

**LICENSING SUB COMMITTEE**  
**DATE OF HEARING: 3 DECEMBER 2024**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR THE SEAHORSE, 10 NEWPORT STREET, TIVERTON, DEVON, EX16 6NH**

**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 The Seahorse, 10 Newport Street, Tiverton, Devon, EX16 6NH

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 The Seahorse, 10 Newport Street, Tiverton, Devon, EX16 6NH.

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

- *‘An old world ale bar with a new look. Ambient music fit for conversation. A place for old friends to meet new and make a community pub for all’.*

1.3 So the Sub-Committee are aware, and because it is mentioned in representations, the premises does not currently hold a premises licence but has previously, and was known as ‘Courtenay's Ale & Cider Bar’ up until 2023.

## 2.0 THE APPLICATION

2.1 The application for a new premises licence was submitted by Mr Jamie Frost and Miss Natalie Green.

2.2 In summary, the following has been applied for:

| Activity                             | Indoors /<br>Outdoors (or<br>both)               | Days               | Times  |
|--------------------------------------|--|--------------------|--|
| Live music                           | Indoors  | Monday –<br>Sunday | 12:00 – 23:00<br>Extended to 01:00 on<br>Christmas Eve and 02:00<br>on New Year's Eve. |
| Recorded music                       | Indoors  | Monday –<br>Sunday | 12:00 – 24:00<br>Extended to 01:00 on<br>Christmas Eve and 02:00<br>on New Year's Eve. |
| Late night<br>refreshment            | Indoors  | Monday -<br>Sunday | 23:00 – 24:00<br>Extended to 01:00 on<br>Christmas Eve and 02:00<br>on New Year's Eve. |
| Supply of alcohol                    | For<br>consumption<br>ON and OFF<br>the premises | Monday -<br>Sunday | 12:00 – 24:00<br>Extended to 01:00 on<br>Christmas Eve and 02:00<br>on New Year's Eve. |
| Hours premises<br>open to the public | N/A  | Monday –<br>Sunday | 12:00 – 24:00<br>Extended to 01:00 on<br>Christmas Eve and 02:00<br>on New Year's Eve. |

**Table 1: Activities / times requested on application**

- 2.3 The applicant has provided additional information about licensable activities in the relevant *'further detail'* box on the application form. The Licensing Officer feels it is important to highlight some of this information for further discussion.

Live music and recorded music

- 2.4 The applicant has stated that this will be *'non audible'* to neighbours. The Licensing Officer is not sure if the applicant has mentioned this as a proposed condition but it could be interpreted as such. If this is the case, the practicality and enforceability of this needs to be considered carefully.

- 2.5 The Council's pool of licensing conditions highlights that:

*"Inaudibility" conditions have been popular in the past but have faced sufficient criticism in the courts to be quashed as invalid for lack of precision. Noise conditions are notoriously difficult to pre-empt and should be applied only where professional advice has been obtained from Mid Devon District Council's Public Health Team. Such conditions will be strictly tailored to the premises in question and the concerns to hand in relation to noise attenuation and resultant nuisance.*

- 2.6 Such an issue was considered in R (on the application of Developing Retail Limited) v East Hampshire Magistrates' Court [2011] EWCH 618 Admin. It was stated that *'without some degree of specificity as to what is meant by inaudibility, the condition is in my judgment so vague as to be unenforceable. In those circumstances I consider that the noise condition is liable to be quashed'*.

Late night refreshment

- 2.7 The additional detail given by the applicant is as follows:

*'Alcohol and snacks will be served until 23:45 on nights we are open to 24:00, with doors closed at 23:00 to give people peace and ample time to leave quietly'*.

- 2.8 The applicant needs to clarify this as the Licensing Officer is not sure what is meant by *'doors closed at 23:00'*. There is a subsequent condition which states that there will be no admission or readmission to the premises after 24:00, which reflects the proposed opening times applied for in Section L of the application. There would therefore seem to be a possible contradiction.

- 2.9 Additionally, the supply of alcohol has been applied for up until 24:00, not 23:45, but this particular issue may no longer be relevant as a result of a condition agreed with the Police (see section 5 of this report).

- 2.10 It should be noted that Late night refreshment relates to the supply of hot food or hot drink' between the hours of 23.00 and 05.00. This is highlighted because the applicant has asked for it to be licensed from 12:00 and at this time, the requirement for a licence would not apply.

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

### **3.0 CIRCUMSTANCES IN WHICH ENTERTAINMENT ACTIVITIES ARE NOT LICENSABLE AND IMPACT ON CURRENT 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.

3.4 This is highlighted because the applicant has applied for live music up until 23:00 and recorded music up until 24:00 (with an extension on Christmas Eve and New Year's Eve). Depending on the specific circumstances of the case, live music may not be licensable (except for after 23:00 on Christmas Eve and New Year's Eve) and recorded music may be licensable Monday - Sunday from 23:00 to 24:00, assuming it was not considered to be incidental or background.

#### Impact of licence conditions on non-licensable entertainment

3.5 Any 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.
- 3.6 Essentially, if the live or recorded music is not considered licensable, any conditions on a licence which apply will be 'suspended'.

#### Dealing with issues as a result of non-licensable entertainment

- 3.7 Issues or problems relating to activities which are not considered licensable can still be addressed. For example, if music is causing a nuisance, Environmental Health can still take action under the Environmental Protection Act 1990.
- 3.8 From a licensing perspective, any potential licence can be reviewed 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 not a relevant consideration for the current application.

### **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, section M of the application (attached as **Annex 1**) states:

- There shall be no self-service of alcohol on the premises
- There shall be no admission or readmission to the premises after 24:00 hours
- Suitable receptacles will be provided for cigarette litter
- The Challenge 25 scheme in operation at the premises, including the forms of identification that are acceptable
- An incident log shall be kept and maintained at the premises to record all crime and disorder
- The consumption of alcohol shall cease at 24:00
- The maximum number of persons including staff and entertainers allowed at the premises will not exceed 60

- In the absence of adequate daylight, artificial lighting in any area accessible to the public shall be fully operational
- All drinks shall be served in plastic / paper / toughened glass
- The performance of live entertainment will be limited to a max duration of 3 hours inclusive of any breaks
- Clear and legible notices shall be prominently displayed at all exits requesting patrons to respect the needs of the local residents
- No speakers for amplification of music shall be placed on the outside of the premises
- Accompanied children under 12 will only be allowed to remain on the premises between 10:00 and 21:00
- An alcohol sales refusals register shall be kept at the premises and be maintained to include details of all alcohol sales refused.
- Challenge 25 proof of age requirements. Acceptable identification are photo driving licence, passport, pass hologram card.

4.3 With regards to the condition relating to accompanied children under 12 only being allowed to remain on the premises between 10:00 and 21:00, it should be noted that the opening hours applied for are from 12:00 so the applicant should clarify this requirement as part of their response to the Notice of Hearing.

## **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 Responsible Authorities made representations in this case.

- 5.4 The Police did not make a representation because they agreed a number of conditions with the applicant. These conditions are attached as **Annex 3**.
- 5.5 Some of these conditions may address issues raised in representations submitted by 'other persons' (see section 6 of this report for further information). For example, there is an agreed condition that states '*the last sale of alcohol will be permitted no later than 30 minutes prior to the premises closing*', which essentially establishes a 30 minute 'drink up' period prior to closing.
- 5.6 So the Sub-Committee are aware, at the time of writing this report the Licensing Officer has contacted the Police to try and clarify some of the agreed conditions and an update on this will be provided at the hearing, if necessary.
- 5.7 Although the Police have not submitted a representation, given their involvement and agreement of conditions, they will be notified of the hearing.

## **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 4 representations concerning the application. These are in opposition to the application (or elements of the application).
- 6.3 All of the representations are attached in full as **Annex 4, 5, 6 and 7**.
- 6.4 In brief, the general issues raised are listed below. This list is not designed to duplicate the issues raised in full, as representations are attached to this report, but instead provide a very brief summary of the general concerns.
- Potential nuisance and disorder (including anti-social behaviour) late at night or early in the morning, exasperated by the potential lack of 'drinking up' time
  - Potential nuisance from music
  - Potential nuisance from people congregating outside (including when smoking / vaping)
  - Potential littering issues
  - The safety of patrons whilst outside the premises and in close proximity to the road

- Potential safety of patrons whilst inside the premises in light of the space / capacity set

6.5 If any party believes that a general issue raised has not been included in the brief summary above they can raise this in response to the Notice of Hearing and at the hearing.

#### Suggested conditions

6.6 'Other parties' have suggested conditions / amendments to the application that they would like to see and these have been briefly summarised below under what is thought to be the most relevant licensing objective. Full details can be seen in their submissions which are attached to this report.

#### 6.7 Crime and disorder

- A reduction in times permitted to sell alcohol / stay open on certain days
- Installation of CCTV
- Requirement for door staff at certain times
- Dispersal of groups congregating outside the premises
- Implementation of a 30 minute 'drink up' period (i.e. no alcohol sales to be permitted for the last 30 minutes of being open)
- No consumption of alcohol outside the premises

#### 6.8 Public safety

- Capacity to be limited to 40 people (including staff and entertainers)
- Dispersal of groups congregating outside the premises

#### 6.9 Public nuisance

- No live music
- No live and recorded music after 23:00
- The performance of live music restricted to once per month
- No extended hours for Christmas Eve
- The limitation of noise from entertainment by considering the placement of equipment used for amplification
- The installation of soundproofing



- A two door entrance / exit system
- The door to be fitted with a self-closing mechanism
- External doors and windows to be kept shut during regulated entertainment (except for access and egress) and staff to check this
- A telephone number to be displayed, where it can be seen from outside, for local residents to be able to contact the premises and report issues
- The Licence holder / DPS to be available at all times during regulated entertainment and be responsible for liaising with Responsible Authorities
- Noise from smokers to be kept to a minimum

6.10 A map showing the location of the premises in relation to those that have submitted representations will be available for Members of the Sub-Committee.

6.11 So the Sub-Committee are aware, the Licensing Authority received an anonymous representation which did not provide any details of the person(s) submitting it (i.e. there was no names, addresses or contact details). This submission has not been accepted.

## **7.0 LICENSING OFFICER COMMENTS ON SUGGESTED CONDITIONS / AMENDMENTS TO THE APPLICATION**

### Capacity of the premises

7.1 It should be noted that all of the representations appear to raise the issue of capacity for the premises and this follows on from the applicant stating that the maximum occupancy is 60. Some have suggested that this should be reduced to 40.

7.2 With regards to capacity limits in general, the Licensing Officer would highlight that the safe capacity may have been set by the applicant as a result of compliance with other legislation, for example, when completing a fire risk assessment under the Regulatory Reform (Fire Safety) Order 2005. The Section 182 Guidance covers this and states that:

*“Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in*

*preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile. (Paragraph 2.18)*

7.3 In light of the above, the applicant should confirm, as part of their response to the Notice of Hearing to the Licensing Authority, how the maximum capacity of 60 people was set and whether this was done in accordance with a specific piece of legislation.

7.4 As noted above, there were no representations from Responsible Authorities but so the Sub-Committee are aware, Devon and Somerset Fire and Rescue Service did, as is usually the case, highlight the following general requirement:

*'The responsible person for the premises must carry out a fire risk assessment, record significant findings and take appropriate action. The Fire and Rescue Authority considers that the significant findings should include an evaluation of the means of escape and the number of people that can safely be accommodated on the premises; this capacity should include all people on the premises including staff and performers.'*

Further information can be found in the "Safety Advice" section of our website: <http://www.dsfire.gov.uk/>.

#### Potential extension of opening hours

7.5 One suggestion within a representation appears to extend the opening hours of the premises by 30 minutes on Friday and Saturday until 00:30 (the applicant has applied to close at 00:00 on these days). This has likely been suggested to permit a 30 minute drink up time but the Licensing Officer does not believe it would be appropriate to make such an amendment. This is because people may have decided against submitting a representation in the first place based on the midnight closing time - they may therefore be disadvantaged with any subsequent extension beyond what was initially applied for.

#### Non-licensable activities and conditions relating to them

7.6 As set out in Section 3 of this report, it should be remembered that even if activities such as live and recorded music are removed from the licence or restricted, they may still be permitted as a non-licensable activity at certain times. In such situations, conditions may be suspended and would not have effect.

#### Proposed Designated Premises Supervisor (DPS) not being one of the applicants

7.7 The question has been asked if alcohol can be sold when the DPS is not on the premises. The short answer to this is yes, it can.

7.8 The specific condition to which the query relates states is a mandatory condition which states:

- 1) *No supply of alcohol may be made under the premises licence -
  - a) *at a time when there is no designated premises supervisor in respect of the premises licence, or*
  - b) *at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.**
- 2) *Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.*

7.9 The Section 182 Guidance states:

*The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or the personal licence has been suspended. (Paragraph 10.26)*

*The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold... (Paragraph 10.28)*

7.10 It can therefore be seen that as long as a DPS is named on the licence (and that person holds an active personal licence), there is compliance with that part of the mandatory condition and they need not be on the premises at all times.

7.11 The Section 182 Guidance goes on to state:

*...the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol but may be absent at times from the premises when a transaction takes place. However, the responsible personal licence holder may not be able to escape responsibility for the actions of anyone authorised to make sales. (Paragraph 10.30)*

7.12 The Licensing Act 2003 does not state that such authorisation need be in writing but the Licensing Team does have template documents which cover this and consider it to be a form of good practice.

#### No alcohol zone in relation to the premises

7.13 A representation received indicates that there may be an alcohol free zone in this area and suggests that, as a result, alcohol cannot be consumed outside the premises as a result. There is no such Public Space Protection Order in place. Even if there was, it would not mean that alcohol could not be consumed per say, but likely create an offence should someone fail to comply with a request not to consume or surrender alcohol.

## 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 Policy 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 Other Person attending 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 Licensing Authority will be that each application will be determined on its merits. The Licensing Authority will have regard to any guidance issued by the Home Office, this Policy and any measures it deems necessary to promote the licensing objectives. The Licensing Authority may depart from the guidelines in this Policy if it has justifiable and compelling reasons to do so. The Licensing Authority will give reasons for any such departure from the Policy. (Paragraph 6.3)*
- 8.7 *The Licensing 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 Licensing 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 *Since the introduction of the Act, the Licensing Authority's experience is that the vast majority of complaints about licensed premises are caused by public nuisance, in particular excessive noise from live and recorded music and disturbance caused by customers congregating outside licensed premises. The Licensing Authority will expect applicants to have particular regard to these issues and, if considered appropriate, to include in their Operating Schedules adequate and effective steps to control noise and disturbance from their premises. (Paragraph 6.6)*
- 8.10 *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)*
- 8.11 *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)*
- 8.12 *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)*
- 8.13 *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)*
- 8.14 *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)*
- 8.15 *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)*

- 8.16 *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)*
- 8.17 *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)*
- 8.18 *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)*
- 8.19 *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/>.

## 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 some relevant sections are highlighted below. The full Guidance can be viewed here:

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

9.2 *Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged.*

*Licence conditions:*

- *must be appropriate for the promotion of the licensing objectives;*
- *must be precise and enforceable;*
- *must be unambiguous and clear in what they intend to achieve;*
- *should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*
- *must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- *should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- *should not replicate offences set out in the 2003 Act or other legislation;*
- *should be proportionate, justifiable and be capable of being met;*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format. (Paragraph 1.16)*

9.3 *Licensing authorities should look to the police as the main source of advice on crime and disorder. (Paragraph 2.1)*

- 9.4 *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. (Paragraph 2.8)*
- 9.5 *Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (Paragraph 2.22)*
- 9.6 *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)*
- 9.7 *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)*
- 9.8 *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)*
- 9.9 *Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who*



*engages in antisocial 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 2.27)*

## **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 8**. 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 | Agreed Police conditions |
| Annex 4 | Representation 1         |
| Annex 5 | Representation 2         |

|         |                        |
|---------|------------------------|
| Annex 6 | Representation 3       |
| Annex 7 | Representation 4       |
| Annex 8 | Procedure for hearings |

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**Circulation of the Report:** Legal Services / Members of Licensing Sub-Committee / Applicant / Other Persons (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/>