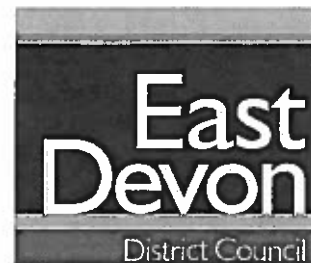


Date: 28 September 2009
Contact number: (01395) 571544
E-mail: clane@eastdevon.gov.uk
Our Reference: Christopher Lane
Your Reference: CL



To: Members of the Licensing & Enforcement Sub-Committee
(Councillors: Graham Godbeer, Marion Olive & Mark Williamson)
Remaining members of the Licensing and Enforcement Committee
for information)

Head of Legal, Licensing & Democratic Services – For information
Senior Licensing Officer
Assistant Solicitor
All parties to the hearing

East Devon District Council
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Meeting of the Licensing & Enforcement Sub-Committee

Tuesday 6 October 2009 at 9.30 am Council Chamber, Knowle, Sidmouth

Members of the public are welcome to attend this meeting. A hearing loop system will be in operation in the Council Chamber. Due to the requirements of the Licensing Act 2003 only parties to the hearing are permitted to address the sub-committee (through their representative as appropriate). Visitor car parking is available at the top of the drive outside the main reception area.

Visitors please note that the doors to the civic suite (meeting rooms) will be opened ¼ hour before the start time of the meeting. Councillors are reminded to bring their key fobs if they wish to access the area prior to that time.

A G E N D A

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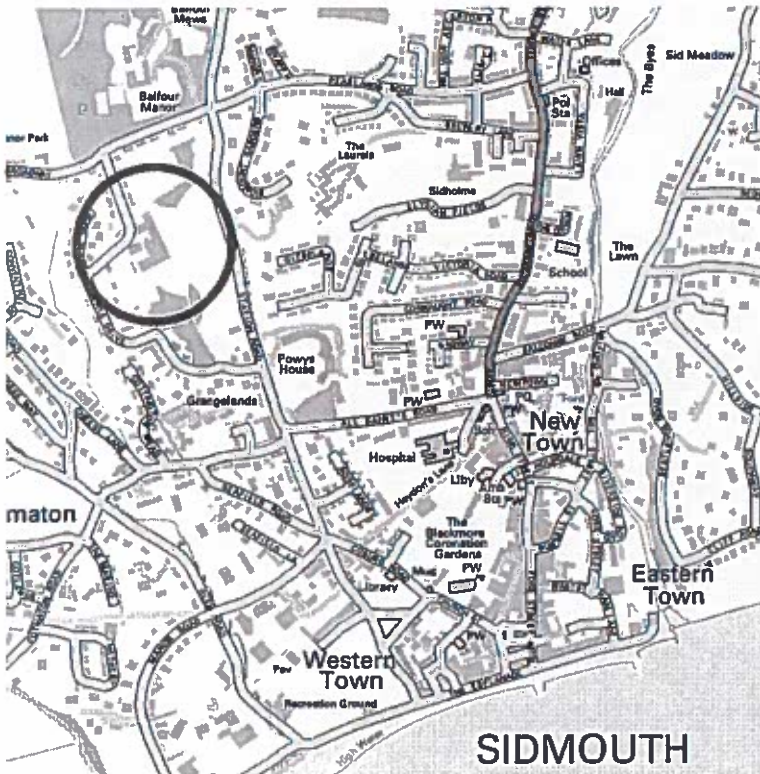
1. To receive the minutes of the meeting held on 11 August 2009. 3 - 11
2. To receive any apologies for absence from Members of the Sub Committee.
3. To consider any items which in the opinion of the Chairman should be dealt with as matters of urgency because of special circumstances.

(Note: Such circumstances need to be specified in the minutes; any Member wishing to raise a matter under this item is requested to notify the Chief Executive in advance of the meeting).
4. To agree any items to be dealt with after the public (including the press) have been excluded. (There are no items which the Officers recommend should be dealt with in this way).
5. Schedule of applications for Sub Committee approval where an agreed position has been reached and all Parties have agreed a hearing is unnecessary. Senior Licensing Officer 12 -13

Members Remember!

- You must declare any personal or prejudicial interests in an item whenever it becomes apparent that you have an interest in the business being considered.
- Make sure you say the reason for your interest as this has to be included in the minutes.
- If your interest is prejudicial you must leave the room unless you have obtained a dispensation from the Council's Standards Committee or where Para 12(2) of the Code can be applied. Para 12(2) allows a Member with a prejudicial interest to stay for the purpose of making representations, answering questions or giving evidence relating to the business but only at meetings where the public are also allowed to make representations. If you do remain, you must not exercise decision-making functions or seek to improperly influence the decision; you must leave the meeting room once you have made your representation.
- You also need to declare when you are subject to the party whip before the matter is discussed.

Getting to the Meeting – for the benefit of visitors



The entrance to the Council Offices is located on Station Road, Sidmouth. Parking is limited during normal working hours but normally easily available for evening meetings.

The following bus service stops outside the Council Offices on Station Road:
From Exmouth, Budleigh, Otterton and Newton Poppleford – 157

The following buses all terminate at the Triangle in Sidmouth, From the Triangle, walk up Station Road until you reach the Council Offices (approximately ½ mile).

From Exeter – 52A, 52B
From Honiton – 340 (Railway Station), 387 (Town Centre)
From Seaton – 52A, 899
From Ottery St Mary – 382, 387

Please check your local timetable for times.

The Committee Suite has a separate entrance to the main building, located at the end of the visitor and Councillor car park. The rooms are at ground level and easily accessible; there is also a toilet for disabled users.

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Licensing & Enforcement Sub Committee held at Knowle, Sidmouth on Tuesday 11 August 2009

- Present:** Councillors:
Chris Gibbings (Chairman)
Pat Graham
Jim Knight
- Officers:** Ian Carter - Senior Licensing Officer
Giles Salter – Assistant Solicitor
Rachel Perram - Democratic Services Officer
- Apologies** Councillor:
Graham Godbeer

The meeting started at 9.30am and finished at 1.57pm.

***7 Minutes**

The minutes of the meetings of the Licensing & Enforcement Sub Committee held on 16 June and 8 July 2009 were confirmed and signed as a true record.

***8 Application to grant a Premises License under the Licensing Act 2003 at The Redwing Inn, Church Road, Lymptone**

The Sub Committee gave consideration to the application for the grant of a Premises Licence under the Licensing Act 2003 to permit the provision of regulated entertainment, entertainment facilities, late night refreshment and the sale of alcohol for consumption both on and off the premises at The Redwing Inn, Church Road, Lymptone.

The Chairman identified members of the Sub Committee, Officers and applicants. Interested parties present were Mr Jason and Mrs Sue Ingham; Tim Selley-Solicitor representing Mr & Mrs Hennessy (in attendance) and Mr & Mrs Tooke; Mr and Mrs Cole; Mrs Wadhams; Mr Jim Morris representing Tim Gibson. The applicant was Mr James Robshaw, (who attended with his Designated Premises Supervisor, Lianne Asel) and was represented by Mr Graham Gover, Solicitor.

Applicant's Case

The applicant's case was that the application was to replace the licence granted by the historical Justice On-Licence and the Public Entertainment Licence that was transferred to a Premises Licence when the Licensing Act 2003 came into force in 2005. It was understood that this licence had been surrendered due to bankruptcy of the previous licensee (who had operated without the Licensing Authority taking any enforcement action against the licensee).

The new proprietor wished to operate a restaurant supplying quality food to its patrons; this was felt to be a moderating influence. The Proprietors stressed that they did not want the conflict of a quality food establishment with a noisy, music establishment. The current application was lesser than the previously held licence for the premises.

*8

**Application to grant a Premises License under the Licensing Act 2003 at
The Red Wing Inn, Church Road, Lymstone (Cont)**

Mr Gover advised that the main areas of concern for the Interested Parties had been the external area; the increase of noise from the patio and beer garden, and increased vehicular and pedestrian traffic to and from the premises.

He advised that external activity in the beer garden would be the consumption of food and alcohol and for smoking in a designated area. It was stated that use of the area should be conditioned in line with other licensed premises in the village, such as The Swan. The sale of alcohol would continue until 12.30am.

Mr Gover said that music could be provided as incidental to the regulated activities and any conditions were not covered by a TENS application. The mediated position was that there would be no music outside and that music would not be audible beyond the boundary of the premises.

The Planning Consent, granted in 2008 did not include any issues of car parking facilities. The flue extraction system for the kitchen had been covered in the Planning Conditions PP.

The premises had been designed to contain noise. Internal walls had been clad with sound insulation material, noise levels would be set by the Environmental Health Officers. When "live" music was played, windows would be covered by sound reducing baffles. It was felt that the physical control of the premises should be by the imposition of conditions and not by reducing the timings in the application.

The applicant was keen to stress that this was a different licence, operated by a different proprietor, which should have the opportunity to run the premises.

Questions from Interested Parties

In response to a query over the proposed closing time on Sundays of 12.30am, Mr Gover stated that this was in line with The Globe and The Swan in the village.

Answering a query over the external plan that showed a grassed area in the car park, the applicant confirmed that this area was purely ornamental and would not be used by patrons. The decision to grass this area had been as made to limit disturbance to the neighbouring property. Some visual screening would also be added.

In response to concerns over the number of patrons that would be using the beer garden at one time, the Applicant's Solicitor stated that an indicative maximum number would be in the region of 60. Interested Parties were reminded that these numbers did not form part of this application but was covered by the Fire Safety Act.

Outside lighting details had not been finalized, however the applicant stated that wiring had been installed for two carriage type lamps, for security lighting, a light for staff and a bulk head light for the corner of the area.

Jill Wheller, EDDC Environmental Health Officer stated that her team used a Defra Good Practice Guide for Noise in Pub, Clubs and Beer Gardens and that 9.00pm was a recommended cut-off time for regulated activities to cease. However, with the advent of the Non-Smoking regulations in 2005, which brought an accompanying requirement to provide an outdoor designated smoking area, it was extremely difficult to enforce noise nuisance on voices within such a beer garden. However EDDC would monitor the premises in future. The applicant was advised that Environmental Health recommended the removal of patio heating and seating, outside the designated garden usage hours, which was found to discourage smokers from loitering in the area.

Application to grant a Premises License under the Licensing Act 2003 at The Red Wing Inn, Church Road, Lymptone (Cont)

Interested Parties' Case

The Interested Parties added several comments to their previously submitted representations.

Mr Jason Ingham, who lived opposite the premises, referred to the Human Rights Act - Article 8, which outlined the right to respect for private and family life. He referred to EDDC Licensing Policy, point 17.1 that stated that the impact of an application should not be unreasonable or disproportionate. He and his family had a history of disturbed nights' sleep - caused both by patrons leaving The Redwing Inn late at night and from bottle banks being emptied as early as 5.00am in the morning.

Mr Tim Selley, Solicitor representing Mr & Mrs Hennessy and Mr & Mrs Tooke advised that there were no comments to make on the proposed internal running of the premises.

His clients' concerns lay with the use of the beer garden. He directed the committee to the proposed condition 14 of Appendix E. It was felt that an 11.00 pm cessation of activities would lead to nuisance and disruption to neighbouring property owners. Mr Selley referred to The Good Practice Guidance for Pubs and Clubs. It was recommended that when beer gardens were in close proximity to residential property, regulated entertainment should cease at 9.00 pm or dusk, whichever was earlier. In this case 11.00 pm was considered unreasonable, 9.00 pm was proposed as a more appropriate closure time. He understood that smokers had to be allowed outside, but these numbers would be limited.

He proposed amendments to the proposed conditions

Condition 5- addition of "or sound"

Condition 9 addition of "or noise" (from the extraction fans)

Condition 18 "must cease at 9.00 pm"

Mr Hennessy spoke about his concerns over the possibility of a noisy ventilation and extraction system. He produced a plan, which showed his property's proximity to the premises, stating that his house was downwind of the Inn. His property would be the most adversely affected by noise from the extraction system. He referred to the DEFRA handbook (pgs 53/54 of the bundle) which placed his property in a 'high risk' category.

Mr Cole's concerns centred over the rebound of sound from the beer garden across the village and also from the noise of vehicles leaving the premises late at night.

Mrs Cole added that there had been incidents of anti-social behaviour in the village, that had not been resolved by the Police, who were rarely in the village and were slow to respond to reported offences. It was felt to be intolerable that weekend after weekend there was noise and drunkenness in the village.

Mrs Wadhams expressed her concern over traffic movement late at night which she believed could cause nuisance and disturbances. As many of the buildings in Church Road were listed, double glazing was not permitted to limit sound from carrying inside properties.

Decision

The Sub Committee carefully considered the application with the amendments following mediation, for the licensable activities and the proposed hours of operation with a view to deciding whether the application promoted the licensing objectives, as required by the Licensing Act 2003. The Committee also took into account Government Guidance, the Council's own licensing policy and the Human Rights Act 1998 in making its decision

*8

**Application to grant a Premises License under the Licensing Act 2003 at
The Red Wing Inn, Church Road, Lymestone (Cont)**

The Sub Committee considered the relevant representations that all parties had made as well as the written representations and other documentation put before the committee.

The Sub Committee considered the particular locality of the premises in a large village and its physical relationship with residential property in the vicinity.

The Sub Committee considered it relevant that no representations had been received from the police in relation to the Licensing Act objectives that had been the subject of representations received. That was to say: public safety, public nuisance, crime and disorder. From this the Committee concluded that the police did not consider there to be any significant problem associated with the operation of the premises, or that there was likely to be if the amended application was granted - provided that the conditions they had requested were imposed.

The Committee noted that the applicant had reduced the hours originally requested.

The Sub Committee carefully considered the operating schedule put forward by the applicants and the likely impact of the application. In relation to the evidence heard regarding the history of the premises, the Committee considered that the establishment would be well managed and controlled with good policies in place with adequate supervision from line management.

There was no evidence to suggest that the operation the applicant proposed to run would cause the unacceptable impact suggested by local residents.

The Sub Committee reminded all parties of the closure and review powers which the Government brought into force on 24 November 2005. Premises which do not operate in an acceptable way in terms of the licensing objectives may in extreme cases be closed down by police action or have their scope of operation reduced by the licensing authority.

Whilst the Sub Committee acknowledged the concerns expressed by the interested party, the Committee believed the concerns expressed in representations had been addressed by the hours of operation for the licensable activities and the conditions that had been imposed which were tailored to the size, characteristics and activities on the premises, and which the Committee believed to be necessary and proportionate.

RESOLVED 1) that the Premises Licence be granted with the following conditions:

- (a) The extent of the areas within which the various licensable activities will be permitted is as indicated by the legends on the applicant's plan.
 - (b) Permitted hours for the various licensable activities will be as set out in the amended Appendix B with the exception that the terminal hour on a Sunday will be 12.00 (midnight).
- 2) that the conditions in the operating schedule as set out in the amended Appendices E and F will apply:
- a) Appendix E to be amended as follows:
 - 1 & 2 replaced by Conditions 1- 5 of Appendix F
 - 7 & 8 will be replaced by 7,8, 9 of Appendix F.
 - b) Current conditions 10 -13 of Appendix E to be replaced with 10-13 of Appendix F.
 - c) Current condition 18 Appendix E to be amended to read "Use of the patio and beer garden by patrons for the consumption of food and drink must cease at 10.00 pm."
 - d) Condition 5 Appendix E to be amended to read "amplified music or sound."
 - e) A further new condition to read "Bottle skips and bins containing cans or bottles will not be emptied outside between the hours of 10.00 pm and 07.00 am on any day."

All conditions will be re-numbered appropriately.

- 3) that the Designated Premises Supervisor will be:
Lianne Magarete Asel. 2 Belle Vue Cottages, Chapel Road,
Lympstone. EX8 5ER

*9

Application to grant a Premises Licence under the Licensing Act 2003 at Sidmouth Rugby Football Club, Blackmore Field, Heydon's Lane, Sidmouth

The Sub Committee gave consideration to the application for the grant of a Premises Licence under the Licensing Act 2003 to permit the provision of regulated entertainment, entertainment facilities, late night refreshment and the sale of alcohol for consumption both on and off the premises at Sidmouth Rugby Football Club (RFC), Blackmore Field, Heydon's Lane, Sidmouth.

The Chairman identified members of the Sub Committee, Officers and applicants. The applicant was Mr Malcolm Barratt, represented by Mr Colin Chesterton, Solicitor and Club Secretary. Mr Robert Neale was present as an interested party.

Applicant's Case

The Applicant's case at the hearing was that the application encouraged by the police to accommodate the way in which the club functioned.

Sidmouth RFC held a club premises certificate, which allowed members into the club but that any non-members, such as visiting supporters, could not be entertained. The application had been made necessary by the change of legislation.

*9

Application to grant a Premises Licence under the Licensing Act 2003 at Sidmouth Rugby Football Club, Blackmore Field, Heydon's Lane, Sidmouth (contd)

Sidmouth RFC was a successful club and thrived at all levels; it ran three senior XV's, a Colts team and numerous junior teams from Under 8s to Under 16s. It relied on the goodwill and voluntary support of its members, and parents of the children who played the game. Some 70 - 80 matches were played on average in each year. 350 children signed up every year in the junior section and Sidmouth Rugby Club was amongst the strongest clubs in the South West.

The club wished to maximise its income as it had little financial support from the RFU. Income came from bar receipts, subscriptions and income raised from the use of the field during the summer months for car parking during Folk Week, minor counties cricket events and to the nearby bridge and bowls club.

The club intended to remain as a recreational club for Sidmouth and did not want to become a commercial venture, but needed to hold a premises licence in order to allow non-members to purchase alcohol at various functions. Private functions would not exceed more than half the number of rugby club functions in any year. The applicant was willing to provide a timetable of functions to the police and EDDC for their records.

The club needed to be well run as this was the only way it could prosper in the future. The Club had existed on the Blackmore Field site for 125 years.

Interested Party's Case

Mr Neale, the Interested Party added several comments to his previously submitted representation.

Mr Neale believed that the club was moving away from being a recreational venture and that the intention was to become more commercial with many non-rugby related functions.

He referred to his experiences of anti-social behaviour in Heydons Lane. Heydons Lane was normally a quiet, peaceful part of Sidmouth, was a narrow lane with limited access. He believed that there would be a natural increase in traffic if this licence was permitted. Recent repairs to a fractured drain emphasized that vehicular access to the club was inappropriate.

Mr Neale felt that in future activities should be restricted to match days. Functions relating specifically to the club were appropriate. However use for dinners, discos and birthday functions were considered inappropriate; there were other premises in the town for such occasions.

Mr Neale did however recognise that finance was a justification for the club to seek a premises licence, in order to raise funds.

Decision

The Sub Committee carefully considered the application for the licensable activities and the proposed hours of operation with a view to deciding whether the application promotes the licensing objectives, as required by the Licensing Act 2003. The Committee also took into account Government Guidance and the Council's own licensing policy, and the Human Rights Act 1998 in making this decision

The Sub Committee considered the relevant representations that all parties had made and the written representations and other documentation put before this Sub Committee.

The Sub Committee considered the particular locality of the premises in Sidmouth town centre and its physical relationship with residential properties in the vicinity.

Application to grant a Premises Licence under the Licensing Act 2003 at Sidmouth Rugby Football Club, Blackmore Field, Heydon's Lane, Sidmouth (contd)

The Sub Committee consider it relevant that no representations had been received from the Police in relation to the Licensing Act objectives that have been the subject of representations at this meeting, that is to say: public safety, public nuisance, crime and disorder. From this the Sub Committee concluded that the police did not consider that there was any significant problem associated with the current operation of the premises, or that there was likely to be if the amended application was to be granted.

The Sub Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application. In relation to the evidence the Committee heard regarding the history of the premises, the Committee considered the establishment to be well managed and controlled with good policies in place and adequate supervision. The Committee considered that the Sidmouth RFC provided an important facility both for the youth and residents of the town of Sidmouth.

The Sub Committee did not accept that there was evidence of a significant public nuisance, risk to crime and disorder, risk to public safety, risk to children arising from the current operation of the premises. This was due to a lack of evidence of a history of complaints to the statutory authorities.

There was no real evidence that the operation the applicant proposed to run would cause the unacceptable impact suggested by the local resident.

The Sub Committee reminded all parties of the closure and review powers which the Government brought into force on 24 November 2005. Premises which do not operate in an acceptable way in terms of the licensing objectives may in extreme cases be closed down by police action or have their scope of operation reduced by the licensing authority.

Whilst the Sub Committee acknowledged the concerns expressed by the interested parties, the Committee believed the concerns expressed in representations had been addressed by the hours of operation for the licensable activities and the conditions that have imposed which were tailored to the size, characteristics and activities on the premises, and which the Committee believed to be necessary and proportionate.

RESOLVED 1) that the Premises Licence be granted with the following conditions:

- (a) The extent of the areas within which the various licensable activities will be permitted is as indicated by the legends on the applicant's plan.
 - (b) Permitted hours for the various licensable activities will be as set out in the amended Appendix A
 - (c) The conditions will now be as shown in Appendix D.
- 2)** The conditions will now be as shown in Appendix F to include as follows:
- a) 1-3 Appendix D
 - b) 4-21 Appendix F
 - c) Add further items for consideration Appendix F clauses 5,7 & 8
 - e) A new additional condition to read "Bottle skips and bins containing cans or bottles will not be emptied outside between the hours of 10.00pm and 07.00am on any day."
- 3)** that the Designated Premises Supervisor would be Malcolm Barratt
125 Winslade Road, SIDMOUTH. EX10 9EZ

***10 Schedule of application for Sub Committee approval where an agreed position has been reached and all parties have agreed a hearing is unnecessary**

Consideration was given to the report of the Senior Licensing Officer which set out a schedule of applications for Sub Committee approval where an agreed position had been reached and all parties had agreed that a hearing was unnecessary.

RESOLVED that the applications be granted as applied for subject to the agreed positions set out in the schedule and any relevant statutory conditions and the applicants having complied with relevant statutory requirements.

Type of Application	Name of premises and address	Agreed position reached by the parties
Application for the variation of a premises licence	Axminster Guildhall, West Street, Axminster	<p>Following mediation the applicant and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.</p> <p>Section P to be withdrawn (original conditions to remain attached to licence with conditions 1 and 2 removed).</p> <p>Add C.C.T.V. conditions as follows: -</p> <p>C.C.T.V. to be installed operated and maintained to the satisfaction of the Licensing Authority and Chief Officer of Police.</p> <p>C.C.T.V. recordings must be maintained for a period of 14 days or for a period of time to be agreed in writing by the Licensing Authority.</p> <p>If the C.C.T.V. equipment is inoperative the Licensing Authority must be informed within 7 days and immediate steps to be taken to restore the equipment to full working order.</p> <p>A notice must be displayed at the entrance to the premises advising that C.C.T.V. is in operation.</p> <p>Update proof of age policy by incorporating conditions 8 and 14 plus :-</p> <ol style="list-style-type: none"> 1. A due diligence system will be in place to ensure persons under 18 will not be sold alcohol. 2. The premises will operate a 'challenge 21' policy whereby persons who appear to be under 21 will be asked to provide valid proof of age before they are sold alcohol e.g. passport, photo driving licence, PASS proof of age card. No

		<p>alcohol will be sold without such proof of age.</p> <p>3. Notices will be displayed in the premises about the 'challenge 21' scheme.</p> <p>4. Staff will be trained on induction and regularly thereafter in the premises' due diligence system.</p> <p>5. There will be signs at the bar stating 'no under 18's at the bar'.</p>
Recommendation	Approval of application subject to the amended operating schedule	

Chairman Date

Agenda Item 5

Licensing Sub Committee

06 October 2009

NMcD

Schedule of applications for Sub Committee approval where an agreed position has been reached and all parties have agreed a hearing is unnecessary.

Summary

The report details these applications.

Recommendation

That this application be granted as applied for subject to the agreed positions set out in the schedule below, any relevant statutory conditions and the applicants having complied with relevant statutory requirements.

a) **Reasons for Recommendation**

To ensure full compliance with statutory processes.

b) **Alternative Options**

The Licensing Authority must grant these applications as all parties have agreed a position which they consider makes a hearing unnecessary.

c) **Risk Considerations**

Applications must be dealt with within the statutory time limits.

d) **Policy and Budgetary Considerations**

Officers have taken into account the Council's Licensing Policy in making the recommendation.

e) **Date for Review of Decision**

The council's decision may be appealed to the Magistrates Court. The Licensing Act 2003 also contains review provisions.

1. Legislation Background

- 1.1 Under the Licensing Act 2003 it is unclear whether applications where an agreed position has been reached and the parties do not consider a hearing to be necessary, require to be formally determined by a licensing sub committee, as opposed to relying on determination powers delegated to officers. To put the matter beyond doubt, these applications are reported to members for their approval of the agreed position. This process also enables members to be advised of the success of the informal mediation in advance of hearings, which is facilitated by Licensing Officers or sometimes by other Responsible Authorities.

2 Schedule of Applications

Type of Application	Name of premises and address	Agreed position reached by the parties
Application for the variation of a premises licence	Holly Tree Inn 161 Withycombe Village Road, Exmouth	Following mediation the applicant, 20 local residents and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved. That the proposed operating hours for the supply of alcohol be amended to 0900 hrs to 12 Midnight daily and the premises opening hours amended to 0800 hrs to 0030 hrs daily. The current non standard times for Bank Holidays and the New Years Eve extension to remain as per current licence.
Recommendation	Recommend approval of application subject to the amended operating schedule	

Legal Implications

Included within the report

Financial Implications

No apparent financial implications

Background Papers

- The relevant licensing application
- Representations received from Interested Parties & Responsible Authorities
- Guidance issued under Section 182 of the Licensing Act 2003
- The District Council's Statement of Licensing Policy

Neil McDonald Ext.2709

Licensing Sub Committee

Licensing Officer

06 October 2009

