

**AGENDA ITEM**

**LICENSING SUB COMMITTEE  
26 April 2016**

**REPORT OF THE HEAD OF HUMAN RESOURCES AND DEVELOPMENT**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR  
MOORHAYES COMMUNITY CENTRE, TIVERTON, DEVON, EX16 6TN**

**REASON FOR REPORT**

1. An application has been received for a new premises licence for Moorhayes Community Centre, Tiverton, Devon, EX16 6TN. Relevant representation 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:

<b>Financial</b>	If there is an appeal against the decision the Council could find itself bearing the costs
<b>Legal</b>	If the decision is not lawful the Council could find itself subject to appeal or judicial review
<b>Risk Assessment</b>	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 following description of the premises is provided in the application:

*‘Moorhayes Community Centre is a purpose built community centre with a main hall and meeting room, together with a full commercial kitchen. There is a large outside grassed area, suitable for and normally used as a football pitch, a hard surfaced and fenced multi use games area, outside seating areas, children’s play area and also a car park. The premises have been extended to improve the facilities available to the local community and consist of the existing ‘Country House’ bar, plus a new restaurant and bar area. The main hall has a bar which can be opened for functions’.*

- 1.2 Although the application to be considered is for a new premises licence, it should be noted that the premises has held a premises licence since 2007. This new application must be considered on its own individual merits, but a copy of the current premises licence is attached for member’s information as Annex 1. This is because some of the representations made relate to the existing function of the premises and it may be useful to refer to.

## **2.0 APPLICATION**

- 2.1 The application was submitted by Moorhayes Community Association.

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

- Plays (indoors and outdoors) from 08:00 until 01:00, Monday to Sunday
- Films (indoors and outdoors) from 08:00 until 01:00, Monday to Sunday
- Indoor sporting events from 08:00 until 01:00, Monday to Sunday
- Boxing or Wrestling (indoors) from 08:00 until 01:00, Monday to Sunday
- Live music (indoors and outdoors) from 08:00 until 01:00, Monday to Sunday
- Recorded music (indoors and outdoors) from 08:00 until 01:00, Monday to Sunday
- Performance of dance (indoors and outdoors) from 08:00 until 01:00, Monday to Sunday
- Anything of a similar description to live music, recorded music and dance (indoors and outdoors) from 08:00 until 01:00, Monday to Sunday
- Late night refreshment (indoors and outdoors) from 23:00 until 01:00, Monday to Sunday

- Supply of alcohol (on and off the premises) from 08:00 until 01:00, Monday to Sunday

2.3 For some of the activities outlined above, the application also includes a New Year's Eve 'de-regulation'.

2.4 The application also states that any outside event held on the field will be restricted to weekends, with all music and / or performances to finish by midnight. Outside events will also be restricted to no more than six per calendar year.

2.5 Specific timings can be seen on the application itself which is attached as Annex 2. The plans are attached as Annex 3. In terms of what the plans show, the application states the following:

*'The overall site plan shows the entire site etched in blue and the 'main' premises area including some outside seating, immediately outside the building etched in red. The area etched in red is where licensed activities may take place in accordance with the schedules/times indicated below and the wider outside area marked in blue is where they shall be restricted to a maximum six times per calendar year.'*

2.6 The application includes a request for the condition requiring a Designated Premises Supervisor to be 'disapplied', which essentially means that Moorhayes Community Association will be responsible for ensuring alcohol sales are properly supervised. The existing licence in place has this same arrangement.

### **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 information on this which can be seen within section M of the application (attached as Annex 2).

### **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 The Police provided a response to the application and agreed the following conditions with the applicant:

- *The requirement for SIA registered door staff at any function involving licensable activities shall be risk assessed by the Committee and the promoter of the event*
- *Any outside event involving licensable activities shall be subject to the Committee / promoter of the event providing the Police and Licensing Authority with 21 days' notice of such event, providing details of numbers attending, timings, activities and measures to uphold the licensing objectives*
- *CCTV will be fitted, operated and maintained to the satisfaction of the Chief Officer of Police and the Licensing Authority*

4.4 With the agreement of the Police and the applicant the CCTV condition was subsequently re-worded as follows:

- a) CCTV cameras are located within the premises to cover all public areas including all entrances and exits (*to be marked on the plan attached to the premises licence*)
- b) The system records clear images permitting the identification of individuals, with cameras at entrances and exits capturing images of face and torso
- c) The CCTV system is able to capture a minimum of 8 frames per second and all recorded footage must be securely retained for a minimum of 28 days
- d) The CCTV system operates at all times while the premises are open for licensable activities. All equipment must have a constant and accurate time and date generation
- e) The CCTV system is fitted with security functions to prevent recordings being tampered with, i.e. password protected
- f) There are members of trained staff at the premises during operating hours able to provide viewable copies on request to police or authorised local authority officers as soon as is reasonably practicable in accordance with the Data Protection Act 1998

4.5 On the basis of these conditions being agreed the Police have no further comments and will not be attending the hearing.

4.6 The following comment was received from Ian Winter, Environmental Protection Officer, Mid Devon District Council:

*'Having reviewed the application I have no objections with regards to noise and nuisances. The applicant has detailed that outdoor events will be finishing at 12 midnight and that the number of events will be limited to six per year. I understand that objections have been made to the licensing team but on checking the Council's Data system no recent noise complaints have been made to Environmental Health.'*

*Should noise become an issue once the licence has been granted Environmental Health will have the option to take action under the Licensing Legislation (by asking for a Review of the licence) or through the Statutory Nuisance Legislation’.*

## **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 has received four representations (two from the same household). The representations were submitted by Ms Carol Barnett, Mr Wayne Fearn, Ms Lynn Jenner and Mr Peter Radford-Gourlay. They are attached as Annex 4, 5, 6 and 7 respectively. Any representation in the form of an email chain has been pasted into a word document to ensure they are easy to read.
- 5.3 The prescribed 28 day period for representations ended on 29 March 2016 and it should be noted that the representation from Mr Peter Radford-Gourley was received on 30 March 2016. Following a conversation between the Licensing Team and Mr Radford-Gourley it was pointed out that the notice advertising the application may have been interpreted as the final day for representations being 30 March 2016. A copy of the notice is attached as Annex 8 so members can view this for themselves.
- 5.4 In order to ensure the process is not prejudicial, and also in consideration of the fact that representations had already been made, it is recommended that this representation be considered. The specific issue of interpreting the date differently on the notice has not been a problem in the past, perhaps because representations are generally not left until the final day. However, in recognition of the ambiguity the template notice that this authority provides to applicants has now been amended to clearly show the final date for representations. This will prevent this issue from occurring in the future.
- 5.5 The relevant parts of the representations are summarised briefly below, and for continuity, have been phrased similarly where possible to enable re-occurring themes to be highlighted.
- 5.6 Mrs Carol Barnett has raised the following points:
- The premises is close to residential properties and would be intrusive to those living nearby
  - The scale and scope of the licence is considered unreasonable
- 5.7 Mr Wayne Fearn has raised the following points:
- The premises is close to residential properties
  - The patio style doors are often left open during events and this leads to noise nuisance from music and patrons
  - The potential for litter problems
- 5.8 Ms Lynn Jenner has raised the following points:
- The premises is close to residential properties
  - The hours applied for are considered too much

- The patio style doors are often left open during events and this leads to noise nuisance from music and patrons
- The potential for litter problems

5.9 Mr Peter Radford-Gourlay has raised the following:

- The premises is close to residential properties and the sale of alcohol for consumption off the premises would lead to additional rowdiness and disturbance

5.10 Mr Peter Radford-Gourlay has also raised some points about the commercial aspect of the premises. This is not considered relevant to the four licensing objectives.

5.11 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 DETERMINATION**

- 8.1 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
- 8.2 It is important that reasons are given for the decision which set out the matters taken into consideration and why such a decision was arrived at.
- 8.3 Members have five working days from the conclusion of the hearing to make a decision.
- 8.4 An adopted procedure for Hearings is available as Annexe 9. This should help guide all parties through the hearing process.

## 9.0 APPEAL

- 9.1 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: Copy of current licence (for information only)

Annex 2: Application for a new premises licence

Annex 3: Plans submitted with the premises licence application

Annex 4: Representation from Ms Carol Barnett

Annex 5: Representation from Mr Wayne Fearn

Annex 6: Representation from Ms Lynn Jenner

Annex 7: Representation from Mr Peter Radford-Gourlay

Annex 8: Copy of notice advertising application

Annex 9: Hearing Procedure

<b>Contact for any more information</b>	<b>Thomas Keating (01884 244618)</b> Lead Licensing Officer
<b>Background Papers</b>	S.182 Guidance to Licensing Act 2003 & MDDC Statement of Licensing Policy
<b>File Reference</b>	Licensing/Hearings/Moorhayes
<b>Circulation of the Report</b>	Applicant / 'Other Persons'