12B, Schedule 1 of the Licensing Act 2003 relies on the premises not being 'licensed', whereas the exemption highlighted in paragraph 3.2 of this report (and as per Section 12A (2) of Schedule 1) specifically relies on the premises licence authorising the sale of alcohol for consumption on the premises.

3.13 In summary, and in order to try and ensure it is clear for all parties going forward:

- As the premises is currently unable to sell alcohol in the beer garden, it does not benefit from the exemptions highlighted in paragraph 3.2 of this report.
- As the beer garden does not currently form part of the licensed area, it could possibly benefit from the workplace exemption highlighted in paragraph 3.3 of this report.
- If, depending on the outcome of this variation application, the beer garden forms part of the licensed area for entertainment purposes, the workplace exemption for live music would not apply. The beer garden would also still not benefit from the exemptions in paragraph 3.2 of this report.

3.14 The Licensing Authority appreciate that this is a significant consideration and invites any party that disagrees with the above view to provide further details as part of their response to the Notice of Hearing. This will hopefully give the Licensing Authority time to review this information prior to the hearing.

Regulated entertainment or incidental?

3.15 With regards to the entertainment being provided, it is important to make a distinction between music that is classed as 'regulated entertainment' under the

Licensing Act 2003 and music that is considered to be 'background' or 'incidental'.

3.16 The Section 182 Guidance states:

'The performance of live music or playing of recorded music is not regulated entertainment under the 2003 Act if it is 'incidental' to another activity "which is not itself a description of entertainment falling within paragraph 2" of Schedule 1 to the 2003 Act'. (Paragraph 16.57).

3.17 The explanatory notes of the Licensing Act 2003 state that:

A number of exemptions to regulated entertainment are included in the Act including:-...

b) music which is incidental to an activity which is not itself the provision of regulated entertainment, for example, music played in lifts or piano music played in the background in a restaurant.

3.18 This is relevant in this case because in Part 3 of the application form, the applicant has stated that they wish to 'add the provision of background music'. The applicant should therefore confirm if they require recorded music to be licensed, in the knowledge of the above information and the fact that background music is unlikely to be licensable.

Impact of licence conditions on non-licensable entertainment

3.19 Any existing licence conditions (or conditions added on a determination of an application for a premises licence) which relate to live music or recorded music remain in place, but are suspended between the hours of 08.00 and 23.00 where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

3.20 Essentially, if the live and recorded music is not considered licensable, any conditions on a licence which apply will be 'suspended'. However, the licence could be reviewed if there are issues and at this stage, conditions could be made to have effect or be placed on the licence. It is important to note that this power follows on from an application to review a premises licence and this is therefore not a relevant consideration for the current application.

Dealing with issues as a result of non-licensable entertainment

- 3.21 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, as stated above.

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 As stated above, the applicant requests to remove the condition relating to operating in accordance with a JD Wetherspoon document. This makes sense as it is no longer relevant.

- 4.3 The applicant has also offered conditions in order to promote the licensing objectives and these can be seen in section M of the application form (attached as **Annex 1**).

- 4.4 It is the Licensing Officers view that some of these conditions require rewording to ensure they are precise and enforceable. Additionally, the Sub-Committee may want to consider the impact and usefulness of some conditions in their current format.

- 4.5 For example, the applicant has said that to prevent public nuisance they will be '*keeping windows closed after 9pm*'. However, this may not address the potential issue caused by doors left open longer than required for normal entrance and egress.

- 4.6 Additionally, the applicant has said '*we will keep a decibel meter on site and perform regular volume checks*'.

- 4.7 Ideally, and depending on the intention of the applicant, such a condition might define what 'regular' means (i.e. give a specific time period) and could quantify what level is considered acceptable / unacceptable along with the resulting actions that would then follow. This may have not been the intention of the applicant but in light of the representations, it is right for the Sub-Committee to consider such issues and ask the applicant to explain how such a condition would work in practice.

- 4.8 As part of their response to the Notice of Hearing, the applicant is asked to reconsider the wording of the conditions they have offered and provide the Licensing Authority with details of any potential amendments. To be clear, the

applicant does not have to provide updated conditions, but it may be helpful for the Sub-Committee and Other Persons to better understand what conditions and actions are proposed and how they will be complied with.

- 4.9 It may be helpful for the applicant to refer to the Council's '*Pool of licensing conditions*' document, which is available here:

<https://www.middevon.gov.uk/business/licensing/new-statement-of-licensing-policy-licensing-act-2003/>.

5.0 RESPONSIBLE AUTHORITIES

- 5.1 Responsible Authorities under the Licensing Act 2003 are notified of all full premises licence variation 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 was received from any Responsible Authority concerning this application. As a result, they are not party to the hearing.

6.0 OTHER PERSONS

- 6.1 The Licensing Act 2003 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. The Section 182 Guidance states that '*... representations should relate to the impact of licensable activities carried on from premises on the objectives*' (Paragraph 9.4). For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.

- 6.2 In this case, the Licensing Authority received THIRTEEN representations concerning the application. These are in opposition to the application (or 'negative').

6.3 The Sub-Committee should note that although THIRTEEN representations were received, not all elements of these representations are considered relevant by the Licensing Officer. **Table 2** (below) provides details of who has submitted these representations, along with a very brief note of what is, and what is not, considered relevant within their submissions.

6.4 All of these representations are attached to this report in full (as identified in **Table 2**). It should be noted that further information (and justification) about what is and what is not considered relevant is provided in paragraph 7 of this report.

6.5 It is the Licensing Officers view that some of the representations are lacking information. However, paragraph 9.9 of the Section 182 Guidance states:

‘It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it’.

6.6 As a result, relevant parties will be expected to amplify and clarify their representations at the hearing. If someone feels that the brief summary below misses a specific point made within a representation then this can be stated in their response to the Notice of Hearing.

| No. | Name | Issue(s) raised considered relevant | Issue(s) raised not considered relevant |
|-----|------------------------------|---|---|
| 1. | Teresa Hodges (Annex 4) | <ul style="list-style-type: none"> Live and recorded music (inside and outside) could lead to noise nuisance in a residential area. A change in the licence / operation of the premises could lead to increased noise and anti-social behaviour from patrons. | |
| 2. | Ian Hodges (Annex 5) | <ul style="list-style-type: none"> This representation appears identical to the one above. | |
| 3. | Emma Reid (Annex 6) | <ul style="list-style-type: none"> Live music (inside and outside) could lead to noise nuisance. | <ul style="list-style-type: none"> The potential impact on the value of the property |
| 4. | Holly Fairchild (Annex 7) | <ul style="list-style-type: none"> General comment about effect of application but must provide further information. | |

| | | | |
|-----|--|--|--|
| 5. | Guy Garret (Annex 8) | <ul style="list-style-type: none"> • Live music (inside and outside) could lead to noise nuisance. | <ul style="list-style-type: none"> • The representation states that '<i>increased alcohol consumption (longer hours)</i>' could lead to disorderly behaviour. However, the application does not seek to vary the existing hours for the sale of alcohol or opening. |
| 6. | Mary Abbott (Annex 9) | <ul style="list-style-type: none"> • Live and recorded music (inside and outside) could lead to noise nuisance in a residential area • A change in the licence / operation of the premises could lead to anti-social behaviour. | <ul style="list-style-type: none"> • Noise from traffic in the St Saviour's Way car park. |
| 7. | Dawn Crofts (Annex 10) | <ul style="list-style-type: none"> • Music outside could lead to noise nuisance. | |
| 8. | Nathan Crofts (Annex 11) | <ul style="list-style-type: none"> • Music outside could lead to noise nuisance. | |
| 9. | Esme Cooper (Annex 12) | <ul style="list-style-type: none"> • Noise from music – experienced issue on 29 March 2024. • Noise from patrons. | |
| 10. | Avelie Stuart and Daniel Davey (Annex 13) | <ul style="list-style-type: none"> • Noise from music – experienced issue on 29 March 2024. • Outside rear area / beer garden closing an hour before premises closing time is too late and could result in loud noise and bright lights. • Monitoring and use of emergency footpath which leads from the beer garden. | |

| | | | |
|--|-----------------------------|--|--|
| | | <ul style="list-style-type: none"> • Dispersal of patrons and possible public nuisance. | |
| 11. | Susan Welsh (Annex 14) | <ul style="list-style-type: none"> • Noise from music and people could lead to nuisance - experienced issue on 29 March 2024 and submitted video recording. | |
| 12. | Nigel Garside (Annex 15) | <ul style="list-style-type: none"> • Noise from music could lead to nuisance. | |
| 13. | Emma Rowe (Annex 16) | <ul style="list-style-type: none"> • Impact of late night noise from premises. • Concerns about behaviour of patrons. | |
| Table 2. Brief summary of representations and relevance to licensing. | | | |

6.7 A map showing the location of the premises in relation to those that have submitted representations will be sent to Members of the Sub-Committee prior to the hearing.

7.0 LICENSING OFFICER ASSESSMENT AND COMMENTS ON THE REPRESENTATIONS RECEIVED

7.1 In order to assist the Licensing Sub-Committee, the general topics that have been raised in the representations received are summarised below and information provided as to why they are considered as either being relevant or not relevant. This section of the report does not seek to reproduce the representations in full, as they are attached separately.

7.2 It must be noted that what follows is the view of the Licensing Officer based on the information available at the time of completing this report. If any Interested Party has comments or observations to make about what follows they are asked to contact the Licensing Team on receipt of this report and provide any information in support of their view. This can be done by emailing licensing@middevon.gov.uk. The Sub-Committee can then consider the issue(s) that have been raised at the hearing.

7.3 It must also be noted that just because something has not been considered as relevant in the information that follows, this does not mean that the issue itself is not deserving of attention. It just means that it is not an issue that the Licensing Sub-Committee should consider with regards to their decision on this application.

- 7.4 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, the Section 182 Guidance is referenced and further information about this Guidance can be found in paragraph 9 of this report.

Overview of issues considered relevant

- 7.6 **Issue 1:** Music from the premises leading to a nuisance
- 7.7 **Officer comment:** The potential for noise from music is relevant (in terms of public nuisance) and this has been raised as an issue both indoors and outdoors. The Licensing Officer does wish to clarify the following points:
- With regards to live music, the application requests this from 10:00 – 00:30 indoors and from 10:00 – 21:00 outdoors (Monday to Sunday).
 - Any conditions (or potential conditions) which relate to live or recorded music are suspended between 08.00 and 23.00, if certain conditions are met.
- 7.8 With regards to public nuisance, the Section 182 Guidance states:

‘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. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues’. (Paragraph 2.23)

‘As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate’. (Paragraph 2.24)

'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 2.25)

7.9 Some of those that have made representations have noted that they experienced a noise nuisance on 29 March 2024. It would be helpful if the applicant can provide details of any actions taken at this event to try and ensure nearby residents were not adversely effected.

7.10 **Issue 2:** Behaviour of patrons / anti-social behaviour

7.11 **Officer comment:** This is relevant and the Sub-Committee needs to consider the concerns raised in light of the licensing objectives, and balance them against the conditions offered up / response of the applicant.

7.12 It should be noted that the Section 182 Guidance states:

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 2.25)

7.13 **Issue 3:** Dispersal of patrons and possible public nuisance

7.14 **Officer comment:** This is relevant and can be linked to the above point. The Sub-Committee may like to consider if the change in use of the premises (i.e. the addition of regulated entertainment) may result in a different atmosphere / dynamic that could potentially have an impact on these kinds of issues.

7.15 The Section 182 Guidance highlights that... *'premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective'. (Paragraph 8.44)*

7.16 **Issue 4:** Beer garden closing time(s) and loud noise / bright lights

7.17 **Officer comment:** This is relevant as the variation application seeks to use this area for licensable activities (i.e. live music until 21:00 and recorded music until 00:30). The Sub-Committee needs to consider the concerns raised in light of

the licensing objectives, and balance them against the conditions offered up / response of the applicant.

7.18 The existing licence does not appear to contain any restrictions on the use of the beer garden (i.e. specific closing times) and the Licensing Officer believes the Sub-Committee should think carefully about how to approach this matter. As stated in paragraph 2.4 of this report, the Sub-Committee should only consider those issues for which a variation is sought. They are not to review and amend the existing entitlements of the licence and in this instance, it is the applicant that has offered a condition to close the outside rear area / beer garden an hour before the premises closing time.

7.19 To be clear, the Licensing Officer is of the view that the Sub-Committee can restrict / condition the use of the outside area in relation to the activities applied for, if deemed necessary, but should not restrict access to this area in general, beyond what the applicant has offered, because the current licence permits this up until the closing times.

7.20 If there were subsequent issues with the use of the beer garden as a result of non-licensable activities, they could legitimately be addressed via other means, such as a review of the licence and conditions being added. The Section 182 Guidance confirms this:

'If appropriate for the promotion of the licensing objectives, and if there is a link to remaining licensable activities, conditions that relate to non-licensable activities can be added to or altered on that premises licence or club premises certificate at review following problems occurring at the premises. This has been a feature of licence conditions since the 2003 Act came into force...

It is also not uncommon for licence conditions relating to the sale of alcohol to restrict access to outside areas, such as unlicensed beer gardens, after a certain time'. (Paragraph 16.52)

7.21 The condition offered by the applicant could also be clarified in the sense that it is not clear if closing the external area ties in with the closing times of the licence OR the times they decide to close on any given day, which could be earlier than the licence permits.

7.22 **Issue 5:** Monitoring and use of emergency footpath

7.23 **Officer comment:** This is potentially relevant but it may depend on the extent to which the licence holder can exert control over this area. The Licensing Officer hopes to visit the premises prior to the hearing to better understand where this path is in relation to the beer garden. If it is an emergency exit / route then it may well need to be kept clear but there may be a number of parties responsible for this.

7.24 It must be remembered that conditions must be focused on matters which are within the control of individual licence holders.

Overview of issues NOT considered relevant

- 7.25 **Issue 6:** Impact on the value of a property
- 7.26 **Officer comment:** There was a comment that the value of a property may be effected by the premises in some way. As stated above, 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. The value of a property does not link to a licensing objective and is therefore not relevant.
- 7.27 **Issue 7:** Noise from traffic in the St Saviour's Way car park
- 7.28 **Office comment:** The licence holder has no control over the use of a public car park, which, regardless of the current application, can be used by anyone. Any conditions need to be focused on the matters which are within the control of individual licence holders and this means on the premises and within its vicinity. For this reason, the issue is not considered relevant.

Issue concerning the protection of children from harm licensing objective

- 7.29 Some of the representations mention the possible issue of children not on the premises hearing foul language and this engaging the protection of children from harm licensing objective. The Licensing Officer understands and appreciates the concern but would question whether or not this does engage the protection of children from harm objective, as opposed to the public nuisance objective.
- 7.30 With regards to the protection of children from harm, the Section 182 Guidance states:
- Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.* (Paragraph 2.26).
- 7.31 As a consequence, the Licensing Officer believes that the concerns raised, insofar as they are understood, do not apply to children being on the actual premises.
- 7.32 Additionally, Section K of the application asks the applicant to state what adult entertainment or services they may undertake at the premises which may give rise to concern in respect of children. This has been completed as ‘N/A’.
- 7.33 None of this negates the fact that this could still be a public nuisance issue and a licence holder should manage the premises in a way that promotes the licensing objectives. This includes supervising and managing the behaviour of those on the premises.
- 7.34 In summary, the Licensing Officer believes the following to be potentially relevant / not relevant for the Sub-Committee to consider:

| Relevant | |
|-----------------|--|
| Issue 1 | Music from the premises leading to a nuisance |
| Issue 2 | Behaviour of patrons / anti-social behaviour |
| Issue 3 | Dispersal of patrons and possible public nuisance |
| Issue 4 | Beer garden closing time(s) and loud noise / bright lights |
| Issue 5 | Monitoring and use of emergency footpath |

| Not relevant | |
|---------------------|---|
| Issue 6 | Impact on the value of a property |
| Issue 7 | Noise from traffic in the St Saviour's Way car park |

8.0 LICENSING POLICY

- 8.1 The Licensing Act 2003 requires the Council, as the Licensing Authority, to formally adopt a policy setting out how it will deal with its duties under the Act. That policy must be reviewed every five years and the current Policy came into effect on 7 January 2019. It must be considered in its entirety, but in order to help proceedings, the following information is highlighted in advance of the hearing.
- 8.2 *In carrying out its licensing function the Licensing Authority must promote the following four licensing objectives:*
- *The prevention of crime and disorder*
 - *Public Safety*
 - *The prevention of public nuisance*
 - *The protection of children from harm (Paragraph 2.2)*
- 8.3 *It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as a “cure all” for solving all problems within the community... (Paragraph 3.2)*
- 8.4 *Where no relevant representations are received, the application will be granted on the terms applied for. Where relevant representations are received, the application will be considered by a Licensing Sub Committee at a hearing... (Paragraph 5.13)*
- 8.5 *Any party to a hearing may expand on their representation but may not introduce new or different representations. (Paragraph 5.14)*

- 8.6 *When determining a licence application, the overriding principle adopted by this authority will be that each application will be determined on its merits. The authority will have regard to any guidance issued by the Home Office, this Statement of Licensing Policy and any measures it deems necessary to promote the licensing objectives. The authority may depart from the guidelines in this Policy if it has justifiable and compelling reasons to do so. The authority will give reasons for any such departure from policy. (Paragraph 6.3)*
- 8.7 *The authority will expect applicants to demonstrate in their applications active steps for the promotion of the licensing objectives. When determining an application, a key consideration for the authority will be the adequacy of measures proposed in the Operating Schedule to promote the licensing objectives having regard to the type of premises, the licensable activities to be provided, the nature of the location and the needs of the local community. (Paragraph 6.4)*
- 8.8 *The authority will also have regard to wider considerations affecting the residential population, businesses and the amenity of an area. These include alcohol-related violence and disorder, antisocial behaviour, littering and noise, particularly late at night and in the early morning. (Paragraph 6.5)*
- 8.9 *When determining an application, the authority will consider all relevant evidence, both oral and written, provided by parties to a hearing. Evidence which is irrelevant will be disregarded. The authority encourages applicants and persons making representations to attend hearings so that they can give evidence. Where an individual fails to attend the hearing, the authority will consider their application or representation but may attach less weight to it. (Paragraph 6.7)*
- 8.10 *It should be noted that, when determining an application, the authority is making a judgment about risk. A key purpose of the licensing function is not to respond to crime and disorder, nuisance or public harm once it has happened but to make an informed assessment of the risk of such things occurring if a licence is granted and to take such steps as it considers appropriate to prevent or minimise such risks. (Paragraph 6.8)*
- 8.11 *Licence conditions will be tailored to the individual application and only those considered appropriate to meet the licensing objectives will be imposed. Licence conditions will not be imposed where other regulatory regimes provide sufficient protection, for example Health and safety at work, fire safety legislation etc. (Paragraph 6.9)*
- 8.12 *The Licensing Authority will also take into account when making its decision that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour, especially once individuals have left licensed premises and are therefore beyond the direct control of licensees. However, when making a decision, the authority will focus on the direct impact of the activities taking place on the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. (Paragraph 6.10)*

- 8.13 *The 'need' or demand for a licensed premises of any kind or the commercial damage that competition from a new licensed premises would do to other licensed premises in an area will not be matters that the authority will consider when discharging its decision making function. (Paragraph 6.11)*
- 8.14 *The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When the authority's discretion is engaged consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or Other Persons on the basis of the licensing objectives. (Paragraph 6.15)*
- 8.15 *In general, applications for licensed premises located in residential areas wishing to open beyond 23.00, and those operating a beer garden or outside area beyond 21:00, will be expected to have a higher standard of control included within their operating schedule to address any potential public nuisance issue. (Paragraph 6.16)*
- 8.16 *Where representations are received, stricter conditions relating to noise control may be appropriate and necessary in sensitive locations such as residential areas. (Paragraph 6.17)*
- 8.17 *In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case. (Paragraph 6.19)*
- 8.18 *Conditions are crucial in setting the parameters within which premises can lawfully operate. Any contravention of a condition on a premises licence or club premises certificate is a criminal offence so it is essential that conditions are worded clearly, precisely and unambiguously. In addition, conditions must:*
- *be appropriate, reasonable and proportionate*
 - *be enforceable*
 - *not duplicate other statutory requirements*
 - *be relevant to the particular type, location and character of the premises concerned*
 - *not be standardised*
 - *should be justifiable and capable of being met*
 - *not replicate offences set out in the Act or in other legislation*
 - *be written in a prescriptive format. (Paragraph 6.22)*

- 8.19 *The Authority will pay particular attention to the effect (or potential effect) of licensable activities on those living, working or otherwise engaged in the area concerned and, where relevant representations are received, may attach conditions if it considers it appropriate for the promotion of the licensing objectives. (Paragraph 6.27)*
- 8.20 *Conditions attached by the Authority to Premises Licences and Club premises certificates will relate to matters falling within the control of individual licensees. It is recognised that the licensing function cannot be a mechanism for the control of disorderly behaviour by individuals once they are beyond the direct control of the licence holder. However, the Licensing Authority and Responsible Authorities may take action where it can be established that there is a clear linkage between disorderly behaviour and a specific premises. (Paragraph 6.28)*
- 8.21 *The Authority will not impose inappropriate or over-burdensome conditions on licences. The Authority may, however, if its discretion is engaged, impose conditions where existing legislation does not provide adequate controls and additional measures are considered to be appropriate for the promotion of the licensing objectives. (Paragraph 6.29)*
- 8.22 *When determining the appropriate set of conditions the Licensing Authority will focus primarily on the individual style of the premises and the licensable activities proposed. Consideration should also be given to the following:*
- The size, nature and style of operation*
 - Whether the premises is part of a multiple operator's chain and therefore more likely to have an operating schedule that is tried and tested*
 - The cumulative effect of conditions in terms of cost and practical implementation*
 - The likely cost of the condition(s) for the operator*
 - Whether a simpler or better way of dealing with a perceived problem could be found*
 - Whether there is an actual risk of undermining an objective, as opposed to a conceivable risk. In the latter case, there is no need for the condition*
 - Whether the condition will be enforceable, if it is not specific or could be considered subjective it may not be enforceable. (Paragraph 6.30)*
- 8.23 *Members must have regard to the Licensing Authority's Policy when making their decision and it can be viewed in full here:*

<https://www.middevon.gov.uk/business/licensing/new-statement-of-licensing-policy-licensing-act-2003/>

- 8.24 It should be noted that the Policy contains various Appendices, some of which may be of use to Parties attending the hearing. This includes a 'Pool of Conditions' (<https://www.middevon.gov.uk/media/346400/appendix-c-pool-of-conditions.pdf>) and a 'Code of Good Practice' (<https://www.middevon.gov.uk/media/346401/appendix-d-code-of-good-practice.pdf>).

9.0 GOVERNMENT GUIDANCE

- 9.1 Members are also obliged to have regard to the Guidance produced under Section 182 of the Licensing Act 2003. The most recent version of this was published in January 2024 and various sections have been highlighted throughout this report. The Guidance can be viewed here:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

10.0 DETERMINATION AND OPTIONS OF THE SUB-COMMITTEE

- 10.1 The Section 182 Guidance states that: *'As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.* (Paragraph 9.37)
- 10.2 *In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*
- *the steps that are appropriate to promote the licensing objectives;*
 - *the representations (including supporting information) presented by all the parties;*
 - *this Guidance;*
 - *its own statement of licensing policy.* (Paragraph 9.38)
- 10.3 *Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.* (Paragraph 9.42)

- 10.4 *The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (Paragraph 9.43)*
- 10.5 *Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any 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. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business... (Paragraph 9.44)*

Options of the Sub-Committee

- 10.6 By virtue of Section 35 (3) and (4) of the Licensing Act 2003, the Sub-Committee must, having regard to any relevant representations, take such steps it considers appropriate for the promotion of the licensing objectives.

These steps are:

- To grant the variation, as applied for;
- To modify the conditions of the licence (conditions are modified if they are altered or omitted or any new condition is added);
- To reject the whole or part of the application

- 10.7 Reasons must be given for the decision and they must set out the matters taken into consideration and why such a decision was arrived at.

- 10.8 Members have five working days from the conclusion of the hearing to make a decision.

11.0 APPEAL

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

12.0 THE PROCESS FOR THIS HEARING

- 12.1 The Council have an adopted procedure for hearings and this attached to this report as **Annexe 17**. In so far as is possible and practicable, the Licensing Authority will work in accordance with this procedure.

13.0 ANNEXES TO THIS REPORT

| | |
|----------|----------------------------------|
| Annex 1 | Copy of current premises licence |
| Annex 2 | Copy of application form |
| Annex 3 | Plan of premises |
| Annex 4 | Representation 1 |
| Annex 5 | Representation 2 |
| Annex 6 | Representation 3 |
| Annex 7 | Representation 4 |
| Annex 8 | Representation 5 |
| Annex 9 | Representation 6 |
| Annex 10 | Representation 7 |
| Annex 11 | Representation 8 |
| Annex 12 | Representation 9 |
| Annex 13 | Representation 10 |
| Annex 14 | Representation 11 |
| Annex 15 | Representation 12 |
| Annex 16 | Representation 13 |
| Annex 17 | Procedure for hearings |

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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/>