

**AGENDA ITEM**

**LICENSING SUB COMMITTEE  
12 JUNE 2017**

**REPORT OF THE DIRECTOR OF OPERATIONS**

**DETERMINATION OF A PREMISES LICENCE APPLICATION FOR CHARCOAL GRILL,  
27 FORE STREET, CULLOMPTON, DEVON, EX15 1JS**

**REASON FOR REPORT**

1. An application has been received for a new premises licence for Charcoal Grill, 27 Fore Street, Cullompton, Devon, EX15 1JS. 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. The licensing of a business does link to the corporate plan via the economy and community priorities. However, in dealing with and determining this application, the Sub-Committee must only consider the licensing objectives and nothing else.

**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, the body responsible for Child Protection and the Home Office (if applicable). 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.
- 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 HISTORY OF THE PREMISES**

- 1.1 The application to be considered by the Sub-Committee is for a new premises licence for Charcoal Grill, 27 Fore Street, Cullompton, Devon, EX15 1JS.
- 1.2 The Sub-Committee should be aware that the premises has an existing premises licence (licence number MDV PL0063) at 55 Fore Street, Cullompton, Devon, EX15 1JT. This licence has been held since 2006. The holder of the existing licence, Mr Cakir Sen, is the applicant for the proposed new licence.
- 1.3 For information purposes, a copy of the existing licence is attached to this report as Annex 1. This existing licence is also for late night refreshment and the times permitted mirror the times requested on the new application (with the exception of the opening hours for Sunday which need to be clarified – see Paragraph 2.3 below). The new application does however propose additional conditions beyond those on the existing licence.
- 1.4 The new application must be considered on its own individual merits however, the Sub-Committee may decide that the operation of the existing premises is a relevant consideration, in light of the above information (i.e. the licence holder will be the same and the licensable activities would be taking place at the same time). This particular point will be relevant when considering some of the representations which reference the operation of the existing premises.

## **2.0 APPLICATION**

2.1 The applicant is a Mr Cakir Sen and the application itself was submitted on his behalf by BGW Solicitors. The application form is attached as Annex 2 and the plan accompanying the application is attached as Annex 3.

2.2 In summary, the following has been applied for:

### Late night refreshment

- Monday – Thursday from 23:00 until 23:30
- Friday and Saturday from 23:00 until 01:00
- Sunday from 23:00 until 23:30
- Christmas Eve from 23:00 until 01:00
- New Year’s Eve from 23:00 until 01:00

### Hour’s premises open to the public

- Monday – Thursday from 14:00 until 00:00
- Friday and Saturday from 14:00 until 01:30
- Sunday from 14:00 until 01:30
- Christmas Eve from 14:00 until 01:30
- New Year’s Eve from 14:00 until 01:30

2.3 The Licensing Team have tried to contact the solicitor dealing with the application to clarify the proposed opening times of the premises on Sunday. The application is requesting late night refreshment until 23:30 but a closing time for the premises is then given as 01:30. This additional two hours is not in keeping with the other times listed on the application but unfortunately the Licensing Team has not received a response at the time of writing this report. This will need clarifying at the hearing but it is important to note that times applied for cannot be increased and the question is therefore whether or not the opening hours for Sundays should have been applied for until 00:00.

2.4 The premises are described in the application as a *‘food takeaway shop offering delivery service’*.

## **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 Section M of the application (Annex 2) includes details on the measures that the applicant is proposing to promote these licensable objectives.

#### **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
- the Home Office (if applicable)

4.3 As of 6 April 2017 the Home Office was made a Responsible Authority and the statutory application forms amended to reflect the requirements of the Immigration Act. As a result, the standard 'automated' online form that this authority used was out of date and could not be used. This application was therefore submitted to licensing via email. The Licensing Team cannot find a record of the Home Office being notified of the application.

4.4 This is not a fault on the part of the applicant and the Home Office was subsequently notified of the application on 12 May 2017. This was the final date for representations. The Home Office subsequently replied on 17 May 2017 to confirm that they would have had no representations / objections to make.

4.5 In cases like this where there has been a defect in the consultation process a decision needs to be made on whether or not it is necessary to 'restart' the application process. This decision needs to be made (and justified) on a case-by-case basis. In this particular case, the Home Office are the only party potentially disadvantaged (i.e. all other Responsible Authorities received the application) and as they have no comments to make, it is felt that it is appropriate to continue with this application and allow the hearing to go ahead as planned (i.e. it is not considered necessary to 'restart' the process).

4.6 Environmental Health has submitted a representation and this is attached as Annex 4. The representation is summarised as follows:

- The potential for anti-social behaviour late at night

- The dark lane leading to Jarman's Court may be used by people to urinate and vomit
- The plans do not show where the extraction system exits the building and as a result, it is possible that given the nearby neighbouring properties, public nuisance may be caused by both the noise from operating this extraction system and the subsequent odour generated
- Noise from customers congregating around the premises

4.7 The representation also states that planning permission must be sought before the applicant applies for a premises licence. The Sub-Committee should be aware that this is not possible and the licensing authority cannot compel an applicant to first apply for planning permission. Additional information is provided on the current planning situation later in this report (Paragraph 6.14).

4.8 Environmental Health have requested additional details from the solicitor dealing with the application with respect to the location of the extraction system but has not received a response at the time of writing this report.

4.9 No other representations were received from Responsible Authorities but advisory information was provided by both Planning and the Fire Service.

4.10 The Planning Department have confirmed that the premises do not currently have planning permission to operate as a hot food takeaway. The site would require a change of use from A1 to A5.

4.11 The Fire Service have stated that a fire safety inspection will be carried out and that and fire safety issues identified will be dealt with under their own powers (Regulatory Reform (Fire Safety) Order 2005).

## **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 eight representations. These are summarised briefly below, and for continuity, have been phrased similarly where possible to enable re-occurring themes to be highlighted. It is important to note that what follows in the report is only a brief summary of representations. The representations themselves are attached in full as Annexes 5 - 12.

5.3 The Licensing Officer believes that some of the points raised in these representations are not relevant and should not be considered by the licensing sub-committee. Additional information on this, as well as a summary of considerations, is provided in

Paragraph 6.0 of this report. These observations are from the Licensing Officer alone. If anyone has comments on these points then it is requested that they put this in writing and submit it to the licensing team prior to the hearing and in line with the requirements to return the 'Notice of Hearing' (i.e. by 5 June 2017). This information can then be circulated to the Sub-Committee in advance of the hearing.

5.4 **Cullompton Town Council** (Annex 5) has raised the following points:

- Anti-social behaviour will be relocated to a residential area
- The food hygiene rating for the premises is poor
- Noise from the premises in a residential area
- An insufficient fire exit to the rear of the premises

5.5 Cullompton Town Council have recommended that the application be refused.

5.6 **Mr & Mrs Ogle** (Annex 6) have raised the following points:

- Anti-social behaviour will be relocated to a residential area
- The potential for litter problems
- The dark lane leading too Jarmans Court may be used by people to urinate and vomit
- Additional threat and violence for local residents if premises relocates
- Food hygiene issues, the potential for pest infestation and drain problems
- Limited parking at the site and the potential difficulty in parking for nearby residents
- The extraction system could lead to noise and odour issues
- An insufficient fire exit to the rear of the premises
- Children being unable to sleep (as well as effected by things like air pollution, lack of cleanliness and 'moral devaluation')
- Local tenants unhappy with the proposal

5.7 Mr Ogle has also included some photos with the representation and these are also attached as Annex 6.

- 5.8 Additionally, Mr Ogle has enclosed a petition which is said to have ‘some 60 signatures’ requesting that the application be refused. This petition is attached to this report as Annex 7.
- 5.9 The petition is viewed by the Licensing Officer as supporting information to the initial representation submitted by Mr and Mrs Ogle. To clarify this, each individual signatory has not been treated as a separate objector for the purpose of this hearing.
- 5.10 Each page of the petition contains a statement to say that those signing are requesting that Mid Devon District Council refuse the application. It then states that the premises would be trading in the early hours of the morning and should not be allowed in a residential area. However, in terms of making a representation, the petition does not explain why, in relation to the four licensing objectives, the application should be refused. Additionally, each signatory was presumably aware of the application having signed the petition and could have submitted a representation directly themselves.
- 5.11 In light of this information, the Sub-Committee need to decide for themselves on how much weight to attach to the petition.
- 5.12 **Mr George Mills** (Annex 8) has raised the following points:
- Late night drinking has led to anti-social behaviour and this licence will add to these problems
  - The potential for litter problems
  - Alleyways and doorways may be used by people as toilets
  - Children being unable to sleep because of late night noise
- 5.13 Mr Mills has requested that there is no opening of the premises after 23:00. The Sub-Committee should be aware that the premises only requires a licence under the Licensing Act if it trades beyond this time because late night refreshment is only licensable between 23:00 and 05:00.
- 5.14 **Mr P Bradley** (Annex 9) has raised the following points:
- The potential for litter problems
  - Current situation with regards to anti-social behaviour in the early hours of the morning
- 5.15 **Mr R, Mrs G, Mr R and Mr L Priestley** (Annex 10) have raised the following points:
- Late night drinking has led to anti-social behaviour and this licence will add to these problems

- Potential for people to congregate around the premises late at night
- Cars parked nearby would be more at risk of damage or theft
- Limited parking at the site and the potential difficulty in parking for nearby residents
- People congregating around Jarmans Court would make it difficult for drivers to pull in and out safely
- The potential for litter problems
- Alleyways and doorways may be used by people as toilets
- The extraction system could lead to odour issues
- The potential for pest infestation and drain problems

5.16 Additionally, this representation states that Fore Street is a conservation area and that takeaways do not bring visitors or trade during the day. The Sub-Committee should be aware that the issue of trade is not relevant to the Licensing Act and should not be considered.

5.17 **Judith Merritt** (Annex 11) has raised the following points:

- CCTV is not shown on the plan and needs to be legal and cover all areas
- The potential for litter problems and issues with waste collection
- The potential for pest infestation and drain problems
- The dark lane leading too Jarmans Court may be used by people to urinate and vomit
- Limited parking at the site and the potential difficulty in parking for nearby residents
- Potential for deliveries to the premises to cause a nuisance
- Noise from customers congregating around the premises and Jarmans Court. This would also make it difficult for cars to pull in and out safely.
- The extraction system could lead to noise and odour issues

5.18 Judith Merritt has raised a number of issues which seem to be in the form of queries against the application. Examples include:



- a question on how staff can be trained to ask customers to leave in an orderly and respectful manner.
- A question about the location of lighting
- A question about how staff are trained to 'environmental health' requirements
- A statement about a logbook recording system and asking if this is not a health and safety requirement anyway
- A question asking how children would be prevented from accessing the premises after 21:00 (when unaccompanied)

5.19 Some of these matters can be clarified by the applicant at the hearing. For example, they can explain how, in practice, they will deal with unaccompanied children after 21:00.

5.20 **Trudi Nelson** (Annex 12) has raised the following points:

- Anti-social behaviour (including breaking of windows)
- The potential for litter problems
- Noise problems and children being unable to sleep

5.21 **Amir Faridi** (Annex 13) has raised the following points:

- Anti-social behaviour (including breaking windows of nearby properties)
- The potential for litter problems (including broken glass bottles)
- Doorways may be used by people as toilets
- The potential for pest infestation

5.22 A map showing the location of the nearby parties who have made representations in relation to the premises will be available to view and reference at the hearing.

## **6.0 ADDITIONAL INFORMATION AND GOVERNMENT GUIDANCE**

6.1 In order encourage a productive and focused hearing the following section of the report includes additional information on the application and the representations received. Where possible, specific information has been included from Guidance produced under S.182 of the Licensing Act 2003.

6.2 In terms of representations generally, S182 Guidance states that:

A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. (Paragraph 9.4)

- 6.3 Some of the points made in representations are not considered relevant by the licensing officer, or alternatively, seem to apply to issues which would be beyond the responsibility of the licence holder. These are clarified below. Once again, if any party disagrees with any of these points it is requested that they put this in writing and submit it to the licensing team by 5 June 2017, in line with the requirements to return the ‘Notice of Hearing’. This will help to ensure a productive hearing.

#### Opening hours for local premises

- 6.4 For information purposes and to allow the sub-committee to put this application in to the wider context of the late night economy in Cullompton, the table below shows the times applied for in this application, alongside the times permitted by other premises licensed to sell alcohol and provide late night premises in the immediate area (Friday and Saturday):

<b>Premises</b>	<b>Alcohol terminal hour</b>	<b>LNR terminal hour</b>	<b>Closing time</b>
Charcoal Grill	N/A	01:00	01:30
Kings Head	00:30	01:00	01:00
Manor House	01:30	02:00	02:00
Market House	01:00	N/A	01:30
Pony and Trap	01:00	01:30	01:30
Weary Traveller	02:00	02:30	02:30
White Hart Inn	01:00	01:00	01:30

## Anti-social behaviour and Charcoal Grill

- 6.5 A number of representations relate to anti-social behaviour and S182 Guidance is important to note:

‘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 2.21)

- 6.6 With this in mind it is unlikely that a licence holder could be held responsible for some of the issues highlighted in representations. Examples include:

- Individuals urinating or vomiting when they are outside the immediate area of the premises
- Individuals breaking shop windows when they are outside the immediate area of the premises
- Individuals damaging vehicles parked nearby
- A build-up of traffic in the area

- 6.7 This is not to say that if these issues exist then they are not problems to be dealt with. It just means that alternatively means of dealing with these issues need to be found and this could involve a number of Responsible Authorities and associated bodies (i.e. the Licensing Authority, Police, and Community Safety).

- 6.8 Some of the representations also reference the current situation with regards to the existing Charcoal Grill premises and anti-social behaviour. This is linked to the crime and disorder licensing objective and S182 Guidance states that:

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

- 6.9 Although no representation have been received from the Police it is possible that nearby residents experience issues that the Police are not necessarily aware of. If any parties who have made representations have previously complained to Environmental Health, the Police or Licensing (or any other body) about the premises directly, then it is requested that they provide additional information on this to the Licensing Team by 5 June 2017, in line with the response to the ‘Notice of Hearing’. This information / evidence will assist the sub-committee in assessing the impact of what appears to be similar premises.

- 6.10 This is not to say that the absence of previous complaints or logs prevents representations from being considered. S182 Guidance states:

‘There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises’. (Paragraph 9.4)

#### Public safety

- 6.11 Some of the representations have also covered issues of public safety and it is important to note that the public safety licensing objective relates to the safety of those using the premises, not general public health which is addressed in other legislation. Additionally, conditions should not be imposed which relate to matters of cleanliness or hygiene (Paragraph 2.7 of S172 Guidance). The body responsible for Health and Safety (Environmental Health) have not made a representation in relation to this licensing objective.

#### Public nuisance

- 6.12 In terms of the representations relating to public nuisance, S182 guidance states:

‘It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter’. (Paragraph 2.15)

- 6.13 It goes on to state that:

‘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 2.18)

#### Planning permission

- 6.14 In terms of the crossover between the licensing process and planning, Section 182 Guidance states that:

Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts

prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs. (Paragraph 9.45)

- 6.15 The Licensing Team have been speaking to the Planning Department about this specific premises and it has been confirmed that an application for change of use would be required. This application has not yet been submitted and the Planning Department have contacted the solicitor dealing with the application but at the time of writing this report have not received a response.
- 6.16 It is the case that some of the issues raised in representations would also be considerations of planning. However, the licensing sub-committee will need to satisfy themselves in relation to the proposed licensable activities and the action required to promote the four licensing objectives. The premises would not be able to operate legally until they had all of the required permissions in place. For example, even if a licence was granted it would not entitle the applicant to use the premises until planning permission was granted.
- 6.17 Given the potential crossover between planning and licensing in dealing with some of the matters raised, the licensing team are trying to arrange for someone from the Planning Department to be available during the time of the hearing to answer any specific questions the Sub-Committee may have. It is important to note however that planning did not make a representation against the application and they would only be present at the hearing to assist in the understanding of the general planning process.
- 6.18 Section 182 Guidance also 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 14.57)

There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee. (Paragraph 14.58)

- 6.19 In relation to planning permission, the Council's Licensing Policy states that:

The Authority recognises that it is a fundamental principle of the Act that the licensing function should not duplicate other statutory regulation. In particular, the Licensing Authority recognises that licensing applications should not be seen as a repeat of the planning application process and that there is no legal basis to refuse a licence application because it does not have planning permission. Applicants are

recommended, however, to ensure that appropriate planning permissions are obtained before an application for a premises licence or club premises certificate is made. (Paragraph 4.3.3)

6.20 A brief summary of the points that the Licensing Officer considers relevant is provided below. This is followed by a summary of points that are not considered to be relevant. It is hoped that this final summary will help to ensure a focused hearing. Once again, it is important to note that this is the view of the Licensing Officer and if any party feels differently then we ask that they notify the licensing team of this in writing by 5 June 2017. This will ensure that there is time for this information to be circulated to the Sub-Committee.

6.21 The Licensing Officer believes that the main points to consider at the hearing are as follows:

- a) The potential for people to congregate in and around the premises leading to noise and anti-social behaviour impacting upon nearby residents.
- b) Nearby residents (including children) not being able to sleep as a result of the above.
- c) The lane leading to Jarman's Court may be used by people to congregate, urinate and vomit.
- d) Potential for nuisance via the extraction system in relation to both noise and odour (this issue may also be considered at the planning stage).
- e) The arrangements for fire exits (although Paragraph 4.11 of this report should be noted and the Licensing team have, at the time of writing this report, asked the Fire Service if any issues have been identified).
- f) The location and availability of waste receptacles and the potential for litter problems associated with the premises.
- g) The potential for deliveries to the premises to be a nuisance, insofar as they are linked to the proposed licensable activities (this issue may also be considered at the planning stage).

6.22 The issues that are not considered relevant are as follows:

- a) The fact that planning permission has not been applied for at this stage – this is not a reason to refuse the application.
- b) The existing food hygiene rating for the premises and issues relating to cleanliness and hygiene.

- c) Anti-social behaviour by individuals not linked to the premises and / or beyond the immediate area surrounding the premises.
- d) The lack of parking in the area.
- e) The general feeling that a premises like this is not required or that people are generally unhappy with the proposal. In order to be considered relevant, such issues would need to be directly linked, with reason, to the licensing objectives.

## **7.0 LICENSING POLICY**

- 7.1 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:
- 7.2 The Licensing Authority has a duty to carry out its licensing functions with the aim of promoting the four licensing objectives. (Paragraph 3.1)
- 7.3 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)
- 7.4 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)
- 7.5 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)
- 7.6 Members must have regard to the policy when making their decision and a copy will be available for people to view at the hearing.

## **8.0 GOVERNMENT GUIDANCE (GENERAL)**

- 8.1 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 April 2017. Section 6 of this report provided some specific information from the Guidance which is considered relevant to this application and the representations received. This section of the report will contain some sections of the Guidance which are relevant to the licensing process more generally.
- 8.2 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)
- 8.3 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 9.37)
- 8.4 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 9.38)
- 8.5 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)
- 8.6 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)



- 8.7 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 the 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)

## **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 (in this case the application is only for late night refreshment)
- Rejecting the application

- 9.2 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.

- 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 14. 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.

## **10.0 THIS REPORT**

- 10.1 If any interested party wishes to comment on this report, believes there is an inaccuracy or would like something clarified then they should put this in writing to the Licensing Team by 5 June 2017. This is in line with the requirement to respond to the Notice of Hearing and will ensure that there is time to circulate this information to the Licensing Sub-Committee, as well as any other interested party that may need the information prior to the hearing commencing.

### **LIST OF ANNEXES TO THIS REPORT**

Annex 1:	Copy of existing licence
Annex 2:	Application form
Annex 3:	Plan of the new premises
Annex 4:	Representation – Environmental Health
Annex 5:	Representation – Cullompton Town Council
Annex 6:	Representation - Mr & Mrs Ogle
Annex 7:	Petition on behalf of Mr & Mrs Ogle
Annex 8:	Representation - Mr George Mills
Annex 9:	Representation - Mr P Bradley
Annex 10:	Representation - Mr Richard, Mrs Gillian, Mr Renny and Mr Priestley
Annex 11:	Representation - Judith Merritt
Annex 12:	Representation - Trudi Nelson
Annex 13:	Representation - Amir Faridi
Annex 14:	Procedures for the hearing

<b>Contact for any more information</b>	<b>Thomas Keating (01884 244618)</b> Lead Licensing Officer  <b>Simon Newcombe</b> Public Health and Professional Services Man.
<b>Background Papers</b>	S.182 Guidance to Licensing Act 2003 & MDDC Statement of Licensing Policy
<b>File Reference</b>	Licensing / Hearings / Charcoal Grill
<b>Circulation of the Report</b>	Applicant / 'Other Persons'