

REPORT OF THE HEAD OF HUMAN RESOURCES AND DEVELOPMENT

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR
HAYNE BARN, ZEAL MONACHORUM, DEVON, EX17 6DE**

REASON FOR REPORT

1. An application has been received for a new premises licence for Hayne Barn, Zeal Monachorum, Devon, EX17 6DE. Relevant representations have been received. Accordingly, Mid Devon District Council as the licensing authority is obliged to hold a hearing to determine the application.

RECOMMENDATIONS

1. That this application is decided in accordance with the licensing objectives

RELATIONSHIP TO CORPORATE PLAN

1. None

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	If there is an appeal against the decision the Council could find itself bearing the costs
Legal	If the decision is not lawful the Council could find itself subject to appeal or judicial review
Risk Assessment	If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court

CONSULTATION CARRIED OUT WITH:

1. The process of applying for these licences is prescribed by regulations made under the Licensing Act 2003. The applicant must copy their applications to the “Responsible Authorities” consisting of the Police, Fire Service, Weights and Measures, body responsible for Health and Safety (Environmental Health), Environmental Health for nuisance, the Planning Authority, the Licensing Authority, the local Director of Public Health and the body responsible for Child Protection. If the application is submitted online the Licensing Authority must forward it to all Responsible Authorities.
2. This Council notifies the relevant town or parish council for where the premises is.
3. Applicants are also obliged to advertise their applications in two ways – on the premises so as to be visible to passers-by and in a local newspaper.

1.0 PREMISES

1.1 The premises are described in the application as ‘a 17th century grade 2 listed Threshing Barn with lean-to and a new extension which shall be used for events such as weddings, parties and concerts. The main barn is one room (14 metres x 5 metres in size) with a bar at the south end of the barn. The maximum occupancy of the main room in the Threshing Barn at any one time will be restricted to 135 people in respect of certain areas, parts or floors as specified by building regulations’.

1.2 The application goes on to state the following:

‘In order to minimize noise disturbance we have built a new extension, which shall restrict noise from travelling directly outside. This is due to the fact that there are double doors leading from the main barn into the new extension’.

‘When necessary we would place an additional bar area on the opposite side of the wall in the lean-to. Due to the nature of the events there may be occasions when there will be outdoor music, predominantly acoustic background music. Outside: If amplification is needed it would be kept to a minimum so as not to disturb any neighbours. Our nearest neighbours are 3 fields away so this would not be a problem to monitor. Rather than being a focus, the music played is likely to be ambient’.

2.0 APPLICATION

2.1 The application was submitted by Mr Tim Herniman and Mrs Camilla Herniman.

2.2 In summary, the following licensable activities have been applied for:

Plays

Indoors:	Monday – Thursday	09:00 until 23:00
	Friday and Saturday	09:00 until 00:00
	Sunday	09:00 until 23:00

Outdoors: As indoors but to end by 22:00

Films

Indoors: Monday – Thursday 09:00 until 00:00
 Friday and Saturday 09:00 until 01:30
 Sunday 09:00 until 01:30

Outdoors: As indoors but to end by 22:00

Live Music

Indoors: Monday – Thursday 09:00 until 00:00
 Friday and Saturday 09:00 until 01:30
 Sunday 09:00 until 00:00

Outdoors: As indoors but to end by 23:00

Recorded Music

Indoors: Monday – Thursday 09:00 until 00:00
 Friday and Saturday 09:00 until 01:30
 Sunday 09:00 until 00:00

Outdoors: As indoors but to end by 23:00

Performance of Dance

Indoors: Monday – Thursday 09:00 until 00:00
 Friday and Saturday 09:00 until 01:30
 Sunday 09:00 until 00:00

Outdoors: As indoors but to end by 22:00

Anything similar to music / dance

Indoors: Monday – Thursday 09:00 until 00:00
 Friday and Saturday 09:00 until 01:30
 Sunday 09:00 until 00:00

Outdoors: As indoors but to end by 23:00

Late Night Refreshment

Indoors/ Monday – Thursday 23:00 until 00:00
 Friday and Saturday 23:00 until 01:30
 Sunday 23:00 until 00:00

Outdoors: As indoors

Supply of Alcohol

Indoors: Monday – Thursday 10:00 until 00:00
 Friday and Saturday 10:00 until 01:30
 Sunday 10:00 until 00:00

Outdoors: As indoors

Hours Open to the Public

Monday – Sunday 00:00 until 24:00

- 2.3 The application also includes further details for some of these activities and also some Non-standard timings (i.e. New Year's Eve deregulated). These can be seen on the application itself which is attached as Annex 1. The plans submitted with the application are attached as Annex 2.

3.0 LICENSING OBJECTIVES

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

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

- 3.2 The applicant has provided the following statement within section M of the application:

'Although we have not completed any of the following boxes (a reference to the four licensing objectives to be considered) we are happy to take guidance from Responsible Authorities'.

4.0 RESPONSIBLE AUTHORITIES

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

- 4.2 The Responsible Authorities are:

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

- 4.3 Environmental Health has made a representation on the application. This recommended that a noise condition be attached to the premises licence. The suggested noise condition is attached as Annex 3. Assuming it was a condition on the licence Environmental Health would recommend the application be approved.

5.0 OTHER PERSONS

- 5.1 The Licensing Act allows 'other persons' to make representations provided they are relevant. 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 licensing authority will not accept representations considered to be frivolous or vexatious.

5.2 In this case the licensing authority received three representations within the statutory 28 day period. They are briefly summarised below and attached in their entirety as Annexes.

Mr & Mrs Palmer (Annex 4)

- Potential for noise nuisance from the premises
- Local road network is inadequate
- The premises will disturb local wildlife
- Potential for litter

Mr & Mrs Carey represented by Mr Graham Gover (Annex 5)

- Potential for noise nuisance from the premises
- Lack of information in the application, including the ability of the building to contain noise and lack of conditions offered up

Mrs Janet Hollingsworth (Annex 6)

- Potential for noise nuisance from the premises
- Local road network and potential traffic
- Increased risk of drink driving

5.3 In order to try and ensure a focused hearing the following comments are made in relation to this specific application and the representations received:

- The potential for increased traffic is not in itself a relevant matter for the sub-committee to consider
- The presence of existing licensed premises in the village and the deemed need for another is not a relevant matter for the sub-committee to consider
- Local wildlife is not a relevant matter for the sub-committee to consider
- The issue of drink driving is a criminal matter for the Police

5.4 A map showing the location of the residents who have made representations in relation to the premises will be made available at the hearing to assist members.

6.0 LICENSING POLICY

6.1 The Licensing Act requires the Council as the Licensing Authority to formally adopt a policy setting out how it will deal with its duties under the Act. That policy must be reviewed every five years and this Council formally adopted the current policy on 18 December 2013 and it came into effect 7 January 2014. It includes the following:

6.2 The Licensing Authority has a duty to carry out its licensing functions with the aim of promoting the four licensing objectives. (Paragraph 3.1)

6.3 The Authority will expect applicants and licence holders to demonstrate that they have given thought to and have in place adequate measures to ensure that the operation of their premises will not have an adverse effect on the quality of life of persons living and/or working in the vicinity of the premises. (Paragraph 4.1.4)

6.4 In determining a licensing application, the overriding principle adopted by this Authority will be that each application will be determined on its own merits. (Paragraph 5.3.1)

6.5 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 7.2)

6.6 Members must have regard to the policy when making their decision and are requested to bring their own copy to the hearing.

7.0 GOVERNMENT GUIDANCE

7.1 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003. The relevant version for this application was published in March 2015. It includes the following:

7.2 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (Paragraph 1.17)

7.3 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. (Paragraph 9.36)

7.4 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 9.37)

8.0 DEREGULATION DETAILS

8.1 As a result of deregulatory changes that have amended the Licensing Act, no licence is required for the following activities:

Plays

- Performances between 08:00 and 23:00 on any day, provided the audience does not exceed 500.

Dance

- Performances between 08:00 and 23:00 on any day, provided the audience does not exceed 500.

Indoor Sporting Events

- Events between 08:00 and 23:00 on any day, provided that those present do not exceed 1000.

Boxing or Wrestling Entertainment

- Events between 08:00 and 23:00 on any day, provided that the audience does not exceed 1000.

Live Music

- A performance of unamplified live music between 08:00 and 23:00 on any day, on any premises.
- A performance of amplified live music between 08:00 and 23:00 on any day, on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
- A performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.

Recorded Music

- Any playing between 08:00 and 23:00 on any day on premises authorised to sell alcohol for consumption on those premises, provided the audience does not exceed 500.

8.2 Deregulations: Conditions for live and recorded music

Any conditions relating to live or recorded music which are added to a licence following the determination of an application for a premises licence remain in place (i.e. appear on the face of the licence), but are **suspended** between the hours of 08:00 and 23:00 on the same day, 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.

8.3 If an application to review a premises licence is made, section 177A(3) of the Licensing Act allows a licensing authority to lift the suspension and give renewed effect to an existing condition relating to music. Similarly, section 177A(4) allows a licensing authority to add a condition to a licence (following a review application) as if music was a regulated entertainment that requires a licence.

9.0 DETERMINATION

9.1 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

9.2 Reasons should be given for the decision which set out the matters taken into consideration and why such a decision was arrived at.

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

9.4 An adopted procedure for Hearings is available as Annex 7. This should help guide all parties through the hearing process.

10.0 APPEAL

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

LIST OF ANNEXES TO THIS REPORT

Annex 1: Premises licence application

Annex 2: Plans submitted with the premises licence application

Annex 3: Representation from Environmental Health

Annex 4: Representation from Mr & Mrs Palmer

Annex 5: Representation from Mr & Mrs Carey represented by Mr Graham Gover

Annex 6: Representation from Mrs Janet Hollingsworth

Annex 7: Hearing Procedure

Contact for any more information	Thomas Keating / Simon Newcombe (01884 244618 / 01884 255 255)
Background Papers	S.182 Guidance to Licensing Act 2003 & MDDC Statement of Licensing Policy
File Reference	Licensing/Hearings/Hayne
Circulation of the Report	Applicant / Environmental Health / 'Other Persons'