

LICENSING SUB COMMITTEE
DATE OF HEARING: 25 JULY 2024

DETERMINATION OF A PREMISES LICENCE APPLICATION FOR ASDA EXPRESS PFS, EXETER ROAD, CREDITON, EX17 3BX

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

Responsible Officer: Simon Newcombe, Group Manager for Public Health and Regulatory Services

Reason for Report: An application has been received for a new premises licence for Asda Express PFS, Exeter Road, Crediton, EX17 3BX

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 Act). 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 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 for a new premises licence for Asda Express PFS, Exeter Road, Crediton, EX17 3BX.
- 1.2 The applicant has given the following description of the premises in the application form:
- ‘Convenience store / petrol filling station’

2.0 THE APPLICATION

- 2.1 The application for a new premises licence was submitted by Euro Garages Limited.
- 2.2 In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Late night refreshment	Indoors and outdoors	Monday - Sunday	23:00 – 05:00
Supply of alcohol	For consumption OFF the premises	Monday - Sunday	00:00 – 24:00
Hours premises open to the public	N/A	Monday – Sunday	00:00 – 24:00

Table 1: Activities / times requested on application

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

3.0 PRIMARY USE OF THE PREMISES

- 3.1 The Section 182 Guidance states that:

Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs) and from premises which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:

- *the retailing of petrol;*

- *the retailing of derv (diesel);*
- *the sale of motor vehicles; and*
- *the maintenance of motor vehicles.* (Paragraph 5.23)

3.2 As stated in paragraph 1.2 of this report, this premises is described as a ‘convenience store / petrol filling station’. The Section 182 Guidance goes on to state that:

It is for the licensing authority to decide, based on the licensing objectives, whether it is appropriate for that premises to be granted a licence, taking into account the documents and information listed in section 17(3) and (4) which must accompany the application. (Paragraph 5.23)

If a licence is granted in respect of a premises and the primary use of that premises subsequently changes (for example, the primary use becomes that of a garage rather than a shop) it would no longer be legal to sell alcohol on that premises. If a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage. The licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises is. (Paragraph 5.23)

3.3 In accordance with *R (on the application of) Murco Petroleum Limited v Bristol City Council [2010] EWHC 1992 (Admin)*, the matter of primary use can be a consideration when a representation has raised the issue of the sale of alcohol being made from a garage.

3.4 This issue has been raised and as a result, the Licensing Authority emailed Gosschalks LLP on the 3 July 2024 to request additional information to clarify the intensity of use of the premises. A response was received on 5 July 2024 which stated:

‘Following discussion with our client they have given us the below information regarding your queries.

The existing intensity of customer use (without alcohol sales) shows that 51% of customers using the premises do so for convenience purposes.

This is anticipated to increase to 54% within the next two years.

Accordingly, the primary use of these premises is not as a garage’.

3.5 Professor Roy Light produced an overview of the primary use issue in 2011 and this is attached as **Annex 3**. It is felt that it gives a helpful overview of the legislation and its historical context, along with the impact of some relevant case law.

4.0 LICENSING OBJECTIVES

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

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

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

- The provision of training for relevant staff working at the premises, including those that sell alcohol
- Spirits will be displayed behind the counter*
- No miniature bottles of spirits (20cl and below) shall be sold from the premises*
- The installation and use of a CCTV system
- A general statement regarding compliance with health and safety legislation
- A till prompt system for the sale of alcohol, and
- When prompted, staff will adopt a Challenge 25 proof of age scheme (and only specific forms of photo identification will be accepted)
- Notices will be displayed on the premises advising customers of the Challenge 25 policy.

** This does not apply to pre-packaged gift sets which may contain a spirit miniature*

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

5.0 RESPONSIBLE AUTHORITIES

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

5.2 The Responsible Authorities are:

- Police
- Fire Service
- Environmental Health (nuisance and health and safety)
- Planning Authority
- Licensing Authority
- Health and Safety Executive

- Weights and Measures (Trading Standards)
- the body responsible for Child Protection
- the local Director of Public Health
- Home Office

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

5.4 It should be noted that some representations have mentioned that the Police have been involved with issues in the area and have also suggested that we contact the Police for more information about issues that appear to relate to different garages entirely. On this point, it is the Licensing Officer's view that the Police are fully aware of the application as a Responsible Authority. It is for them to decide if it is appropriate and necessary to make a representation in light of the individual merits of the application, based on the licensing objectives. In this instance, they have not submitted a representation.

6.0 OTHER PERSONS

6.1 The 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. 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).

6.2 In this case, the Licensing Authority received 5 representations concerning the application. These are in opposition to the application (or 'negative').

6.3 The Sub-Committee should note that although 5 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 section 7 of this report.

6.5 Additionally, and for clarity, the Licensing Team contacted Mr Robert Davies to get more information about the representation(s) he had initially submitted. The additional information provided is included within **Annex 4**.

6.6 It is the Licensing Officer's view that some elements of the representations 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’.

6.7 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 or disagrees with the relevance of an issue, this can be stated in their response to the Notice of Hearing.

Name of party	Issue(s) raised considered relevant	Issue(s) raised not considered relevant
<p>Robert Davies (Annex 4)</p>	<ul style="list-style-type: none"> • Crime and disorder with more people attending as a result of 24 hour licence and potential impact on staff. • Public safety with people in ‘no fit condition’ to walk on forecourt • Risk of public nuisance, including from those ‘under the influence’ walking down from the town centre and then using the premises • Risk of drink driving 	<ul style="list-style-type: none"> • The fact that other premises in the area already sell alcohol (i.e. the perceived ‘need’ for such a premises)
<p>Ian Lanyon (Annex 5)</p>	<ul style="list-style-type: none"> • Potential public nuisance • Increased risk of crime and disorder; rowdy and drunken behaviour • Increased risk of drink driving • Increased risk to staff having to sell alcohol <p>Suggestion: Restrict the times for the sale of alcohol to those similar to other premises in Crediton.</p>	<ul style="list-style-type: none"> • Need or justification for a 24 hour licence

<p>Peter and Sylvia Whitby (Annex 6)</p>	<ul style="list-style-type: none"> • Increased risk of public nuisance and ASB with a licence between 23:00 – 07:00. • Increased risk to staff who are potentially working alone <p>Suggestion: Restrict the times for the sale of alcohol in line with 'supermarket hours'</p>	<ul style="list-style-type: none"> • The fact that other premises in the area also sell alcohol and/or food • Under the protection of children from harm they appear to suggest that those under 18 are out throughout the night but no link is made to how the premises is responsible for this or how the premises may put such people at risk of harm.
<p>Doreen Hughes-Davies (Annex 7)</p>	<ul style="list-style-type: none"> • Increased risk of crime and disorder due to late hours and being the only premises selling alcohol after midnight • Increased risk to public safety due to the premises attracting drunken people • Increased risk to public nuisance as a result of attracting drunken people (including ASB). <p>Suggestion: Restrict the times for the sale of alcohol to 'normal hours'</p>	
<p>Thomas Hughes-Davies (Annex 8)</p>	<ul style="list-style-type: none"> • Increased risk of crime and disorder due to times of licence and attracting drunken people. • Increased risk to public safety due to the premises attracting drunken people • Public nuisance by attracting drunk people during the 	

	hours of 00:00 – 07:00. Suggestion: The licence permits the sale of alcohol up until 23:00	
Table 2. Brief summary of representations and relevance to licensing objectives		

- 6.8 A number of people have suggested that the times for the sale of alcohol should be restricted to ‘normal’ hours or hours similar to other premises. If they have made such a suggestion, or if they now feel like making such a suggestion, they are asked to clarify in their response to the Notice of Hearing the specific times they are suggesting.
- 6.9 For information purposes, **Table 3** (below) shows some of the times permitted by the licences of other local premises. This list is not exhaustive.

Premises	Opening hours	Alcohol hours
Tesco, Wellspark, Crediton, EX17 3PH	08:00 to 22:00 Mon to Sat 10:00 to 16:00 Sunday	06:00 to midnight daily
Tesco Express, High Street, Crediton, EX17 3BJ	Unspecified	06:00 to 23:00 daily
WM Morrisons, Mill Street, Crediton, EX17 1EY	06:00 to midnight daily	06:00 to midnight daily
Spar, 135 High Street, Crediton, EX17 3DU	05:00 to midnight daily	05:00 to midnight daily
Table 3. Licence times for other premises in Crediton		

- 6.10 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.
- 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 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. Is there an actual risk of undermining a licensing objective, or is there just a conceivable risk?
- 7.5 In some paragraphs, the Section 182 Guidance is referenced and further information about this document can be found in section 9 of this report.

Overview of issues considered relevant

- 7.6 **Issue 1:** The sale of alcohol could increase the risk of crime and disorder in the area. Examples include people under the influence of alcohol migrating down from the high street to purchase alcohol late at night / early in the morning, resulting in criminal / disorderly behaviour; potential for staff to be abused; and drink driving.
- 7.7 **Officer comment:** These kinds of issues could be relevant and the Sub-Committee need to consider the concerns raised in light of the licensing objectives, and balance them against the conditions offered up / response of the applicant.
- 7.8 The Sub-Committee will also need to consider to what extent the potential issues are likely to be created by the premises (in light of the licensable activities they have applied for) and by extension, what the applicant can actually do to address them. 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)

- 7.9 For example, if people engage in anti-social behaviour on their way to the premises or after they have left the premises (and are beyond the immediate surrounding area), it is the Licensing Officer's view that this is not within the control of the applicant. Conversely, if patrons gather outside the premises having purchased alcohol and / or late night refreshment and engage in anti-social behaviour whilst stood at that location, this is potentially then linked to the premises and is something the applicant could exert some control over.
- 7.10 The issue of garages (i.e. petrol stations) selling alcohol and the potential risk of drink driving has been discussed for some time. The Licensing Officer feels that the article produced by Professor Roy Light (**Annex 3**) is informative in this regard. It is noted that over the years things have changed significantly and many petrol stations are also convenience stores selling a range of products (i.e. they offer a one stop shop). It also notes that customers will drive (and park) at various other sites to purchase alcohol such as pubs and supermarkets. The Licensing Officer feels that these are all relevant considerations.
- 7.11 **Issue 2:** The sale of alcohol could increase the risk to public safety in the area. Examples given include people under the influence of alcohol walking on the forecourt and other users of the premises being at risk.
- 7.12 **Officer comment:** This is potentially relevant but those that made such representations are asked to expand on this point and explain what their specific concerns are in relation to the proposed licensable activities at the premises. For example, how and why are other users of the premises at risk?
- 7.13 It is important to note that public safety concerns the safety of people using the relevant premises.
- 7.14 **Issue 3:** The sale of alcohol could increase the risk of public nuisance. Examples include people migrating from the high street to purchase more alcohol in what is a quiet area; along with an increased risk of noise, anti-social behaviour and littering as a result of the licence between 23:00 – 07:00.
- 7.15 **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.
- 7.16 Once again, it should be noted that conditions attached to licences should focus on matters that are within the control of individual licence holders. The Section 182 Guidance confirms 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'.*
(Paragraph 14.13)

Overview of issues not considered relevant

- 7.17 **Issue 4:** Need or justification for a 24 hour licence and the fact that other premises already sell alcohol and / or food
- 7.18 **Officer comment:** The applicant is not required to provide a justification (or show the potential need) for the premises. The application form and process is prescribed in legislation and nothing requires the applicant to justify the proposal.
- 7.19 The Section 182 Guidance states that...*“Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy’.*
- 7.20 So all parties are aware, the Council has not implemented a cumulative impact assessment (CIA). Such an assessment can be done to evidence that the number, type or density of licensed premises are having an adverse impact on the licensing objectives (for example, when such areas become a focal point for large groups of people leading to severe or chronic problems of public nuisance and anti-social behaviour or other alcohol related problems).
- 7.21 When a CIA is adopted it essentially means that an applicant will have to demonstrate that the premises would not be adding to the cumulative impact. If relevant representations are then received the application will be considered in light of the adopted CIA.
- 7.22 **Issue 5:** Individuals / groups of under 18 year olds being out throughout the night and potentially being a risk to those working in the shop. This was mentioned under the ‘protection of children from harm’ licensing objective.
- 7.23 **Officer comment:** If this comment is understood correctly, it relates to the potential actions committed by those under 18 against those working at the premises. This does not appear to relate to the protection of children from harm.
- 7.24 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).
- 7.25 As a consequence, the Licensing Officer believes that the concerns raised, insofar as they are understood, do not apply to children on the actual premises being exposed to harm themselves. The person that made this particular representation also commented that they are sure the premises would follow existing legislation regarding the sale [of alcohol] to minors.

8.0 LICENSING POLICY

- 8.1 The 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. 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 Act. 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... (Paragraph 9.44)*

Options of the Sub-Committee

10.6 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
- Refusing to specify a Designated Premises Supervisor
- Rejecting 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 **Annex 9**. 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 application form
Annex 2	Plan of premises
Annex 3	'Primary use test for garage licensing' by Professor Roy Light
Annex 4	Representation 1
Annex 5	Representation 2
Annex 6	Representation 3
Annex 7	Representation 4
Annex 8	Representation 5
Annex 9	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/>