

LICENSING SUB COMMITTEE
DATE OF HEARING: 2 APRIL 2025

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR RE:FUEL
SOUTHWEST LTD, FIVE BRIDGES, CULLOMPTON, DEVON, EX15 1QP**

Cabinet Member(s): David Wulff, Cabinet Member for Quality of Living, Equalities and Public Health

Responsible Officer: Simon Newcombe, Head of Housing and Health

Reason for Report: An application has been received for a new premises licence for Re:Fuel Southwest Ltd, Five Bridges, Cullompton, Devon, EX15 1QP.

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 Mid Devon District Council (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 Re:Fuel Southwest Ltd, Five Bridges, Cullompton, Devon, EX15 1QP.
- 1.2 The applicant has given the following description of the premises in the application form:

Please give a general description of the premises (please read guidance note 1)

A cafe with an open plan layout, ground floor indoor seating for approximately 95 people and an outdoor patio area with seating for approximately 48 people. Across the paddock during the summertime, there is a stretch tent with seating for approximately 54 people.

Operating hours are 8:30am - 5:00pm Monday to Friday and 9am-5:30pm Saturdays & Sundays. Currently we occasionally host evening events and pop-up food nights Monday to Sunday. The cafe primarily serves food (breakfast, lunch and non-alcoholic drinks) between the hours of 8:30am - 4pm). There is a small retail shop selling merchandise and local produce including a small selection of alcohol. There are clearly defined seating areas inside and out, rest rooms and a staff only kitchen. Indoors is fully accessible aside from the small mezzanine area that will be used for private events. Once we have our licence, we intend work towards opening as a restaurant and for local community events in the evenings, meaning our opening hours will then run from 8:30am to 00:00pm Monday to Friday, and 9:00am to 00:00pm Saturday and Sunday.

2.0 THE APPLICATION

- 2.1 The application for a new premises licence was submitted by Re:Fuel Southwest Ltd.
- 2.2 In summary, the following has been applied for:

Activity	Indoors / Outdoors (or both)	Days	Times
Films	Both	Monday – Sunday	08:00 – 00:00
Live music	Both	Monday – Sunday	08:00 – 23:00
Recorded music	Both	Monday – Sunday	08:00 – 23:00

Late night refreshment	Both	Monday - Sunday	23:00 – 00:00
Supply of alcohol	For consumption ON and OFF the premises	Monday - Sunday	08:00 – 23:30
Hours premises open to the public	N/A	Monday – Sunday	08:00 – 00:00

Table 1: Activities / times requested on application

Late night refreshment

2.3 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 08:00 and at this time, the requirement for a licence would not apply.

2.4 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 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 and recorded music up until 23:00 and depending on the specific circumstances, it may not be considered licensable.

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'.
- 3.7 The applicant has also stated that recorded music will be played in the background throughout service. Music that is incidental or 'background' is not classified as regulated entertainment and therefore does not require a licence.

Dealing with issues as a result of non-licensable entertainment

- 3.8 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.
- 3.9 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 these can be seen in 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 Responsible Authorities made representations in this case.

5.4 So the Sub-Committee are aware, we understand the Licensing Officer from Devon and Cornwall Police had discussions with the applicant prior to submission of the application about conditions that would be considered appropriate. The applicant can potentially provide more information about this at the hearing.

5.5 Devon and Somerset Fire and Rescue Service reviewed the application and confirmed that they have no observations to make.

5.6 Although the Planning Authority have not made a representation, they did provide some comments and they are as follows:

'Having read through the information set out within the application form, I consider that planning permission would be required for the proposed use/activities for the building and site. A Certificate of Lawful use, which included retail use amongst other uses (Use Class A1 - now replaced By Class E) was approved in 2016 (App No: 15/01843/COU). However, uses including drinking establishments, drinking establishments with expanded food provision, and venues for live music performance are excluded from classification and thus become 'sui generis'. Planning permission is required for those uses. The applicant should therefore seek planning permission for the proposed uses. Alternatively, if they consider that the proposed uses would not result in a material change of use, it is advised that they apply for a Certificate of Lawful use for the proposed use.'

It should be noted that the above comments are not raising an objection to the licensing application, rather setting out the position from a planning perspective’.

- 5.7 The Licensing Officer has contacted the applicant regarding the planning issue and from a licensing perspective, the matter is not relevant. The Section 182 Guidance makes clear that the planning and licensing regimes are separate. It states that:

‘The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa’. (Paragraph 14.65)

- 5.8 It has been suggested in a representation that the premises licence application should be ‘deferred’ until after any potential planning issue has been resolved but this is not possible. The Sub-Committee should make a decision on the application, based on the licensing objectives and the individual merits of the case. It is for the applicant to discuss and resolve any planning issues with the Planning Authority.

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 3 ‘negative’ representations against the application that contain, to varying degrees, relevant information.

- 6.3 All of the representations are attached in full as **Annex 3, 4, and 5**.

- 6.4 It is the Licensing Officer’s view that certain 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’.

- 6.5 As a result, relevant parties will be expected to amplify and clarify their representations at the hearing.

- 6.6 So the Sub-Committee are aware, an additional representation was received but the Licensing Officer has discounted this as not being relevant. This is because it raised, solely, the issue of the public highway. The reasons for this particular issue not being considered relevant are given in section 7 of this report.
- 6.7 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.

7.0 LICENSING OFFICER COMMENTS ON REPRESENTATIONS

Issues not considered relevant under the Act

- 7.1 As stated in Paragraph 6.1 of this report, representations must relate to the impact of licensable activities carried on from premises on the licensing objectives. It is the Licensing Officers view that elements of the representations are not relevant and what follows is a brief overview of these issues.
- 7.2 It is important to note that just because something is not considered as relevant under the Act, this does not mean the issue itself does not merit attention. It just means that the Act is not seen to be the relevant process / legislation to deal with the issue.

General road safety concerns and responsibility for behaviour / safety of those that have left the premises and its immediate vicinity

- 7.3 A number of representations have mentioned concerns about the health and safety of the public as a consequence of the suitability of the road on which the premises sits. This includes highlighting the use of the road, how busy it can get and previous accidents that have occurred.
- 7.4 The Licensing Officer is of the view that the applicant cannot control issues like the general use of the road, the speed at which people drive and the provision of lighting on a public highway. Additionally, it should be remembered that representations should relate to the impact of licensable activities carried on from premises on the licensing objectives. The public can attend the site and use this road regardless of whether or not the premises has a licence (as they have been).
- 7.5 It is important to note that the public safety licensing objective relates to the safety of those using the premises. This is confirmed in the Section 182 Guidance which states that: *‘Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation’.* (Paragraph 2.8)
- 7.6 With regards to ensuring the safe departure of those using the premises, the Section 182 Guidance goes on to state:

‘Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:

- *Providing information on the premises of local taxi companies who can provide safe transportation home; and*
- *Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks’. (Paragraph 2.16)*

7.7 It is the Licensing Officers view that the applicant is unable to control how someone may travel to and from the premises. The examples given above are indicative of the type of things that the applicant can directly control (i.e. they can ensure information is available concerning the taxis available in the local area and they can potentially place lighting in the car park, assuming they have the right / permission to do so). A premises could also, in theory, implement a one-way system for vehicles entering / leaving the site but any such systems may need to be made in consultation with other authorities, such as the Planning Authority and Devon County Council Highways.

7.8 The importance of issues and resulting actions being within the control of an applicant is reinforced by the Councils’ Licensing Policy which states:

‘Conditions attached by the Licensing 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’. (Paragraph 6.28)

7.9 The S182 Guidance also states that conditions *‘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’. (Paragraph 1.16)*

7.10 As noted previously, planning is a separate regime to licensing and issues regarding traffic and highway safety may be considerations of the Council as the Local Planning Authority (LPA). Devon County Council (Highways) could also be a relevant body in this regard.

7.11 With regards to placing lighting outside the premises, it should be noted that the Section 182 Guidance warns:

‘Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues’. (Paragraph 2.26)

Concern for financial capacity of applicant and potential future transfer of licence

- 7.12 There is no obligation under the Act for applicants to show proof of funds.
- 7.13 If conditions are placed on a licence and then not subsequently complied with, for whatever reason, this then becomes an enforcement matter to be considered at that time.
- 7.14 With regards to the potential financial burden of conditions, the Section 182 Guidance does make some reference to it and states that:

...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. (Paragraph 9.44)

- 7.15 Additionally, questioning what would happen if the applicant was to go out of business having been granted a licence is not something the Sub-Committee can consider. The ability to transfer a licence is stipulated in the Act and appropriate safeguards exist should there be concerns as a result of this.

Unauthorised signage on a highway

- 7.16 Having looked at this issue, and in light of the fact that such signage could be erected regardless of whether or not the premises had a licence, the Licensing Officer believes Devon County Council would be the primary authority for such matters. More information about this can be found here: <https://www.devon.gov.uk/roads-and-transport/maintaining-roads/managing-the-network/unauthorised-signage/> .

Issues considered relevant under the Act

- 7.17 What follows is a very brief overview of the issues that have been raised in representations that are considered to be relevant. To be clear, what follows is not meant to repeat verbatim the issues as they can be seen in the attached Annexes. Additionally, those that made these representations can expand on them in their response to the Notice of Hearing and at the hearing.
- Incidents of anti-social behaviour linked to the sale and consumption of alcohol, in the immediate vicinity of the premises.
 - Safety of those leaving the premises, in so far as they relate to matters that the applicant can control (for example, making information available about local taxis* and providing adequate outside lighting)

**It should be noted that the applicant has offered a condition in the application which states they will provide a list of taxis upon customer request.*

- Noise generated from the premises, including from patrons whilst in the immediate vicinity of the premises and the impact of the sale of alcohol in this regard.
- Possible protection of children from harm issues and restrictions on the areas / hours children may be present.
- Increased litter at the premises and in the immediate vicinity.

7.18 The above information does not prevent any 'Other Person' in presenting and expanding on the relevant representation they have made during the hearing. If the above summary has missed out part of a relevant representation, this may still be raised and discussed.

7.19 If any 'Other Person' has comments or observations to make about the above, i.e. if they believe that issues are relevant under the Act but have been considered as not being relevant, 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 or alternatively writing to Licensing, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP.

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 February 2025 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 6**. 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	Representation 1
Annex 4	Representation 2
Annex 5	Representation 3
Annex 6	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/>