

**LICENSING SUB COMMITTEE**  
**DATE OF HEARING: 17 MAY 2024**

**DETERMINATION OF A NEW PREMISES LICENCE APPLICATION FOR WEMBORTHY VILLAGE HALL, THE VILLAGE, WEMBORTHY, CHULMLEIGH, DEVON, EX18 7QR**

**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 for a new premises licence for Wembworthy Village Hall, The Village, Wembworthy, Chulmleigh, Devon, EX18 7QR.

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 2003, 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, or, if there is none, in a local newsletter, circular or similar document circulating in the area in which the premises are situated.

## **1.0 THE PREMISES**

1.1 An application has been submitted for a new premises licence for Wembworthy Village Hall, The Village, Wembworthy, Chulmleigh, Devon, EX18 7QR.

1.2 The applicant has given the following description of the premises in the application form:

*‘Typical layout for a village hall, situated just on the outskirts of Wembworthy Village, on the road leading into the village, set back about 30 metres off the road. A large public space, with ladies and gents toilets, and kitchen area off the hall. 3 fully functional fire exits. Outside car park suitable for 12 cars. Grassed area immediately outside with picnic benches’.*

## **2.0 PREMISES LICENSING HISTORY**

2.1 This is an application for a new premises licence and there is no premises licence history as such. However, Temporary Event Notices\* (TENs) have previously been used to authorise licensable activities at this site.

\* A TEN is a ‘notice’ which 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.

2.2 So the Sub-Committee are aware, there were 10 TENs in 2023 and there have been 2 so far in 2024.

2.3 Mr Colm Fay was the ‘Premises User’ for 5 of the TENs in 2023 and has also submitted the 2 in 2024.

2.4 The Licensing Team cannot find details of any complaints made about the premises on its system(s). If an Interested Party has previously made a complaint about the premises they should provide us with details of this prior to the hearing so it can, if necessary, be sent to the Sub-Committee.

## **3.0 THE APPLICATION**

3.1 The application for a new premises licence was submitted by Mr Fay on behalf of the Village Hall Committee.

3.2 Mr Fay is a Personal Licence holder with this Council and is also the proposed Designated Premises Supervisor for the application.

3.3 In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Live music	Indoors	Friday and Saturday	12:00 – 23:30
Recorded music	Indoors	Friday and Saturday	12:00 – 23:30
Supply of alcohol	For consumption both ON and OFF the premises	Friday, Saturday and Sunday	12:00 – 23:30
Hours premises open to the public	N/A	Friday, Saturday and Sunday	12:00 – 23:59

3.4 The application form is attached as **Annex 1** and the plan submitted with the application is attached as **Annex 2**.

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

4.1 Many activities that previously required a licence are no longer themselves licensable under the Licensing Act 2003 (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 Relevant to this application is the provision of live and 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

- 4.3 In practice, this means that any conditions on a licence which apply to live and recorded music in these circumstances will be 'suspended' because the activities themselves are not considered licensable.
- 4.4 With regards to this application, and without prejudice to the decision of the Sub-Committee, it would appear that although live and recorded music have been applied for Friday and Saturday between 12:00 – 23:30, it would potentially not be licensable until after 23:00.
- 4.5 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 because premises have an overarching duty to promote the four licensing objectives.

## **5.0 LICENSING OBJECTIVES**

5.1 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**

5.2 The applicant has provided information and proposals on this, and in summary, the steps they intend to take are as follows:

- All staff engaged in licensable activity at the premises will receive information in relation to the following:
  - The Challenge 25 scheme in operation at the premises, including the forms of identification that are acceptable.
- We will also be advised from the responsible authorities.
- Clear and legible notice shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and to leave the vicinity as quickly and quietly as possible.

5.3 Full details of these proposals can be seen within section M of the application (**Annex 1**).

## **6.0 RESPONSIBLE AUTHORITIES**

6.1 Responsible Authorities under the Licensing Act 2003 are notified of all premises licence applications. The onus is on each Responsible Authority to determine when they have appropriate grounds to make a representation.

6.2 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
- the local Director of Public Health
- Home Office

6.3 No representations were received from any Responsible Authority concerning this application. As a result, they are not party to the hearing.

## 7.0 OTHER PERSONS

7.1 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 revised Guidance issued under section 182 of the Licensing Act 2003 (Section 182 Guidance) states that '*... representations should relate to the impact of licensable activities carried on from premises on the objectives*' (Paragraph 9.4).

7.2 The Licensing Authority received one relevant representation concerning the application and this was in opposition to the application (or 'negative'). This representation was originally in the form of a letter (attached as **Annex 3**). The Licensing Team then asked the relevant party to complete the standard representation form as this can sometimes help them to focus on the four licensing objectives. This form was subsequently received and is attached as **Annex 4**.

7.3 The Licensing Officer has attached both responses to this report as it appears that the initial letter may contain more information about some of the issues raised. For example, the letter mentions that the light concern is a result of 'security and fairy' lights whereas the representation form just mentions 'light pollution'.

7.4 It is the Licensing Officer's view that some elements of the representation are lacking in 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.'*

7.5 So the Sub-Committee are aware, a second representation was received but this was not considered relevant to the four licensing objectives and was therefore not accepted.

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

8.1 In order to assist the Licensing Sub-Committee, the general topics that have been raised in the representation 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 representation in full, as it is attached separately.

8.2 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](mailto:licensing@middevon.gov.uk). The Sub-Committee can then consider the issue(s) that have been raised at the hearing. They may, of course, come to a different decision on the relevance of matters but issues must always relate to the impact of licensable activities carried on from premises on the four licensing objectives.

8.3 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.

8.4 Additionally, although something may be considered as being relevant the Licensing Sub-Committee must still then make a decision on the likelihood of the issue occurring and the potential for the licensing objective(s) to be undermined. This is a judgement about the level of risk and will dictate what action, if any, is appropriate and necessary.

8.5 In some paragraphs, the S182 Guidance and the Council's Licensing Act Policy is referenced and further information about these documents can be found in sections 9 and 10 of this report.

### **Overview of issues considered relevant**

#### **Issue 1: The potential for disruption**

8.6 This is kept in on the basis that borderline representations should be given the benefit of the doubt. The Licensing Officer feels this gives the Interested Party an opportunity to expand on it at the hearing and explain in more detail what the potential disruption is and what could cause it.

**Issue 2:** The potential for noise

- 8.7 The Interested Party can give more information about this issue at the hearing, including details on the noise (and times) that is of concern.

**Issue 3:** The potential for light pollution

- 8.8 The Interested Party can give more information about this issue at the hearing.

**Overview of issues not considered relevant**

**Issue 4:** Provision and legality of parking

- 8.9 The provision of parking in the wider area and how people arrive at the premises is not something that the applicant can control and the Licensing Officer does not believe this is relevant. Assuming there are no parking restrictions, any person could park in certain locations and ultimately, they may do so regardless of whether or not the premises has a licence.

- 8.10 Although issues around parking and traffic are not considered relevant under the Licensing Act 2003, both issues may be considerations of Mid Devon as the Local Planning Authority (LPA). The LPA are, in themselves, a Responsible Authority and have not made a representation against this application.

**Issue 5:** Safety of those not using the premises

- 8.11 The representation also mentions potential safety concerns regarding children using the playground. Paragraph 2.8 of the Section 182 Guidance states that *'Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation'*.
- 8.12 As a result, the Licensing Officer does not believe this is relevant (in terms of the Licensing Act 2003) and would just state that individual road users remain accountable for their actions. For example, if people park on double yellow lines, cause an obstruction or drive dangerously, legislation exists to address these issues.

**9.0 LICENSING POLICY**

- 9.1 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.

- 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 *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)*

9.19 *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)*

9.20 *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)*

9.21 *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)*

9.22 *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)*

9.23 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/>

9.24 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>).

## **10.0 GOVERNMENT GUIDANCE**

10.1 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 Section 182 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 *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)*

10.3 *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 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)
- 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 By virtue of Section 18 (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. 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
- Refusing to specify a Designated Premises Supervisor
- Rejecting the application

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

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

#### **12.0 APPEAL**

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

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

13.1 The Council have an adopted procedure for hearings and this attached to this report as **Annex 5**. In so far as is possible and practicable, the Licensing Authority will work in accordance with this procedure.

#### **14.0 ANNEXES TO THIS REPORT**

Annex 1	Copy of application form
Annex 2	Copy of plan
Annex 3	Copy of letter
Annex 4	Copy of representation form
Annex 5	Procedure for hearings

**Contact for more Information:** Tom Keating (Specialist Lead, Licensing) / [tkeating@middevon.gov.uk](mailto:tkeating@middevon.gov.uk) OR Philip White (Licensing Officer) / [hsaid@middevon.gov.uk](mailto:hsaid@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/>