

AGENDA ITEM

LICENSING SUB COMMITTEE
14 November 2016

**REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS
TRANSFORMATION**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR
HIGHER EGGBEER FARM, CHERITON BISHOP, EX6 6JQ**

Responsible Officer: Jackie Taylor - Licensing Officer

REASON FOR REPORT

1. An application has been received for a new premises licence for Higher Eggbbeer Farm, Cheriton Bishop. Relevant representations have been received. Accordingly, Mid Devon District Council as the licensing authority is obliged to hold a hearing to determine the application.

RECOMMENDATIONS

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

RELATIONSHIP TO CORPORATE PLAN

1. None

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

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

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

CONSULTATION CARRIED OUT WITH:

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

1.0 PREMISES

- 1.1 The premises are described in the application as *“Predominantly a wedding venue. We also hold the Loft Barbers live sessions which is fast becoming one of the best small music venues in England. It comprises of a farm house with barns set in 14 acres of land. There is a large garden and a yard, which is where the arrivals drinks are normally served. The main barn is in the medieval style with a bar situated at the back. There is a second Bar / games room on the south side of the lower yard. The farm has a long private drive and has no close neighbours.”*

2.0 APPLICATION

- 2.1 The application was submitted by Mr Alistair Scott Lawson on 20/09/2016.
- 2.2 In summary, the following licensable activities have been applied for:

Plays

Indoors: Monday – Sunday 11:00 until 23:00

Outdoors: As indoors

Films

Indoors: Monday – Sunday 11:00 until 23:00

Outdoors: As indoors

Live Music

Indoors: Monday – Sunday 11:00 until 23:30

Outdoors: As indoors

Recorded Music

Indoors: Monday – Sunday 11:00 until 01:30

Outdoors: As indoors

Performance of Dance

Indoors: Monday – Sunday 11:00 until 23:00

Outdoors: As indoors

Late Night Refreshment

Indoors Monday – Saturday 11:00 until 01:30

Sunday 11:00 until 24:00

Outdoors: As indoors

Supply of Alcohol for consumption on and off the premises

Monday – Saturday 11:00 until 01:30

Sunday 11:00 until 24:00

Hours Open to the Public

Monday – Saturday 00:00 until 24:00

Sunday 09:00 until 24:00

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

2.4 Members should also be aware that Temporary Event Notices have been submitted to cover events at the premises on the following dates:

16/06/2015	10/05/2016
07/06/2016	18/06/2016
06/08/2016	26/07/2016
30/08/2016	27/08/2016
03/07/2015	10/09/2016
05/09/2015	01/10/2016
15/09/2015	08/10/2016
01/03/2016	27/09/2016
24/04/2016	29/10/2016

- 2.5 The Environmental Health Team have received two separate complaints about noise from the premises, one on 16 September 2015 and another on 21 April 2016. On both occasions the Environmental Health Team sent out standard letters to the premises and diary sheets to the complainants. However, the completed diary sheets were not returned to the Environmental Health Team so the matter was not investigated further at the time.

3.0 LICENSING OBJECTIVES

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

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

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

I am aware of all the licensing objectives, I will be happy to accept any further advice from the responsible authorities.

4.0 RESPONSIBLE AUTHORITIES

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

- 4.2 The Responsible Authorities are:

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

- 4.3 Environmental Health made a representation on the application on 4 October 2016. The Officer recommended that a noise condition be attached to the premises licence and this is attached as Annex 3. The applicant responded to the licensing team on 4 October 2016 to agree to the condition being attached to the licence. As a result of this agreement, the Environmental Health Team have no further representations.

5.0 OTHER PERSONS

- 5.1 The Licensing Act allows 'other persons' to make representations provided they are relevant. To be relevant, a representation must relate to the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives. The licensing authority will not accept representations considered to be frivolous or vexatious.

- 5.2 In this case the licensing authority received 1 negative representation and 15

positive representations within the statutory 28 day period. They are briefly summarised below and attached in their entirety as Annexes 4 -19.

Miss Lynn Scarsbrook (Annex 4)

- Potential for traffic related noise nuisance from the premises
- Local road network is inadequate
- Dust is created from the untarmacked driveway

Mr Trevelyan Forrester (Annex 5)

- Guests have visited the shop and have been well behaved
- Brings trade to the area
- Not experienced any traffic problems

David Foyle (Annex 6)

- No issues with crime and disorder
- No issues with public safety, traffic or noise
- No issues with regards protecting children from harm children
- Brings trade to the area

Lance Marshall (Annex 7)

- No public nuisance or crime and disorder with guests who stay following events
- Benefits from increased trade

Eddie Hill (Annex 8)

- Guests at the venue are polite and friendly
- Not experienced noise from traffic
- Benefits the community

J Retter (Annex 9)

- Not experienced any disturbance

Claire Marie-Hunt (Annex 10)

- No Crime or disorder at the premises
- Guests arrived /left the venue at different times throughout the day
- Children were safe at the venue and supervised

Nicola Webber (Annex 11)

- Not experienced crime or disorder at the premises
- Not experienced issues with traffic

Steve Coldrick (Annex 12)

- Attended events which were well regulated with no disorder
- Not experienced any traffic problems negative impacts related to the premises

J Lockyer (Annex 13)

- No disorder
- No public nuisance or public safety concerns

Joanne Carter (Annex 14)

- Attended functions with no concerns of crime and disorder
- Not experienced problems with excessive traffic problems or noise

Kate Budd (Annex 15)

- Attended events with no issues with crime or disorder
- No traffic or noise problems
- Children were well supervised and in no danger

Neil Burgess (Annex 16)

- Attended events with no issues
- Not experienced any traffic problems
- Positive economic benefit

Ian Walker (Annex 17)

- Attended events with no evidence of crime or disorder
- No public safety issues
- Beneficial to the community

Garry Retter (Annex 18)

- Not experienced issues with noise or traffic
- Seeing a positive effect on their own business

Mr Andrew Brittain (Annex 19)

- Good conduct by visitors
- Brings trade to the area
- Never experience traffic problems

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

- The beneficial economic impact on the surrounding area is not a relevant matter
- The issue of drink driving is a criminal matter for the Police

5.4 A map showing the location of the residents who have made representations in relation to the premises is attached as Annex 20.

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 *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 2.15)*

7.4 *Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night. (Paragraph 2.20)*

7.5 *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)

7.6 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy. (Paragraph 9.37)

8.0 DEREGULATION DETAILS

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

Plays

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

Dance

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

Indoor Sporting Events

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

Boxing or Wrestling Entertainment

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

Live Music

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

Recorded Music

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

8.2 Deregulations: Conditions for live and recorded music

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

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

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

9.0 DETERMINATION

9.1 The Committee must take such steps as it considers appropriate for the promotion of the licensing objectives. This may include:

- Granting the licence as applied for
- Granting the licence subject to appropriate modifications necessary for the promotion of the licensing objectives
- Excluding from the scope of the licence any of the licensable activities to which the application relates
- Refusing to specify a Designated Premises Supervisor
- Rejecting the application

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

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

9.4 An adopted Procedure for Hearings is available as Annex 21. This should help guide all parties through the hearing process.

10.0 APPEAL

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

LIST OF ANNEXES TO THIS REPORT

Annex 1: Premises licence application

Annex 2: Plans submitted with the premises licence application

Annex 3: Representation from Environmental Health

Annex 4: Representation from Miss Lynn Scarsbrook

Annex 5: Representation from Mr Trevelyan Forrester

Annex 6: Representation from Mr David Foyle

Annex 7: Representation from Lance Marshall

Annex 8: Representation from Mr Eddie Hill

Annex 9: Representation from J Retter

Annex 10: Representation from Claire Marie-Hunt

Annex 11: Representation from Nicola Webber

Annex 12: Representation from Mr Steve Coldrick

Annex 13: Representation from Mr J Lockyer

Annex 14: Representation from Joanne Carter

Annex 15: Representation from Kate Budd

Annex 16: Representation from Mr Neil Burgess

Annex 18: Representation from Mr Ian Walker

Annex 19: Representation from Garry Retter

Annex 19: Representation from Andrew Brittain

Annex 20: Map showing representations received in relation to the premises

Annex 21: Procedure for Hearings

Contact for any more information	Jackie Taylor - 01884 244619 Thomas Keating - 01884 244618
Background Papers	S.182 Guidance to Licensing Act 2003 & MDDC Statement of Licensing Policy
File Reference	Licensing/Hearings/Higher Eggbeer
Circulation of the Report	Applicant / Environmental Health / 'Other Persons'

