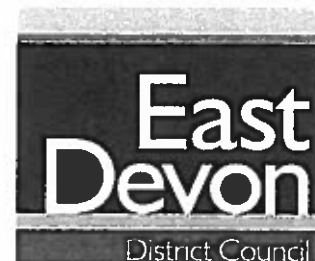


Date: 26 August 2010
Contact number: (01395) 571544
E-mail: clane@eastdevon.gov.uk
Our Reference: Christopher Lane
Your Reference: CL



To: Members of the Licensing & Enforcement Sub-Committee
(Councillors: Chris Gibbings, Steve Hall)
Remaining members of the Licensing and Enforcement Committee
for information)

Senior Licensing Officer
Assistant Solicitor
All parties to the hearing

East Devon District Council
Knowle
Sidmouth
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EX10 8HL

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www.eastdevon.gov.uk

Meeting of the Licensing & Enforcement Sub-Committee

Tuesday 7 September 2010 at 11.30 am (Or upon the rising of the Licensing & Enforcement Committee) 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.

AGENDA

- | | Page/s |
|--|--------|
| 1. To receive the minutes of the meetings held on 2 August 2010. | 3 - 8 |
| 2. To receive any apologies for absence from Members of the Sub Committee. | |
| 3. To receive any declarations of interests relating to items on the agenda. | |
| 4. 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). | |
| 5. 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). | |

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

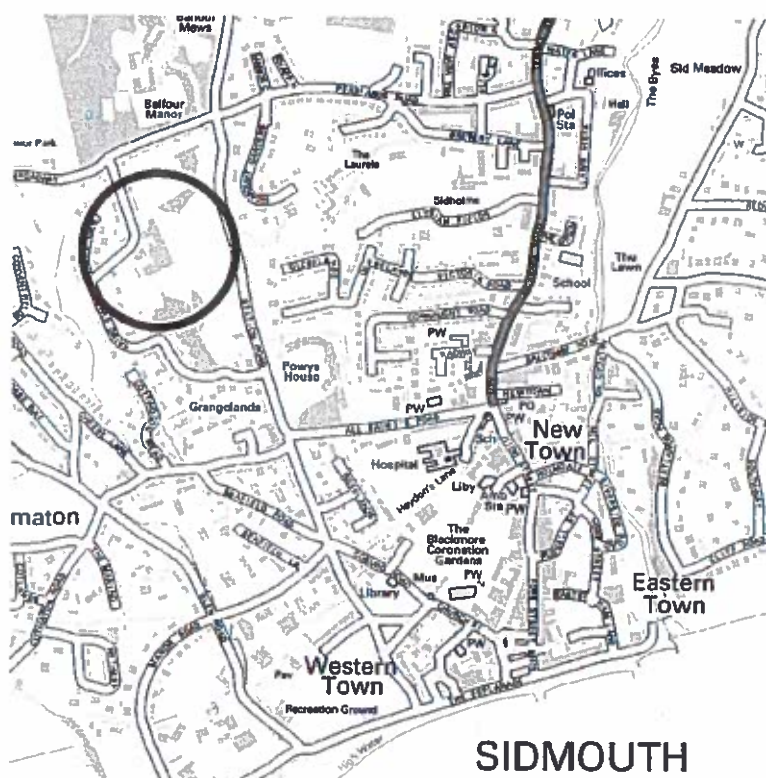
Licensing
Officer

9 - 10

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 representation, 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.

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From Exeter – 52A, 52B
From Honiton – 52B
From Seaton – 52A
From Ottery St Mary – 379, 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 Monday 2 August 2010

Present: Councillors:
Chris Gibbings (Chairman)
Steve Hall (Vice Chairman)
Jim Knight (Item 16 only)
Ken Potter

Officers: Neil McDonald - Licensing Officer
Jill Wheller – Environmental Health Officer
Chris Lane - Democratic Services Officer
Giles Salter – Assistant Solicitor
Douglas Jackson – Licensing Officer
John Loveridge – Licensing Officer
DC Mike Chambers – Devon & Cornwall Constabulary
DS Zoe Newell – Devon & Cornwall Constabulary

Also present: Barry Nicholson

The meeting started at 9.30 am and finished at 11.45 am.

*9 **Minutes**

The minutes of the meetings of the Licensing & Enforcement Sub Committee held on 29 June 2010, were confirmed and signed as a true record.

*10 **Declarations of interest**

Councillor/ Officer	Agenda Item	Type of interest	Nature of interest
Councillor Chris Gibbings	12 – Application to grant a variation to a premises licence for Kennaway House, Coburg Road, Sidmouth. 13 – Application to grant a variation to a premises licence for Pizza Pronto, Sidmouth.	Personal	Kennaway House was within Councillor Gibbings' Ward. Pizza Pronto was in Councillor Gibbings ward.
Councillor Steve Hall	16 – Hackney Carriage Drivers Licence	Personal & Prejudicial	Had known the applicant for a number of years.

***11 Urgent item**

The Chairman agreed for an urgent item to be taken in Part B of the meeting. The matter was concerning the suitability of a Hackney Carriage Driver to continue to be licensed and was a potential public safety issue.

***12 Exempt Information**

RESOLVED that the classification given to the documents to be submitted to the Sub-Committee be confirmed and that the report relating to exempt information be dealt with under Part B of the agenda.

***13 Application to grant a Premises Licence under the Licensing Act 2003 at Kennaway House, Sidmouth**

The Sub Committee gave consideration to the application for the grant of a variation of a Premises Licence under the Licensing Act 2003 to extend the permitted hours for the provision of regulated entertainment, entertainment facilities and late night refreshment and the sale of alcohol for consumption, to add the licensable activity of dance, to allow the provision of live music outside the premises and to allow the sale of alcohol off the premises at Kennaway House, Coburg Road, Sidmouth.

The Chairman identified members of the Sub Committee, Officers, applicants and interested parties present. The applicant was Ms Elizabeth Halls. The interested party present was Ms Jenny Rich.

The Sub Committee carefully considered the application for 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. They also took into account Government Guidance and the Council's own licensing policy, and the Human Rights Act 1998 in making their decision.

The Sub Committee carefully considered the relevant representations that all parties had made and the written representations and other documentation put before the Sub Committee. They 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 made at the hearing, that is to say: public nuisance. From this, the Sub Committee concluded that the Police did not consider that there was currently any significant problem associated with the current operation of the premises, or that there was likely to be if the application was granted. Consideration was given to the particular locality of the premises in the town centre location and its physical relationship with residential properties in the vicinity.

The applicant's case was on paper that the variation was to be more flexible as a business. At the hearing she added that she had reached a mediated position with the police and that the only outstanding issue was the matter of potential noise from a side door to the cellar bar. This had been discussed at length with interested parties but that a compromise could not be reached without a hearing. Ms Hall said that the reinstating of a fire door had been considered, and that extra notices requesting consideration when exiting the building had been placed. There were some issues with fire doors and the Listed Buildings.

Rates of hire had been raised in order to reduce the number of 18th birthday parties. There had been 3 or 4 of these and a school leaver's dance in the previous six month period.

*13 **Application to grant a Premises License under the Licensing Act 2003 at Kennaway House, Sidmouth (Cont)**

The interested party's case was on paper that proposed changes would cause significant nuisance late into the evening and night time and would cause an increase in the level of ambient noise in the vicinity of the premises.

At the hearing Ms Jenny Rich added the major concern was smokers leaving the building after 11.00pm. Her property abutted the premises and her bedroom window was above the cellar bar entrance and at night this could cause noise nuisance and disturbance. Barton Close was a quiet residential area and noise including talking would cause considerable impact.

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, they considered that the event was well managed and controlled with good policies in place and adequate supervision from event organisers.

The Sub Committee did not accept that there was evidence of a significant public nuisance arising from the current operation of the premises. This was because of a lack of evidence of a history of complaints to the statutory authorities. They did however take into account the concerns of local residents about future operation by ensuring that a suitable condition was imposed to alleviate the interested party's concerns over potential noise disturbance.

At the present time there was no real evidence that the operation the applicant now proposed to run would cause the unacceptable impact local residents suggested.

All parties were reminded of the closure and review powers which the Government brought into force on 24 November 2005. Premises which did 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.

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

- (a) The extent of the areas within which the various licensable activities will be permitted 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 Appendix B.
 - (c) The conditions will now be as shown in Appendix E 1 – 4 and a new condition 5 as offered by the applicant that "a member of staff will be on duty at the entrance/exit of the cellar bar from 11.00pm until the terminal hour to control issues of noise disturbance".
 - (d) The mandatory conditions of section 19 of the Licensing Act will be imposed.
- 2) that whilst the Sub Committee acknowledged the concerns expressed by the statutory authority at the hearing, the Sub Committee believe the concerns expressed in representations had been addressed by the hours of operation for the licensable activities and the Noise Management Statement which the Sub Committee believe are necessary and proportionate.
- 3) that the Designated Premises Supervisor would be Elizabeth Halls-Kennaway House Ltd Coburg Road Sidmouth EX10 8NG.

*14 **Application to grant a Premises License under the Licensing Act 2003 at Pizza Pronto, Radway, Sidmouth**

The Sub Committee gave consideration to the application for the variation of a premises licence under the Licensing Act 2003 to extend permitted hours on Friday and Saturdays for late night refreshment from midnight to 2.30am and during the Sidmouth Folk Festival week and for the period between Christmas Eve and New Year's Eve from midnight to 3.00am at Pizza Pronto, 3 Radway Place, Sidmouth.

The Chairman identified members of the Sub Committee, Officers, applicants and interested parties present. The applicant was Mr Yasay Oflaz. The responsible authority representative was Ms Jill Wheller, Environmental Health Officer.

The Sub Committee carefully considered the application for 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. They also took into account Government Guidance and the Council's own licensing policy, and the Human Rights Act 1998 in making their decision.

The Sub Committee carefully considered the relevant representations that all parties had made and the written representations and other documentation put before the Sub Committee. They 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 made at the hearing, that is to say: public nuisance. From this, the Sub Committee concluded that the Police did not consider that there was currently any significant problem associated with the current operation of the premises, or that there was likely to be if the amended application was granted. Consideration was given to the particular locality of the premises in a town centre location and its physical relationship with other residential and commercial properties in the vicinity.

At the hearing the applicant stated that he had mediated the terminal hour back from 3.00 am to 2.30 am after mediation with the police. The table/seating area in the customer waiting area had been removed so that more customers could be accommodated within the shop whilst waiting for their orders. The applicant was currently operating TENs for the period of 30 July to 1 August to open at 3.00 am during the Sidmouth Folk Festival.

Jill Wheller EDDC Environmental Health case on paper was that Noise from the 'comings' and 'goings' of customers late at night and in the early hours of the morning was likely to cause public nuisance.

At the hearing she added whilst it was recognised that there had only been one complaint concerning noise in the past 24 months it was her professional opinion based on national guidance that extending the terminal hour would lead to issues of noise nuisance being associated with the premise. It was her experience from dealing with similar premises in Exmouth where the precedent for a terminal hour of 3.00am had been set that issues of noise could cause problems.

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 they heard regarding the history of the premises, it was considered that the establishment was well managed and controlled with good policies in place.

The Sub Committee did not accept that there was evidence of a significant public nuisance arising from the current operation of the premises. This was because of a lack of evidence of a history of complaints to the statutory authorities. At the present time there

*14 **Application to grant a Premises License under the Licensing Act 2003 at Pizza Pronto, Radway, Sidmouth (Cont)**

was no real evidence that the operation the applicant now proposes to run will cause the unacceptable impact the responsible authority suggests.

All parties were reminded of the closure and review powers which the Government brought into force on 24 November 2005. Premises which did 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.

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

- (a) The extent of the areas within which the various licensable activities be permitted as indicated by the legends on the applicant's plan.
- (b) Permitted hours for the various licensable activities be as set out in the amended Appendix C.
- (c) The conditions be as shown in Appendix H.

- 2) that whilst acknowledging the concerns expressed by the interested parties before the sub Committee believe that the concerns expressed in representations had been addressed by the hours of operation for the licensable activities and the conditions imposed which had been tailored to the size, characteristics and activities on the premises, and were necessary and proportionate.

*15 **Exclusion of the Public**

RESOLVED that under Section 100(A) (4) of the Local Government Act 1972 the public (including the press) be excluded from the meeting as exempt information, of the description set out on the agenda, is likely to be disclosed and on balance the public interest is in discussing this item in private session.

*16 **Hackney Carriage Driver's Licence Applications**

Consideration was given to whether an existing Hackney Carriage Driver was a fit and proper person to continue to be licensed as Hackney Carriage driver. Members heard detailed evidence of alleged offences committed by the Hackney Carriage Driver from both the Police Officers present at the Hearing. Members gave detailed and lengthy consideration to the case presented by both the Police Officers present who had advised the applicant that anything he said may prejudice any future court case against him.

RESOLVED that Mr CED's Hackney Carriage Driver's Licence be suspended for three months, and in the interests of public safety the suspension commences from when the notice is served on him, and that it is monitored in conjunction with Police investigations, so as to minimise any unnecessary suspension time.

This decision does not affect Mr CED's right to appeal to a Magistrates Court, but means that the suspension is immediate on service of the notice.

***16 Hackney Carriage Driver's Licence Applications (Cont)**

(At this point Councillor Steve Hall withdrew from the meeting as he had declared a personal and prejudicial interest in this item as he knew the applicant and left the Chamber and took no part in the debate or voting.)

In reaching these decisions the Licensing & Enforcement Sub Committee had regard to the Human Rights Act 1998 and in particular, Article 6.

Chairman Date

Agenda Item 6

Licensing & Enforcement Sub Committee

7 September 2010

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 grant of a time limited Premises Licence (11-12/09/10)	Whimple Cricket Club, Knowle Cross Recreation Ground, Knowle Cross, Whimple EX5 2NU	<p>Following mediation the applicants and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed conditions are approved.</p> <ol style="list-style-type: none"> 1. 7 SIA registered door-staff must be employed half an hour prior to the commencement of the event to half an hour after licensable activities cease. 2. Stewards when on duty must wear Hi-viz jackets or similar which will be removed when off duty. 3. No glass bottles must be permitted within the licensable area 4. Plastic or toughened containers must be used 5. All bottles must be decanted 6. A challenge 21 policy must be adopted 7. Stewards must ensure the access lane to the ground is kept clear and free for use by emergency vehicles 8. Persons under 16 must be supervised by an adult.
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
- Representation received from Responsible Authority
- Guidance issued under Section 182 of the Licensing Act 2003
- The District Council's Statement of Licensing Policy

Neil McDonald Ext.2709

Licensing Officer

Licensing Sub Committee

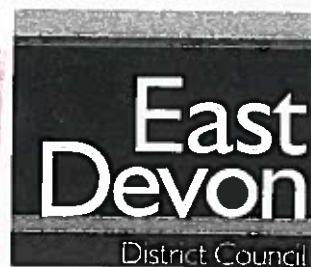
7 September 2010







Date: 27 July 2010
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: Chris Gibbings, Steve Hall, Ken Potter)
Remaining members of the Licensing and Enforcement Committee
for information)

East Devon District Council
Knowle
Sidmouth
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EX10 8HL

Assistant Solicitor
All parties to the hearing

DX 48705 Sidmouth
Tel: 01395 516551
Fax: 01395 517507

www.eastdevon.gov.uk

Meeting of the Licensing & Enforcement Sub-Committee

Monday 2 August 2010 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

- | | Page/s |
|--|--------------------------|
| 1. To receive the minutes of the meetings held on 29 June 2010. | 3 - 4 |
| 2. To receive any apologies for absence from Members of the Sub Committee. | |
| 3. To receive any declarations of interests relating to items on the agenda. | |
| 4. 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). | |
| 5. 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). | |
| 6. Application for the variation of a premises licence under the Licensing Act 2003 to extend the permitted hours for the provision of regulated entertainment, entertainment facilities and late night refreshment and the sale of alcohol for consumption, to add the licensable activity of dance, to allow the provision of live music outside the premises until 9.00pm and to allow the sale of alcohol off the premises at Kennaway House, Coburg Road, Sidmouth. | Licensing Officer 5 - 26 |

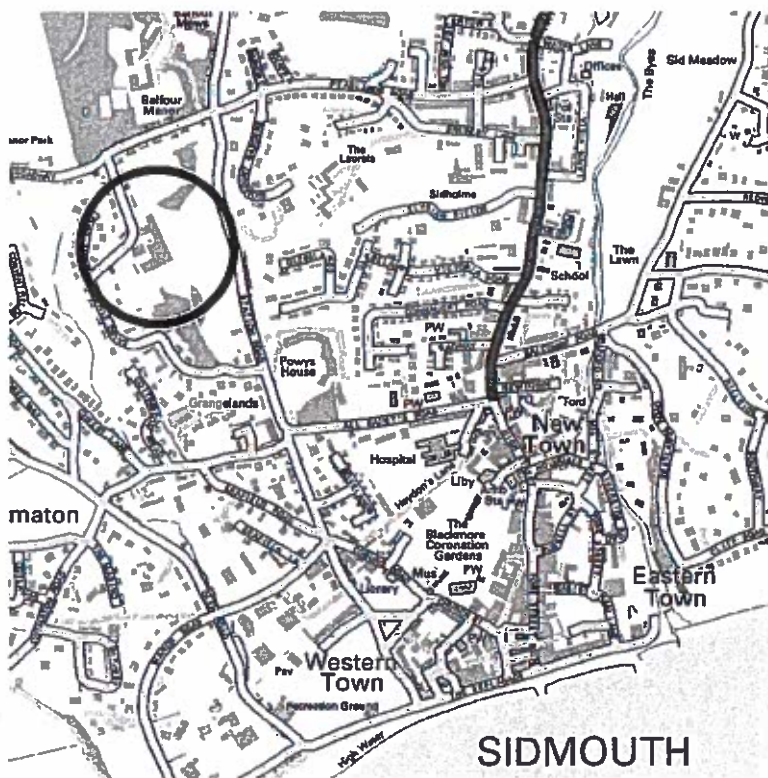
7. Application for the variation of a premises licence under the Licensing Act 2003 to extend permitted hours on Fridays and Saturdays for late night refreshment from midnight to 2.30am and during the Sidmouth Folk Festival week and for the period between Christmas Eve and New Year's Eve from midnight to 3.00am at Pizza Pronto, 3 Radway Place, Sidmouth.

Licensing Officer 27 - 51

Members remember!

- You must declare the nature of any personal or prejudicial interests in an item whenever it becomes apparent that you have an interest in the business being considered.
- Where you have a personal interest because the business relates to or is likely to affect a body of which you are a member or manager as an EDDC nominee or appointee, then you need only disclose that interest when (and if) you speak on the item. The same rule applies if you have a personal interest in relation to a body exercising functions of a public nature.
- 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.

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EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Licensing & Enforcement Sub Committee held at Knowle, Sidmouth on Tuesday 29 June 2010

- Present:** Councillors:
Chris Gibbings (Chairman)
May Hardy
Barry Nicholson
- Officers:** Douglas Jackson – Licensing Officer
John Loveridge – Licensing Officer
Diana Vernon - Democratic Services Officer
Giles Salter – Assistant Solicitor
- Apologies:** Councillors Steve Hall and Mark Williamson

The meeting started at 9.30 am and finished at 9.50 am.

***6 Minutes**

The minutes of the meeting of the Licensing & Enforcement Sub Committee held on 8 June 2010, were confirmed and signed as a true record.

***7 Hackney Carriage Vehicle Suitability**

Consideration was given to the report of the Licensing Officer in respect of an application received for a Hackney Carriage Vehicle Licence for a vehicle with an engine capacity of less than 1300 cc (1248cc). The Council's policy required all licensed Hackney Carriage vehicles to have a minimum engine capacity of 1300cc. The Committee was asked to determine whether to make an exception to the policy or refuse the application.

The Licensing Officer explained further background to the application. The car had been purchased with the belief that it was a 1300cc engine and any breach of policy had been unintentional. The applicant provided the vehicle for inspection and Members inspected its external and internal condition, seating and luggage capacity. The applicant advised that the vehicle would be used for Friday and Saturday night Hackney Carriage pick-ups and not for airport or long-distance work. However types of work could not be stipulated on the licence and so, if granted, the licence would apply to any fares.

The Sub-Committee recognised that the main issue for consideration was to ensure the passengers' comfort and safety. After private deliberation, the Sub-Committee advised it was minded to approve the application. In addition, the Sub-Committee suggested that in the light of variations in vehicle performance of petrol and diesel engines, the current policy should be reviewed.

RESOLVED that the Sub Committee use its discretion to grant the application to license the vehicle as a Hackney Carriage to carry a maximum 3 passengers.

(This was a special exception to the existing policy - the Sub Committee had taken into account the details of the vehicle's servicing and maintenance history and their inspection of the vehicle at the hearing had assured them that it would provide safe and comfortable transport for a maximum of 3 passengers.)

*8

Schedule of applications 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 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 application be granted as set out below, subject to the agreed position set out in the schedule and any relevant statutory conditions and the applicants having complied with relevant statutory requirements.

Type of Application	Name and address	Agreed position reached by the parties
Application for the grant of a premises licence	Route 66 Trinity Square Axminster EX13 5AN	<p>Following mediation the applicants and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.</p> <p>To agree to submit an amended plan of the premises and to agree to the addition of the following conditions as shown below</p> <ol style="list-style-type: none"> 1. No persons shall enter or leave the premises with open vessels or containers. 2. All alcoholic drinks will be decanted and served to customers at the table. 3. Alcohol will only be served to persons who are supplied with a substantial meal. 4. CCTV will be installed operated and maintained to the satisfaction of the Licensing Authority and Chief Officer of Police in the main seating area. 5. A notice will be displayed at the entrance to the premises that CCTV is in operation. 6. Challenge 21 policy will be applied. 7. Licensable activities will only take place in the main seating area as per the revised plan submitted to the licensing authority. 8. Children can attend in the presence of their parents or adult over the age of 18.

Chairman

Date

Agenda Item 6

Licensing & Enforcement Sub Committee

02 August 2010

NMcD

Application to vary a premises licence under the Licensing Act 2003

Summary

The report summarises an application to vary a premises licence.

Recommendation

That members consider the application to vary a premises licence under the Licensing Act 2003,

- 1. To remove condition 11 of Annexe 2 of the current licence.**
- 2. To extend the permitted hours for the provision of regulated entertainment, entertainment facilities and the sale of alcohol.**
- 3. To add the licensable activity of the performance of dance.**
- 4. To allow the sale of alcohol off the premises (currently restricted to on sales only), at Kennaway House, Coburg Road, Sidmouth, EX10 8NG.**

a) Reasons for Recommendation

To comply with statutory processes.

b) Alternative Options

To either grant, refuse or modify the application.

c) Risk Considerations

None

d) Policy and Budgetary Considerations

The Council's Licensing Policy is referred to in the body of the report. There is a possibility of the Council having to pay the applicant's court costs if a successful appeal is brought against the decisions made today.

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 Description of Application

- 1.1 An application has been received from Kennaway House Ltd to vary a premises licence under the Licensing Act 2003 at Kennaway House, Coburg Road, Sidmouth, EX10 8NG.
- 1.2 The premises are a three storey detached grade 2 listed mansion house situated within a mixed commercial and residential area of Sidmouth with areas for public trade on both the ground floor and the lower ground floor.

- 1.3 A plan of the premises will be available at the meeting to show the layout of the establishment and the areas of licensable activity.
- 1.4 Kennaway House currently enjoys the benefit of premises licence PLWA0563. The licence permits, subject to conditions
- the performance of live music (indoors),
 - the playing of recorded music (indoors),
 - the provision of facilities for making music (indoors),
 - the provision of facilities for dancing (indoors), and
 - the sale by retail of alcohol for consumption on the premises only.

The full licence is produced at **Appendix G**.

- 1.5 The original proposed licensable activities and timings are produced in table form at **Appendix A**.

Mediation Meeting & Amended Application

- 1.6 Mediation has taken place between the applicant and the Police which has resulted in an agreed position being reached as listed below-

- Consumption of alcohol in the designated outside area will cease at 1900 hrs.
- Withdraw completely the application to have live music performed outdoors.
- Supply of alcohol Monday to Saturday will cease at 2330 hrs. Premises to close at Midnight.
- Supply of alcohol on Sunday will cease at 2300 hrs. Premises to close at 2330 hrs.
- In view of these revised times premises closing times for all other licensable activities live music, recorded music, dancing and facilities for this (all indoors) to cease at Midnight.

- 1.7 The agreed position includes a reduction in hours for some licensable activities and the withdrawal of live music outside the premises. These amendments are included within **Appendix B**

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Constabulary
Representations have been received but a mediated position has been agreed.
- 2.2 Devon Fire & Rescue Service
No representations have been received.
- 2.3 Area Child Protection Committee and Local Safeguarding Children Board
No representations have been received
- 2.4 Devon Trading Standards
No representations have been received
- 2.5 East Devon District Council, Environmental Health Service
No representations have been received
- 2.6 East Devon District Council, Planning & Countryside Service
No representations have been received



3 Representations and Responses to Notices of Hearing

- 3.1 A total of thirteen representations have been received from Interested Parties details are attached at **Appendix C**.
- 3.2 Details of the responses to the statutory Notice of Hearing are attached at **Appendix D**. Seven of the interested parties have agreed to withdraw their representations following the mediated agreement by the police. Four of the interested parties have failed to respond to the notice of hearing and two have indicated by e-mail that they wished to continue with their representation but were having discussions with the applicant and hoped to reach an agreed position before the committee hearing.

4 Proposed Operating Schedule

- 4.1 The applicants seek to remove condition 11 of Annexe 2 of the existing licence. This condition relates to a restriction on customers taking open containers of alcoholic or soft drink from the premises. The applicants want to replace this with a condition allowing drinks to be taken outside in plastic containers only. The existing operating schedule is attached within Premises Licence PLWA0563 at **Appendix G**.
- 4.2 The applicants have offered an additional four conditions to those already contained within the current premises licence operating schedule these are shown at **Appendix E**. (Condition 4 will now have to be withdrawn following the amendment agreed with the police).

5 Relevant Licensing Policy Considerations

Licensing Objectives

- 5.1 Section 2.1 of the Policy states: 'The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives.' These objectives are the only matters to be taken into account in determining the application and any conditions attached must be necessary to achieve the licensing objectives.
- 5.2 Section 2.2 of the Policy states: A licence will only be granted where the licensing authority is satisfied that these objectives have been met.
- 5.3 Section 2.3 of the Policy lists the kind of measures the licensing authority will be expecting to see taken into account to promote the objectives.

Conditions

- 5.4 Section 4 of the policy sets out what the Sub Committee should consider before imposing conditions on a licence.
- 5.5 The **Guidance** issued under Section 182 Licensing Act 2003 also states:

The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.



Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties.

Licensing Hours

5.6 Section 6.1 of the Policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with licensing hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas. There is no presumption within the legislation for longer opening hours and the licensing objectives are paramount in any consideration of an application.

5.7 Section 6.3 of the Policy states: The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the licensing authority believe it necessary, proportionate and reasonable to restrict the hours required.

6.1 Observations

6.2 The original application being considered for the variation of a Premises Licence was to :

- Extend the start time for live music indoors to commence at 10:00 hrs (currently 18:00 hrs start time).
- Commence all other regulated entertainment and entertainment facilities currently on the licence at 10:00 hrs.
- Extend the provision for making music to midnight.
- Extend all licensable activities currently on the licence including the sale of alcohol on Saturdays until 01:00 hrs.
- To allow the performance of dance indoors.
- To allow the performance of live music (unamplified) outdoors until 21:00 hrs.
- To allow the sale of alcohol off the premises to allow consumption in the garden area.
- To remove condition 11 of Annexe 2 on the current licence that restricts alcohol and soft drinks in open containers from being taken off the premises.

6.3 The police have carried out mediation with the applicants and have reached an agreed position to amend the original application. The amendments have been confirmed by both parties in writing to the Licensing Authority.

6.4 The amended application has satisfied the concerns of many of the interested parties who have withdrawn their representations however there are still representations from six interested parties who have either not withdrawn or have failed to respond. Their original concerns were that the increased licensing hours with outdoor drinking and live music would cause a noise nuisance throughout the day and into the evening and disrupt the peace and quiet of the residential area. There is also concern that customers leaving the premises early in the morning would cause a nuisance for local residents.

6.5 The Sub Committee will now need to consider whether to grant this application as it stands or in the light of the representations to refuse the application or grant it in a different form.

6.6 A location plan is attached at **Appendix F**.



Legal Implications

1. As relevant representations have been made in respect of the application, this hearing must be held. (Relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives, by interested parties or responsible authorities). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.
2. The sub-committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The licensing authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.
3. Section 35 of the Act requires the licensing authority to grant a premises licence unless it considers additional steps are needed for the promotion of the licensing objectives having regard to any relevant representations.

The steps are:

- (a) to grant the licence subject to:-
 - (i) the conditions in the operating schedule modified to such extent as members consider necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under sections 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application.

The conditions of the licence are modified if any are altered or omitted or any new condition is added. Different conditions may be applied to different parts of the premises, and to different licensable activities. The sub-committee must give its reasons for its decision to take any of these steps. Similarly, if any part of an application is rejected, the sub-committee must give its reasons.

4. The Act requires mandatory conditions to be imposed where supplying alcohol or exhibiting films are approved as licensed activities. It also requires a mandatory condition to be imposed where door supervisors or other individuals carrying out security activities are conditions on the licence.

(a) Section 19 - Mandatory conditions relating to the supply of alcohol

No alcohol may be supplied unless there is a designated premises supervisor who also holds a personal licence.

Every supply of alcohol under a premises licence must be made or authorised by a personal licensee

(b) Section 20 - Mandatory condition relating to exhibition of films-not relevant in this case

Children may only be admitted to films in accordance with the classification recommendations of the British Board of Film Classification, or as recommended by the licensing authority.

(c) Section 21 - Door Supervision

Where door supervisors are specified by condition, those individuals must be licensed by the SIA.

5. The sub-committee will need to consider the hours of operation proposed in relation to the



licensable activities in the light of the promotion of the licensing objectives, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential and other commercial properties including other licensed premises, the history of the management of the premises and how it is proposed to be run in the future, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities. These issues, and any other relevant ones, may be explored at the hearing.

6. Human Rights Act 1998

- 6.1 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions are explained below. Essentially, they require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.
- 6.2 Under Article 6, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The procedures established by this Council for hearings under the Licensing Act 2003 are compliant with Article 6.
- 6.3 Under Article 8, "everyone has the right to respect for his private and family life, his home and his correspondence". This right may not be interfered with except in accordance with the law and as may be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Licensing Act cases this means that the sub-committee must have regard to the effect of its decisions on local residents, and balance their interests against those of the public at large (e.g. the customers of the premises under consideration) and the people operating the business from the premises.
- 6.4 Under Article 11, "everyone has the right to freedom of peaceful assembly and to freedom of association with others" except where it is lawful to restrict that freedom in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". In Licensing Act cases this means, for example, that the sub-committee is entitled to impose conditions to ensure that patrons of licensed premises do not unreasonably disturb others living or working nearby. Again, the sub-committee should balance the competing interests.
- 6.5 Article 1 of the First Protocol (that is, the first amendment to the Convention) says that every natural or legal person (meaning a human being or a company) is entitled to peaceful enjoyment of his possessions, except where the law provides for restrictions on that right in the public interest. This means, for example, that it is compliant with the Convention to impose restrictions, such as those provided in the Licensing Act 2003, upon business premises where it is in the public interest to do so. On the other hand the same applies to the owners and occupiers of neighbouring premises.

7. Appeals.

If the sub-committee imposes conditions on the licence with which the applicant disagrees, or modifies the licensable activities permitted or refuses to specify a person a designated premises



supervisor, he or she may appeal within 21 days of notification of the decision to the Magistrates' Court. The applicant may also appeal if an application for a premises licence is rejected. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the licensing authority ought to have imposed different or additional conditions or excluded a licensable activity or refused to specify a persona as designated premises supervisor. The magistrates' court may dismiss the appeal, or substitute its own decision, or send back the case to the licensing authority with directions as to how the case is to be dealt with. The magistrates' court may make any costs order it thinks fit.

8. Review provisions.

If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them or any of the responsible authorities to apply to this licensing authority for a review of the licence. A hearing follows which enables the sub-committee to use the normal powers at a hearing (set out above) but also to suspend the licence for a period of up to three months or to revoke it.

9 Police Closure

A senior police officer may close any premises for 24 hours (this can be extended) where s/he reasonably believes there is or is likely imminently to be disorder on, or in or in the vicinity of the premises and their closure is necessary in the interests of public safety. Closure can also be effected if public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance

Financial Implications

No apparent financial implications

Appendices

- Appendix A – Originally requested times and activities in table form
- Appendix B – Amended requested times and activities in table form
- Appendix C – List of representations received from statutory bodies and interested parties
- Appendix D – Responses to notice of hearings
- Appendix E – List of offered conditions
- Appendix F – Site Plan
- Appendix G – Copy of existing Premises Licence – PLWA0563

Background Papers

- Licensing Application dated 8 June 2010
- Guidance issued under Section 182 of the Licensing Act 2003
- The District Council's Statement of Licensing Policy

Neil McDonald ext 2079
Licensing Officer

Licensing & Enforcement Sub Committee

02 August 2010



APPENDIX A

Kennaway House

Original Proposed Timings

	e) Performance of live music (indoors) f) Playing recorded music (indoors)	e) Performance of live music (outdoors)	g) Performance of dance (indoors) Provision of facilities for making music (indoors) Facilities for dancing (indoors)	i) for consumption on and off the premises	Hours premises are open to the public
Monday	10.00am - Midnight		10.00am - Midnight	midday - Midnight	9.00am - 12.30am
Tuesday	10.00am - Midnight		10.00am - Midnight	midday - Midnight	9.00am - 12.30am
Wednesday	10.00am - Midnight		10.00am - Midnight	midday - Midnight	9.00am - 12.30am
Thursday	10.00am - Midnight		10.00am - Midnight	midday - Midnight	9.00am - 12.30am
Friday	10.00am - midnight		10.00am - Midnight	midday - Midnight	9.00am - 12.30am
Saturday	10.00am - 01:00 am	6:00 pm - 10:45 pm	10.00am - 01:00 am	midday - 01:00 am	9.00am - 01.30am
Sunday	10.00am -11:00 pm		10.00am - 11:00 pm	midday - 11:00 pm	9.00am - 11.30 pm

Kennaway House

Amended Proposed Timings

	e) Performance of live music (indoors) f) Playing recorded music (indoors) g) Performance of dance (indoors)	i) Provision of facilities for making music (indoors) j) Facilities for dancing (indoors)	m) Sale of alcohol for consumption on the premises	m) sale of alcohol for consumption off the premises	Hours premises are open to the public
Monday	10.00am - midnight	10.00am - midnight	midday - 11:30 pm	midday - 7:00 pm	9.00am - midnight
Tuesday	10.00am - midnight	10.00am - midnight	midday - 11:30 pm	midday - 7:00 pm	9.00am - midnight
Wednesday	10.00am - midnight	10.00am - midnight	midday - 11:30 pm	midday - 7:00 pm	9.00am - midnight
Thursday	10.00am - midnight	10.00am - midnight	midday - 11:30 pm	midday - 7:00 pm	9.00am - midnight
Friday	10.00am - midnight	10.00am - midnight	midday - 11:30 pm	midday - 7:00 pm	9.00am - midnight
Saturday	10.00am - midnight	10.00am - midnight	midday - 11:30 pm	midday - 7:00 pm	9.00am - midnight
Sunday	10.00am - 11:00 pm	10.00am - 11:00 pm	midday - 11:00 pm	midday - 7:00 pm	9.00am - 11:30 pm

Representations Received

1. Ms J Rich and Mr G Starmer, Flat 4, Aurora, Barton Close, Sidmouth, EX10 8NL	
Objective	Representations
Prevention of Public Nuisance	<p>We are writing to object to the proposals to extend the licence conditions in respect of Kennaway House.</p> <p>In our opinion the proposed changes will cause significant nuisance to both ourselves, as semi-detached neighbours and others nearby too. The proposed extensions from 1000am until midnight weekdays, Saturdays until 1.00am Sunday and Sundays until 1130pm will result in noise nuisance from both use of the premises and patrons leaving probably up to one hour later than the licenced times. In addition serving drinks in the garden will create nuisance to ourselves and residents in Barton Court etc. The playing of music outside will create further disturbance.</p> <p>To date we have not had cause to complain about noise from Kennaway House. The Duty Managers have worked hard to mitigate any disturbance from events. In common with many others we contributed to the refurbishment and are pleased that the building is once again available for use. The conversion however does not seem to have been carried out with this type of late night activity in mind - noise insulation works seem to have been minimal. The proposed extension to the permitted hours and activities will result in considerable disturbance until the early hours. For the above reasons we object to the proposals and ask that they are not permitted. Despite our objections if any alterations are however granted then appropriate noise conditions must be incorporated.</p> <p>The ambient background noise level in this part of Sidmouth is very low and any slight increase will inevitably cause nuisance.</p>
2. Mr A Skinner, Flat 14, Barton Court, The Triangle, Sidmouth, EX10 8PF	
Prevention of Public Nuisance	<p>As the owner of 14 Barton Court, The Triangle, Sidmouth I wish to register my objection to the proposed extended licensing hours submitted by Kennaway House Ltd on their Public Notice dated 9th June 2010.</p> <p>During the time that Kennaway House has been used for events extending into the evening there has been excessive noise on several occasions and this nuisance can only potentially increase with the extended hours. To allow time for drinking up and clearing away, in my opinion the latest time for licensable activities should be 23.30 on weekdays, 00.00 on Saturdays and 22.30 Sundays.</p>
3. Mr & Mrs J Pringle, Flat 3, Norton Garth Court, Station Road, Sidmouth, EX10 8NY	
Objective	Representations
Prevention of Public Nuisance	<p>I have just been made aware that an application for a regular extension to the Licensing Hours currently granted to Kennaway House has been made to the Council.</p> <p>Further to our telephone conversation I am pleased to learn that extended use of Kennaway House is now being planned. It is a lovely building and adds much to the cultural life of Sidmouth.</p> <p>I hope that I am not being a 'killjoy- but I am aware of the problems that noise causes us all in society today. With regard to the application I feel that the Council should be concerned with the possible noise to local residents caused by music and people drinking both in the house and in the grounds.</p>
Suggested Amendments.	<p>Without knowing how it will be managed and supervised it is difficult to make other than general comments. However I feel that:-</p> <p>a. that all activities should finish at 10.00pm on Sunday.</p> <p>b. that the license on Saturday night should be limited to 12.00 midnight/12.30am.</p>

	c. each and every activity in the garden should be carefully monitored by the company
4. Mr & Mrs D Stuart, Flat 5, Barton Court, The Triangle, Sidmouth, EX10 8PF	
Objective	Representations
Prevention of Public Nuisance	<p>We regard any of these extensions to lead to an invasion of privacy both during the events in the evening and into the early hours.</p> <p>This is a quiet part of Sidmouth and many residents have bought their house here because it is a quiet area. To allow the extensions requested will change this charming part of Sidmouth and cause continuing annoyance to residents in the neighbourhood of Kennaway House and Victoria Hospital.</p> <p>Sidmouth already has plenty of accomodation for gatherings of this kind without intruding on the privacy of neighbours.</p>
5. S & J Jeary, Flat 1, Norton Garth Court, Station Road, Sidmouth, EX10 8NY	
Objective	Representations
Prevention of Public Nuisance	<p>This is a quiet part of Sidmouth and such use of Kennaway House is likely to cause significant disturbance throughout the day and into the early hours. As I understand it Kennaway House exists as a community facility and exhibition space licensed for civil weddings and partnerships and housing the Kennaway Fine Art Guild purporting to exhibit its artists work on a regular basis. Kennaway House is not a pub or a place for general entertainment. If it seeks so to be it is unnecessary, there are numerous public houses, hotel bars and licenced restaurants in very close proximity. There is a licensed club just over the road.</p>
6. J Stephens, Spring Cottage, 6 Roselands, Sidmouth EX10 8PD	
Objective	Representations
Prevention of Public Nuisance	<p>I object strongly to this application on the grounds that it is far too close to residential properties and is very likely to inflict increased noise levels - both from people and vehicles- on the nearby residences. I am thinking particularly of Barton House, the flats abutting Kennaway House and the Abbeyfield Residence and block of flats at the Triangle.</p> <p>I might add that it is unlikely to affect me adversely and I am a friend of Kennaway House and support the charity financially. Nevertheless I think that consideration should be given to residents as in Folk Week with events at the Ham and Blackmore Gardens. Kennaway House operates throughout the year and the issuing of a license in this instance could then open the door for other organisations in residential areas to follow suit.</p>
7. Mr J Kean, Flat 9, Barton Court, The Triangle, Sidmouth, EX10 8PF	
Objective	Representations
Prevention of Public Nuisance	<p>Should the application be successful this relatively quiet and peaceful corner of Sidmouth could well become the centre of unruly behaviour into the early hours. Security risks plus unreasonable disturbance to many elderly residents will not enhance our sense of well-being. I also believe the tranquility of the Sidmouth Church cemetery would be subject to desecration. Furthermore prices of adjacent properties would be threatened. Finally I foresee a successful application being the forerunner of a fully-operational night-club which would be the final straw.</p>
8. R Elgin & F Furber, Flat 3, Barton House, Barton Close, Sidmouth, EX10 8NL	
Objective	Representations
Prevention of Public Nuisance	<p>We are writing to register our objection to the application by Kennaway House Ltd for a variation of the Premises Licence at Kennaway House, Coburg Road, Sidmouth, EX10</p>

	<p>8NL. Our reason for objecting is that extending the licensing hours, as requested in the application, would cause us considerable nuisance on account of the noise causes outside the premises of Kennaway House on Barton Close, which lies directly beneath our bedroom at a distance of no more than 30 meters.</p> <p>One of us, Mrs Fiona Furber, was until very recently the owner and occupier of Flat 1, Aurora, Barton Close, which is adjacent to the licensed premises of Kennaway House. Even under the existing licensing hours, the nuisance caused has been significant through noise from dancing and music and through revellers standing in crowds in Barton Close to smoke and drink. The litter left in Barton Close has been substantial.</p> <p>Extending the licensing hours will, in our view, cause more nuisance and disrupt the peace and quiet of what is, in general, a well-tempered residential area of Sidmouth</p>
<p>9. Devon & Cornwall Constabulary, 1 North Street, Exmouth, EX8 1JZ</p>	
<p>Objective</p>	<p>Representations</p>
<p>Prevention of Crime & Disorder</p>	<p>Please accept this as notification that the Police wish to object to the above application.</p> <p>We hope to reach an agreed position with the applicant and will inform you as soon as possible.</p>

Kennaway House - Responses to Notice of Hearing

Applicant

Kennaway House Limited, Kennaway House, Coburg Road, Sidmouth, EX10 8NG	
Hearing Unnecessary	No
Attending	Yes
Represented by	
Supporting documents	None
Permission requested for attendance of	
Summary of key points	Yes
Prevention of Crime and Disorder	Notices at exits requesting guests to: leave quietly, not smoke in access road
Public Safety	As above Notice at exit warning of access road traffic
Prevention of Public Nuisance	Withdrawal of application to have live music outdoors. Consumption of alcohol outdoors to cease at 7pm Supply of alcohol Mon-Sat to cease at 11.30pm Supply of alcohol Sun to cease at 11.00pm All other licensable activities to cease at midnight

Responsible Authorities & Interested Parties

1.	Ms J Rich and Mr G Starmer, Flat 4, Aurora, Barton Close, Sidmouth, EX10 8NL	
Hearing Unnecessary	No	
Attending	Yes	
Represented by		
Permission requested for attendance of		
Supporting documents	No	
Summary of key points	No	

2.	Mr A Skinner, Flat 14, Barton Court, The Triangle, Sidmouth, EX10 8PF	
Hearing Unnecessary	Yes	
Attending		
Represented by		
Permission requested for attendance of		
Supporting documents	No	
Summary of key points	No	

3.	Mr & Mrs J Pringle, Flat 3, Norton Garth Court, Station Road, Sidmouth, EX10 8NY	
Hearing Unnecessary	Yes	
Attending		
Represented by		
Permission requested for attendance of		
Supporting documents	No	
Summary of key points	No	

APPENDIX D

4.	Mr & Mrs D Stuart, Flat 5, Barton Court, The Triangle, Sidmouth, EX10 8PF	
Hearing Unnecessary	Yes	
Attending	No	
Represented by		
Permission requested for attendance of		
Supporting documents	No	
Summary of key points	No	

5.	S & J Jeary, Flat 1, Norton Garth Court, Station Road, Sidmouth, EX10 8NY	
Hearing Unnecessary	No response received	
Attending		
Represented by		
Permission requested for attendance of		
Supporting documents		
Summary of key points		

6.	J Stephens, Spring Cottage, 6 Roselands, Sidmouth EX10 8PD	
Hearing Unnecessary	Yes	
Attending	No	
Represented by		
Permission requested for attendance of		
Supporting documents	No	
Summary of key points	No	

7.	Mr J Kean, Flat 9, Barton Court, The Triangle, Sidmouth, EX10 8PF	
Hearing Unnecessary	Yes	
Attending	No	
Represented by		
Permission requested for attendance of		
Supporting documents	No	
Summary of key points	No	

8.	R Elgin & F Furber, Flat 3, Barton House, Barton Close, Sidmouth, EX10 8NL	
Hearing Unnecessary	No response received	
Attending		
Represented by		
Permission requested for attendance of		
Supporting documents		
Summary of key points		

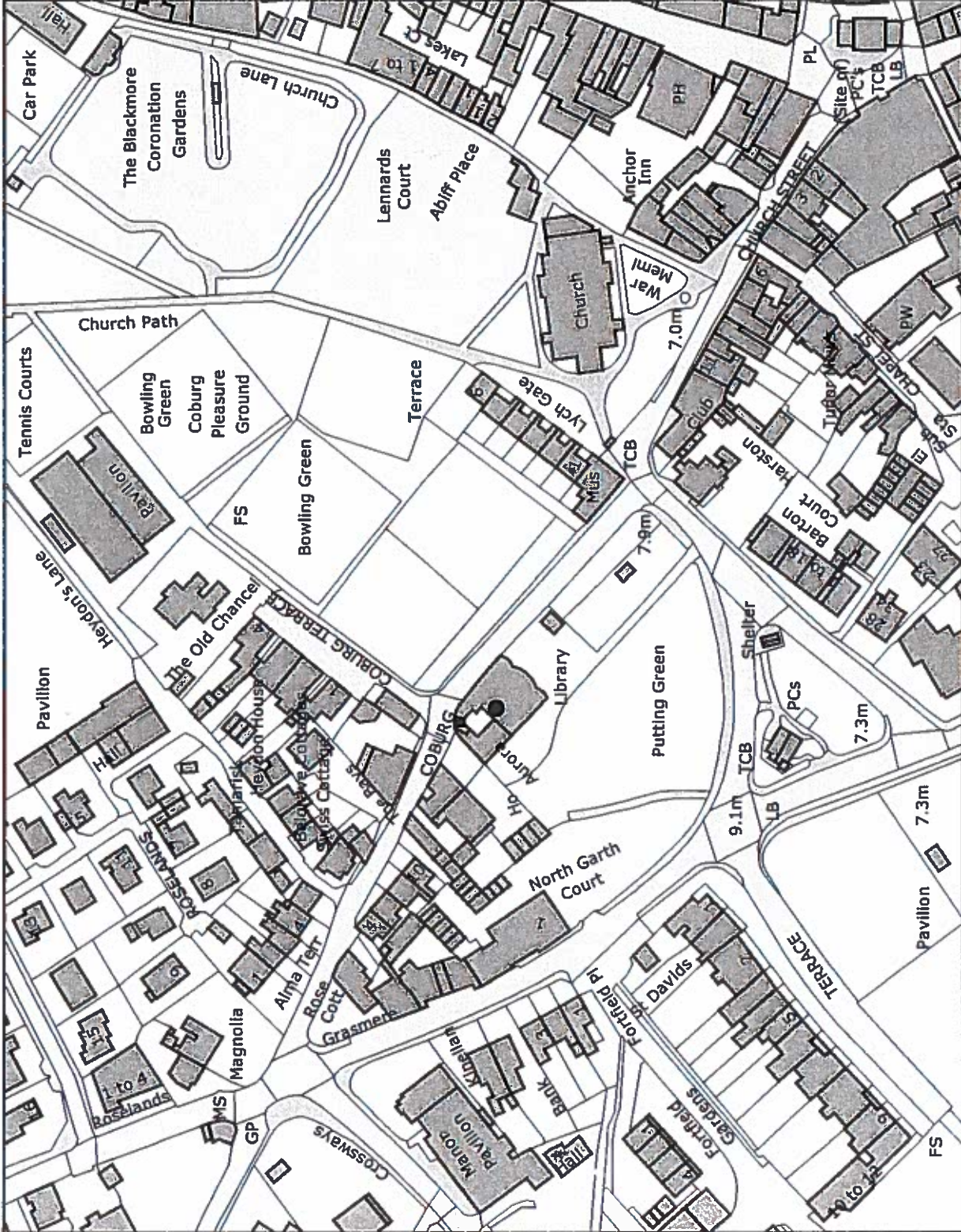
9.	Devon & Cornwall Constabulary, 1 North Street, Exmouth, EX8 1JZ	
Hearing Unnecessary	Yes – agreed position	
Attending		
Represented by		
Permission requested for attendance of		
Supporting documents		
Summary of key points		

APPENDIX E

1. Limit the consumption of alcoholic beverages in the garden to within the prescribed area shown on the plan, i.e. no alcohol to be consumed within 10 metres of the front boundary wall.
2. All containers of alcohol and soft drinks for outdoor consumption to be of plastic.
3. 'No drinks beyond this point' signs to be erected in garden.
4. No outdoor performance of music to be permitted after 21.00.

APPENDIX F

Licensing and Enforcement Sub
Committee 2 August 2010



Kennaway House

Map Tile: SY1287SW Full Reference: SY1246 8740

East Devon District Council
 Knowle
 Sidmouth
 Devon
 EX10 8HL
 DX 48705 Sidmouth
 Tel: 01395 516551
 Fax: 01395 517507



Licensing Act 2003
Premises Licence

PLWA0563

East Devon District Council has granted this Premises Licence in accordance with the Licensing Act 2003. The licence authorises the identified premises to accommodate the licensable activities set out in the document and the plan deposited with and approved by the Licensing Authority. Where the sale of alcohol is authorised as a licensable activity the licence identifies the Designated Premises Supervisor.

Part 1 - Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

Kennaway House

Coburg Road, SIDMOUTH, Devon, EX10 8NG.

Telephone 01395 515551

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- a performance of live music
- any playing of recorded music
- entertainment facilities for making music
- entertainment facilities for dancing
- the sale by retail of alcohol

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
E. Performance of live music (Indoors)	Monday to Sunday	6:00pm	Midnight
F. Playing of recorded music (Indoors)	Monday to Sunday	9:00am	Midnight
I. Provision of facilities for making music (Indoors)	Monday to Sunday	9:00am	8:00pm
J. Provision of facilities for dancing (Indoors)	Monday to Sunday	9:00am	Midnight
M. The sale by retail of alcohol for consumption ON the premises only	Monday to Sunday	Noon	11:00pm

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	9:00am	Midnight



East Devon District Council
Knowle
Sidmouth
Devon
EX10 8HL

DX 48705 Sidmouth

Tel: 01395 516551
Fax: 01395 517507



Licensing Act 2003
Premises Licence **PLWA0563**

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES
- M. The sale by retail of alcohol for consumption ON the premises only

Part 2

NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE
Kennaway House Limited Kennaway House, Coburg Road, SIDMOUTH, Devon, EX10 8NG.
Telephone 01395 515551

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)
Kennaway House Limited 6471831

NAME, ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE
AUTHORISES THE SUPPLY OF ALCOHOL
Elizabeth HALLS Upper Flat, 1 Millford Avenue, SIDMOUTH, Devon, EX10 8DS.
Telephone 01395 515551

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR
WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL
Licence No. EDVE1390 Issued by East Devon

R. L. Pocock

Rachel L Pocock
Head of Legal, Licensing and Democratic Services



Licensing Act 2003

Premises Licence

PLWA0563

ANNEXES

ANNEXE 1 - MANDATORY CONDITIONS

1. a) There shall be no sale or supply of alcohol when there is no designated premises supervisor in respect of this premises licence or at a time when the said premises supervisor does not hold a personal licence or when his/her licence is suspended.
- b) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Source: Section 19 Licensing Act 2003

ANNEXE 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE

1. Events involving the sale of alcohol will not normally be available to the general public but will be by invitation only e.g. Wedding Receptions/Family Celebrations/Dinners.
2. If during a period of six months from the date of opening of the premises the Licensing Authority serves written notice on the Licence Holder requiring that CCTV be provided it must be installed, maintained and operated to the satisfaction of the Chief Officer of Police and Local Authority. If CCTV is required to be installed under condition 2 the following conditions 3 to 6 shall also apply.
3. CCTV must be installed, operated and maintained to the satisfaction of the Licensing Authority.
4. CCTV recordings must be maintained for a period of one month or for a period of time to be agreed in writing by the Licensing Authority.
5. If the CCTV equipment is inoperative the Licensing Authority must be informed as soon as possible and immediate steps to be taken to restore the equipment to full working order.
6. A notice must be displayed at the entrance to the premises advising that CCTV is in operation.
7. Membership of the local Licensees Association must be maintained and the licence holder or their representative must attend meetings and participate in all relevant initiatives.
8. A crime prevention policy agreed by the Licensing Authority must be in place.
9. An incident book must be maintained within which full details of all occurrences of disorder and refused alcohol sales at the premises must be recorded. The incident book must be kept on the premises at all times and must be made available for inspection by officers of both the Licensing Authority and the police.
10. No person carrying open or sealed bottles or glasses will be admitted to the premises at any time.
11. No customers will be permitted to take open containers of alcoholic or soft drinks from the premises.
12. Irresponsible drinks promotions must not be permitted, and the Standards for the Management of Responsible Drinks promotions including Happy Hours produced by the British Beer and Pub Association will be complied with.
13. The licence holder or persons authorised by them must check the premises prior to its opening to the public in order to ensure there are no risks to patrons and that all safety precautions are in place.
14. The licence holder must ensure that all staff receive appropriate training regarding emergency and general safety precautions and procedures.
15. The licence holder must ensure that all staff are aware of the social and legal obligations and their responsibilities regarding the sale of alcohol.

Licensing Act 2003
Premises Licence

PLWA0563

ANNEXES continued ...

16. Free drinking water must be made available at all times that the premises are open to the public.
17. The telephone numbers of local taxi operators must be prominently displayed at the premises for the benefit of customers.
18. All bottles and glasses and rubbish must be removed from public areas on a regular and frequent basis.
19. The electrical system at the premises, including portable appliances must be inspected and tested annually by a competent person and a satisfactory safety report obtained. A competent person will be a suitably qualified electrician who is registered with the ECA or NICEIC.
20. The Gas System, including appliances, must be inspected annually and tested by a CORGI registered gas engineer and a satisfactory Gas Safety Certificate must be obtained.
21. Any oil fired boilers and appliances currently installed on the premises or installed in the future must be inspected and tested annually and an OFTEC certificate of inspection must be obtained.
22. All safety certificates and inspection reports must be kept on site and made available for inspection by officers of relevant statutory bodies.
23. The fire safety measures with which the premises are provided must be maintained in good working order, and their adequacy will be determined on a regular basis, by the carrying out of a fire risk assessment as required by, and in accordance with the Regulatory Reform (Fire Safety) Order 2005.
24. An adequate and appropriate supply of First Aid equipment and materials must be available on the premises.
25. The licence holder must ensure that staff regularly patrol the premises both indoors and out to supervise the orderly conduct of patrons.
26. Prominent, legible notices requesting people to leave the premises and the area quietly must be displayed at all exits.
27. The licence holder, or persons authorised by them, must control the volume of regulated entertainment taking place at the premises.
28. A Health and Safety Policy must be implemented and maintained at the premises.
29. A proof of age policy agreed in writing by the Licensing Authority must be enforced.
30. Any staff that have contact with children at the premises must have undertaken a satisfactory Criminal Records Bureau check.
31. The licensable activities authorised by this licence will be confined to the areas that are indicated on the legend on the plan deposited with and approved by the Licensing Authority.



Licensing Act 2003 Premises Licence Summary

PLWA0563

East Devon District Council has granted this Premises Licence in accordance with the Licensing Act 2003. The licence authorises the identified premises to accommodate the licensable activities set out in the document and the plan deposited with and approved by the Licensing Authority. Where the sale of alcohol is authorised as a licensable activity the licence identifies the Designated Premises Supervisor.

Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDANCE SURVEY MAP REFERENCE OR DESCRIPTION

Kennaway House

Coburg Road, SIDMOUTH, Devon, EX10 8NG.

Telephone 01395 515551

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- a performance of live music
- any playing of recorded music
- entertainment facilities for making music
- entertainment facilities for dancing
- the sale by retail of alcohol

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
E. Performance of live music (Indoors)	Monday to Sunday	6:00pm	Midnight
F. Playing of recorded music (Indoors)	Monday to Sunday	9:00am	Midnight
I. Provision of facilities for making music (Indoors)	Monday to Sunday	9:00am	8:00pm
J. Provision of facilities for dancing (Indoors)	Monday to Sunday	9:00am	Midnight
M. The sale by retail of alcohol for consumption ON the premises only	Monday to Sunday	Noon	11:00pm

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	9:00am	Midnight



Licensing Act 2003
Premises Licence Summary

PLWA0563

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- M. The sale by retail of alcohol for consumption ON the premises only

NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Kennaway House Limited

Kennaway House, Coburg Road, SIDMOUTH, Devon, EX10 8NG.

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

Kennaway House Limited

6471831

NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

Elizabeth HALLS

STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED



Rachel L Pocock

Head of Legal, Licensing and Democratic Services



Agenda Item 7

Licensing & Enforcement Sub Committee

2 August 2010

JRL

Application to vary a premises licence under the Licensing Act 2003

Summary

The report summarises an application to vary a premises licence.

Recommendation

That members consider the application to vary a premises licence under the Licensing Act 2003:

To extend permitted hours on Fridays and Saturdays for late night refreshment from midnight to 2.30am, and during the Sidmouth Folk Festival week and for the period between Christmas Eve and New Year's Eve from midnight to 3.00am at the premises of Pizza Pronto, 3 Radway Place, Sidmouth EX10 8PY.

a) **Reasons for Recommendation**

To comply with statutory processes.

b) **Alternative Options**

To either grant, refuse or modify the variation.

c) **Risk Considerations**

None

d) **Policy and Budgetary Considerations**

The Council's Licensing Policy is referred to in the body of the report. There is a possibility of the Council having to pay the applicant's court costs if a successful appeal is brought against the decisions made today.

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 Description of Application

1.1 An application has been received from Yasar Oflaz to vary a premises licence under the Licensing Act 2003.

1.2 The premises are a two storey building with areas for public trade on the ground floor only. The ground floor consists of an unfurnished shop floor with a food service counter.

1.3 A plan of the premises will be available at the meeting to show the layout of the establishment and the areas of licensable activity. The full plan is produced at Appendix A.

- 1.4 Pizza Pronto currently enjoys the benefit of premises licence PLNA0018. The licence permits, subject to conditions
- the provision of late night refreshment

The full premises licence is produced at **Appendix B**.

- 1.5 The proposed licensable timings are shown in table form at **Appendix C**.

2 Statutory Bodies' Responses

- 2.1 Devon & Cornwall Constabulary
Representations have been received with regard to the increased opening times. The police reached an agreed position with regards to a reduction in the licensable hours. See **Appendix D** for representations received.
- 2.2 Devon Fire & Rescue Service
No representations have been received.
- 2.3 Area Child Protection Committee and Local Safeguarding Children Board
No representations have been received
- 2.4 Devon Trading Standards
No representations have been received
- 2.5 East Devon District Council, Environmental Health Service
Representations have been received regarding potential issues with noise pollution. See **Appendix D** for representations received.
- 2.6 East Devon District Council, Planning & Countryside Service
No representations have been received

3 Representations and Responses to Notices of Hearing

- 3.1 No representations have been received from Interested Parties.
- 3.2 Details of the responses to the statutory Notice of Hearing are attached at **Appendix E**.

4 Proposed Operating Schedule

- 4.1 The applicant has not sought to remove any conditions of Annexe 2 of the existing licence. The existing operating schedule is attached within Premises Licence PLNA0018 at **Appendix B**.
- 4.2 The conditions listed in annexe 2 of the premises licence are reproduced in **Appendix G**.
- 4.3 The applicant has offered additional conditions to those already contained within the operating schedule and are reproduced in **Appendix H**.
- 4.4 The Environmental Health Office representations relate to the prevention of public nuisance objectives. No conditions have been offered.

5 Relevant Licensing Policy Considerations

Licensing Objectives

- 5.1 Section 2.1 of the Policy states: 'The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives.' These objectives are the only matters to be taken into account in determining the application and any conditions attached must be necessary to achieve the licensing objectives.



5.2 Section 2.2 of the Policy states: A licence will only be granted where the licensing authority is satisfied that these objectives have been met.

5.3 Section 2.3 of the Policy lists the kind of measures the licensing authority will be expecting to see taken into account to promote the objectives.

Conditions

5.4 Section 4 of the policy sets out what the Sub Committee should consider before imposing conditions on a licence.

5.5 The Guidance issued under Section 182 Licensing Act 2003 also states:

The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties.

Licensing Hours

5.6 Section 6.1 of the Policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with licensing hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas. There is no presumption within the legislation for longer opening hours and the licensing objectives are paramount in any consideration of an application.

5.7 Section 6.3 of the Policy states: The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the licensing authority believe it necessary, proportionate and reasonable to restrict the hours required.

6 Observations

6.1 The application being considered is for the variation of a Premises Licence to :

- Extend the hours of late night refreshment from midnight to 3.00am on Fridays and Saturdays.
- Extend the hours of late night refreshment from midnight to 3.00am during the Sidmouth Folk Festival week, the day of the



Sidmouth Carnival and between Christmas Eve and New Year's Eve.

- 6.2 The police submitted an objection to this application but a mediated position has been agreed with the applicant as follows:
- by bringing back the terminal hour on Fridays and Saturday nights to 2.30am and
 - removing the extended time for the Sidmouth Carnival
- 6.3 No further conditions were suggested by the police in order to promote the Prevention of Crime and Disorder objective.
- 6.4 The applicant confirmed in writing his agreement to the amendments of his proposed new times for late night refreshment and is reproduced in **Appendix F**.
- 6.5 A representation was made by East Devon District Council's Environmental Health Office based on the impact of noise on people after 11.00pm. The environmental health office has not offered any conditions to prevent any public nuisance. Material to support the objection is contained in their Response to Notice of Hearing and has been reproduced in **Appendix I**.
- 6.5 The Sub Committee will now need to consider whether to grant this application as it stands or in the light of the representations to refuse the application or grant it in a different form.
- 6.6 A location plan is attached at **Appendix J**.
-

Legal Implications

1. As relevant representations have been made in respect of the application, this hearing must be held. (Relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives, by interested parties or responsible authorities). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.
2. The sub-committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The licensing authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.
3. Section 35 of the Act requires the licensing authority to grant a premises licence unless it considers additional steps are needed for the promotion of the licensing objectives having regard to any relevant representations.

The steps are:

- (a) to grant the licence subject to:-
 - (i) the conditions in the operating schedule modified to such extent as members consider necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under sections 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to reject the application.

The conditions of the licence are modified if any are altered or omitted or any new condition is added. Different conditions may be applied to different parts of the premises, and to different licensable activities. The sub-committee must give its reasons for its decision to take any of these steps. Similarly, if any part of an application is rejected, the sub-committee must give its reasons.



4. The sub-committee will need to consider the hours of operation proposed in relation to the licensable activities in the light of the promotion of the licensing objectives, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential and other commercial properties including other licensed premises, the history of the management of the premises and how it is proposed to be run in the future, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities. These issues, and any other relevant ones, may be explored at the hearing.

5. Human Rights Act 1998

- 5.1 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions are explained below. Essentially, they require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.
- 5.2 Under Article 6, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The procedures established by this Council for hearings under the Licensing Act 2003 are compliant with Article 6.
- 5.3 Under Article 8, "everyone has the right to respect for his private and family life, his home and his correspondence". This right may not be interfered with except in accordance with the law and as may be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Licensing Act cases this means that the sub-committee must have regard to the effect of its decisions on local residents, and balance their interests against those of the public at large (e.g. the customers of the premises under consideration) and the people operating the business from the premises.
- 5.4 Under Article 11, "everyone has the right to freedom of peaceful assembly and to freedom of association with others" except where it is lawful to restrict that freedom in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". In Licensing Act cases this means, for example, that the sub-committee is entitled to impose conditions to ensure that patrons of licensed premises do not unreasonably disturb others living or working nearby. Again, the sub-committee should balance the competing interests.
- 5.5 Article 1 of the First Protocol (that is, the first amendment to the Convention) says that every natural or legal person (meaning a human being or a company) is entitled to peaceful enjoyment of his possessions, except where the law provides for restrictions on that right in the public interest. This means, for example, that it is compliant with the Convention to impose restrictions, such as those provided in the Licensing Act 2003, upon business premises where it is in the public interest to do so. On the other hand the same applies to the owners and occupiers of neighbouring premises.



6. Appeals.

If the sub-committee imposes conditions on the licence with which the applicant disagrees, or modifies the licensable activities permitted or refuses to specify a person as a designated premises supervisor, he or she may appeal within 21 days of notification of the decision to the Magistrates' Court. The applicant may also appeal if an application for a premises licence is rejected. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the licensing authority ought to have imposed different or additional conditions or excluded a licensable activity or refused to specify a person as a designated premises supervisor. The magistrates' court may dismiss the appeal, or substitute its own decision, or send back the case to the licensing authority with directions as to how the case is to be dealt with. The magistrates' court may make any costs order it thinks fit.

7. Review provisions.

If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them or any of the responsible authorities to apply to this licensing authority for a review of the licence. A hearing follows which enables the sub-committee to use the normal powers at a hearing (set out above) but also to suspend the licence for a period of up to three months or to revoke it.

8. Police Closure

A senior police officer may close any premises for 24 hours (this can be extended) where s/he reasonably believes there is or is likely imminently to be disorder on, or in or in the vicinity of the premises and their closure is necessary in the interests of public safety. Closure can also be affected if public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance

Financial Implications

No financial implications unless the application is refused there will be possible legal costs if an appeal is made.

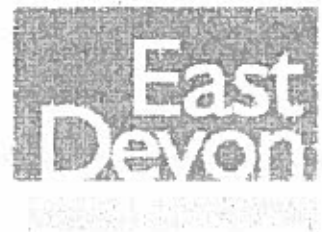
Appendices

- Appendix A – Plan of premises
- Appendix B – Copy of Premises Licence
- Appendix C – Proposed licensable timings
- Appendix D – Representations received
- Appendix E – Responses to Notice of Hearing
- Appendix F – Letter from applicant
- Appendix G – Annex 2 current conditions
- Appendix H – Conditions offered by applicant
- Appendix I – Material Supporting Environmental Health's Objection
- Appendix J – Site Plan

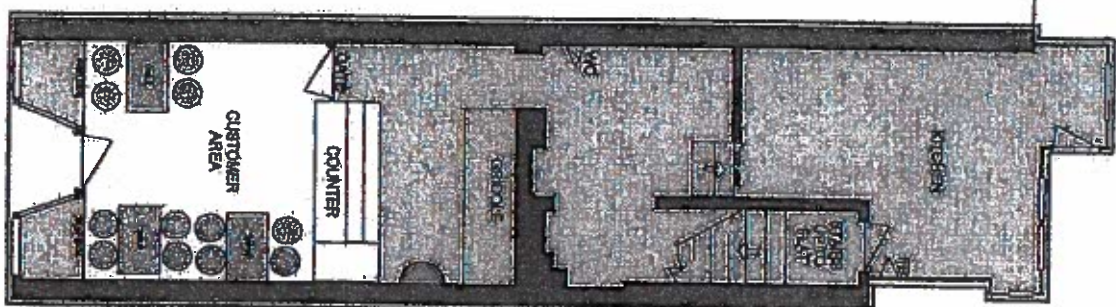
Background Papers

- Licensing Application dated 17 June 2010
- Guidance issued under Section 182 of the Licensing Act 2003
- The District Council's Statement of Licensing Policy










APPENDIX A



Pizza Pronto
 3 Radway Place
 SIDMOUTH
 EX10 8PY

01395 515319

-  EXTENT OF BUSINESS
-  STAFF ONLY AREA
-  CUSTOMER AREA
-  FIRE BLANKET
-  EXTINGUISHER
WET CHEMICAL

OCTOBER 2005

GROUND FLOOR

SCALE 1:100

DRAWN BY
JBL
07778 423721

East Devon District Council
 Knowle
 Sidmouth
 Devon
 EX10 8HL
 DX 48705 Sidmouth
 Tel: 01395 516551
 Fax: 01395 517507



Licensing Act 2003 Premises Licence

PLNA0018

East Devon District Council has granted this Premises Licence in accordance with the Licensing Act 2003. The licence authorises the identified premises to accommodate the licensable activities set out in the document and the plan deposited with and approved by the Licensing Authority. Where the sale of alcohol is authorised as a licensable activity the licence identifies the Designated Premises Supervisor.

Part 1 - Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

Pizza Pronto

3 Radway Place, SIDMOUTH, Devon, EX10 8PY.

Telephone: 01395 516319

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- provision of late night refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
L. Late night refreshment (Indoors)	Monday to Sunday	11:00pm	Midnight

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	Noon	Midnight

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

Part 2

NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Yasar Ofaz

Pizza Pronto, 3 Radway Place, SIDMOUTH, Devon, EX10 8PY,
 Telephone 01395 516319

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)



East Devon District Council
 Knowle
 Sidmouth
 Devon
 EX10 8HL

DX 48705 Sidmouth

Tel: 01395 516551

Fax: 01395 517507



Licensing Act 2003
 Premises Licence

PLNA0018

R. L. Pocock

Rachel L Pocock
 Head of Legal, Licensing and Democratic Services

ANNEXES

ANNEXE 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE

1. CCTV will be installed, maintained and operated to the satisfaction of the Chief Officer of Police and the Licensing Authority.
2. CCTV recordings will be maintained for an appropriate period of time (generally one month - but to be agreed with Police and Licensing Authority)
3. If the CCTV equipment is inoperative, the Police and Local Authority will be informed as soon as possible and immediate steps will be taken to put the equipment back into action.
4. A notice will be displayed at the entrance to the premises advising that CCTV is in operation.
5. Fire extinguishers and fire blankets and any other fire safety equipment required or recommended by the fire service is installed and maintained in good and efficient working condition at the premises.
6. Where there are inadequate council provided rubbish bins and where it will not cause an obstruction rubbish bins will be provided.
7. During opening hours arrangements must be made at regular intervals for litter emanating from the business to be collected and stored inside the premises pending collection.
8. Bags of rubbish will not be left outside the premises overnight.
9. When the premises close all litter on the pavement or road outside the premises will be collected and stored inside pending collection.
10. The licensable activities will be confined to the area(s) outlined in RED on the plan deposited with and approved by the Licensing Authority.



East Devon District Council
Knowle
Sidmouth
Devon
EX10 8HL

DX 48705 Sidmouth

Tel: 01395 516551

Fax: 01395 517507



Licensing Act 2003

Premises Licence Summary

PLNA0018

East Devon District Council has granted this Premises Licence in accordance with the Licensing Act 2003. The licence authorises the identified premises to accommodate the licensable activities set out in the document and the plan deposited with and approved by the Licensing Authority. Where the sale of alcohol is authorised as a licensable activity the licence identifies the Designated Premises Supervisor.

Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDINANCE SURVEY MAP REFERENCE OR DESCRIPTION

Pizza Pronto

3 Radway Place, SIDMOUTH, Devon, EX10 8PY.

Telephone 01395 516319

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- provision of late night refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
L. Late night refreshment (Indoors)	Monday to Sunday	11:00pm	Midnight

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	Noon	Midnight

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Yasar Oflaz

Pizza Pronto, 3 Radway Place, SIDMOUTH, Devon, EX10 8PY.

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED



East Devon District Council
Knowle
Sidmouth
Devon
EX10 8HL

DX 48705 Sidmouth

Tel: 01395 516561

Fax: 01395 517507

APPENDIX B



Licensing Act 2003

Premises Licence Summary

PLNA0018

A handwritten signature in black ink that reads "R. L. Pocock".

Rachel L Pocock

Head of Legal, Licensing and Democratic Services



Pizza Pronto

	Permitted Timings	
	L) Late Night Refreshment	O) Hours premises are open to the public
Monday	11.00pm - Midnight	Noon - Midnight
Tuesday	11.00pm - Midnight	Noon - Midnight
Wednesday	11.00pm - Midnight	Noon - Midnight
Thursday	11.00pm - Midnight	Noon - Midnight
Friday	11.00pm - Midnight	Noon - Midnight
Saturday	11.00pm - Midnight	Noon - Midnight
Sunday	11.00pm - Midnight	Noon - Midnight
Seasonal Variations	None	None

Pizza Pronto

	Proposed Timings	
	L) Late Night Refreshment	O) Hours premises are open to the public
Monday	11.00pm - Midnight	Noon - Midnight
Tuesday	11.00pm - Midnight	Noon - Midnight
Wednesday	11.00pm - Midnight	Noon - Midnight
Thursday	11.00pm - Midnight	Noon - Midnight
Friday	11.00pm - 2.30am	Noon - 2.30am
Saturday	11.00pm - 2.30am	Noon - 2.30am
Sunday	11.00pm - Midnight	Noon - Midnight
Seasonal Variations	During the Sidmouth Folk Festival Week and From Christmas Eve until New Year's Eve	
	11.00pm - 3.00pm	Noon - 3.00am

Pizza Pronto - Representations Received

1. Mr J Smith, Environmental Officer, East Devon District Council, Knowle, Sidmouth									
Objective	Representations								
Prevention of Public Nuisance	<p>I have assessed the above application and have the following comments:</p> <p>1. Site History</p> <p>i have looked at the Council's M3 property database and we have received the following relevant complaints.</p> <table border="1"> <thead> <tr> <th>Reference</th> <th>Date</th> <th>Details</th> <th>Result</th> </tr> </thead> <tbody> <tr> <td>09/02508/NOIPEO</td> <td>02.08.2009</td> <td>shop still open at 03.30 and lots of noise from people outside</td> <td>Noise 1 letter sent and indexed. No further complaints.</td> </tr> </tbody> </table>	Reference	Date	Details	Result	09/02508/NOIPEO	02.08.2009	shop still open at 03.30 and lots of noise from people outside	Noise 1 letter sent and indexed. No further complaints.
Reference	Date	Details	Result						
09/02508/NOIPEO	02.08.2009	shop still open at 03.30 and lots of noise from people outside	Noise 1 letter sent and indexed. No further complaints.						
2. Inspector J Capey, Devon & Cornwall Constabulary, 1 North Street, Exmouth, EX8 1JZ									
Prevention of Public Nuisance	Representation withdrawn – agreed position reached.								

Pizza Pronto - Responses to Notice of Hearing

Applicant

Mr Y Ofiaz, 3 Radway Place, Sidmouth, EX10 8PY	
Hearing Unnecessary	
Attending	Yes
Represented by	
Supporting documents	
Permission requested for attendance of	
Summary of key points	No

Responsible Authorities & Interested Parties

1.	Mr J Smith, Environmental Officer, East Devon District Council, Knowle, Sidmouth	
Hearing Unnecessary	No	
Attending	Yes	
Represented by		
Permission requested for attendance of		
Supporting documents	Yes – Appendix I	
Summary of key points	Yes	
Prevention of Public Nuisance	<p>From our experience of other similar premises, noise generated from the comings and goings of customers is likely to cause a public nuisance (in licensing terms) to local residents. This is exacerbated by the close proximity of the premises and the proposed extended hours - clearly the proposed hours, from time to time, will affect people who are asleep or who are trying to get to sleep. Please see Environmental Protection Advice Note 1 - The impact of noise on people after 11pm. Unfortunately, it is NOT possible to condition most premises such that noise from people coming to and leaving the premises shall not cause a public nuisance (in licensing terms) to local residents. It may be possible to implement stringent management practices, as discussed in Environmental Protection Advice Note 3 - Prevention of Public Nuisance Risk Assessment Process, but even with good management, people coming to and leaving a premises situated in a residential area will cause some public nuisance due to people coming and going from a premises. Please see Environmental Protection Advice Note 4 - The impact on noise from the comings and goings of customers.</p>	

2.	Inspector J Capey, Devon & Cornwall Constabulary, 1 North Street, Exmouth, EX8 1JZ	
Hearing Unnecessary	Yes – Agreed position	
Attending		
Represented by		
Permission requested for attendance of		
Supporting documents		
Summary of key points		

EDDC LICENSING AUTHORITY		
RECEIVED		
15 JUL 2010		
ACCEPT	REJECT	REF

PIZZA PRONTO
3,RADWAY PLACE
SIDMOUTH EX10 8PY

DEAR SIR/MADAM
REFERENCE PIZZA PRONTO LICENCE APPLICATION

FOLLOWING MEDIATION WITH THE POLLICE I WOULD YOU LIKE TO MAKE THE FOLLOWING AMENDIMEMS TO MY APPLICATION :

1. PAGE L

FINISH TIME FRIDAY AND SATURDAY 02:30

2. PAGE O

FINISH TIME FRIDAY AND SATURDAY 02:30

3. NON – STANDART TIMES – TIMES TO REMAIN AS APPLIED FOR BUT CLARIFY DATES

SIDMOUTH FOLK WEEK WHICH TAKES PLACE DURING THE FIRST WEEK OF AUGUST ANNUALLY.

CHRISTMAS AND NEW YEARS FROM CHRISTMAS EVE UNTIL NEW YEARS EVE.

YOURS SINCERELY

YASAR OFLAZ



EDDC RECEPTION	
RECEIVED	
14 JUL 2010	
PASSED TO	

The following conditions contained in annexe 2 the current premises licence:

ANNEXE 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE

1. CCTV will be installed, maintained and operated to the satisfaction of the Chief Officer of Police and the Licensing Authority.
2. CCTV recordings will be maintained for an appropriate period of time (generally one month - but to be agreed with Police and Licensing Authority)
3. If the CCTV equipment is inoperative, the Police and Local Authority will be informed as soon as possible and immediate steps will be taken to put the equipment back into action.
4. A notice will be displayed at the entrance to the premises advising that CCTV is in operation.
5. Fire extinguishers and fire blankets and any other fire safety equipment required or recommended by the fire service is installed and maintained in good and efficient working condition at the premises.
6. Where there are inadequate council provided rubbish bins and where it will not cause an obstruction rubbish bins will be provided.
7. During opening hours arrangements must be made at regular intervals for litter emanating from the business to be collected and stored inside the premises pending collection.
8. Bags of rubbish will not be left outside the premises overnight.
9. When the premises close all litter on the pavement or road outside the premises will be collected and stored inside pending collection.
10. The licensable activities will be confined to the area(s) outlined in RED on the plan deposited with and approved by the Licensing Authority.

The following conditions have been offered by the applicant in addition to those already on the premises licence:

1. CCTV must be installed, operated and maintained to the satisfaction of the licensing authority
2. CCTV 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.
3. If the CCTV equipment is inoperative the Licensing Authority must be informed within seven (7) days and immediate steps to be taken to restore the equipment to full working order.
4. A notice must be displayed at the entrance to the premises advising that CCTV is in operation.
5. The licence holder or people authorised by him must check the premises prior to its opening to the public in order to ensure there are no risks to patrons and that all safety precautions are in place.
6. The licence holder must ensure that all staff receive appropriate training regarding emergency and general safety precautions and procedures.
7. The licence holder must ensure that staff regularly patrol the premises both inside and out to ensure to supervise the orderly conduct of patrons.
8. Prominent, legible notices requesting people to leave the premises and the area quietly must be displayed at all times.
9. Any restrictions on the admission of children to the premises must be displayed at the premises.
10. An incident book must be maintained within which full details of all occurrences of disorder and refused sales at the premises must be recorded. The incident book must be available for inspection by officers of both the licensing authority and the police.
11. The telephone numbers of local taxi operators must be prominently displayed at the premises for the benefit of customers
12. Suitable signage must be displayed requesting patrons to respect the amenities of local residents.

Condition 1 will replace current condition 1 - Appendix G

Condition 2 will replace current condition 2 – Appendix G

Condition 3 will replace current condition 3 – Appendix G

Condition 4 remains unchanged from condition 4 – Appendix G

Conditions 5 - 12 above are new conditions offered by the applicant

Conditions 5 -10 referred to in Appendix G remain unchanged

Environmental Protection Advice Note 1
- The impact of noise on people (particularly after 11pm)

There are principally two areas of concern:

(1) People should reasonably expect a good night's sleep.

Paragraph 2.3.3 of the Borough's Draft Statement of Licensing Policy (Reference a) states:

2.3 To promote these licensing objectives the kind of standards the local authority will expect to see will take into account measures including....

2.3.3 Prevention of Public Nuisance –

- The nature of the activities
- The location of premises and character of the surrounding area in relation to the proximity to residential and other noise sensitive premises
- Latest admission times
- Provision of welfare facilities for example toilets
- Measures for the limitation of noise emissions from the premises. These may include as appropriate noise limitation devices, sound insulation, whether windows are to be opened, the installation of acoustic lobbies and double glazing
- Measures to deal with queuing, where necessary
- Use of outdoor areas
- Odour and light nuisance
- Measures to deal with dispersal of customers from the premises as necessary, including the employment of door supervisors, use of dedicated cab firms, notices in the premises requesting customers to respect neighbours
- Winding down periods particularly in public houses and night clubs etc
- Disposal of waste, particularly glass
- Use and maintenance of plant, including air extraction and ventilation systems
- Litter collection in vicinity including discarded flyers and other promotional material
- Noise from deliveries/collections
- Traffic Management

This is further supported by paragraph 12 of Planning Policy Guidance Note PPG24 (Reference b), 11pm to 7am has been defined within Government Guidance as the "night time period" and defined as the hours when people are normally sleeping which states:

"Local planning authorities should consider carefully in each case whether proposals for new noise-sensitive development would be incompatible with existing activities. Such development should not normally be permitted in areas which are or are expected to become subject to unacceptably high levels of noise. When determining planning applications for development which will be exposed to an existing noise source, local planning authorities should consider both the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future, for example at an airport. Annex 3 gives

guidance on the assessment of noise from different sources. Authorities will also wish to bear in mind that, while there will be sites where noise is significantly lower at night than during the day, other sites may be subjected to night-time noise, for example from traffic, at a level which is little below the daytime level. These sites warrant particular protection: noise-sensitive development should not normally be permitted where high levels of noise will continue throughout the night, especially during the hours when people are normally sleeping (23.00 to 07.00)."

(2) Background noise levels drop during the night time period

Noise levels are well known to drop during the night time period. Consequently potentially noisy activities will have greater impact during this time as background noise levels drop and other noise sources become more intrusive. This is supported by the inclusion of results from the National Noise Incidence survey (Reference c) conducted by The Building Research Establishment (BRE) on behalf of the Department of Environment, Food and Rural Affairs (DEFRA):

Time	Approximate Levels dB(A)	Noise Hour on hour	reduction in noise	Cumulative reduction in noise levels dB(A)
20:00	53 – 56	N/A		N/A
21:00	52 – 54	1 – 2		1 – 2
22:00	50 – 52.5	2 – 2.5		3 – 3.5
23:00	48 – 51	2 – 1.5		5
00:00	45 – 47.5	3 – 3.5		8 – 8.5
01:00	42.5 – 44	2.5 – 3.5		10.5 – 12
02:00	40.5 – 43	2 – 1		12.5 – 13

The aforementioned table and attached graph indicates that, nationally noise levels drop from between 48 – 51 dB(A) at 23:00 to approximately 43 to 44 dB(A) at about 01:00, indicating that nationally noise levels drop between 5 and 7 dB(A) between these times. Therefore any potential noise source is likely to become potentially more intrusive as noise levels drop.

References:

Reference a

Draft Statement of Licensing Policy – East Devon District Council (January 2008 to January 2011).

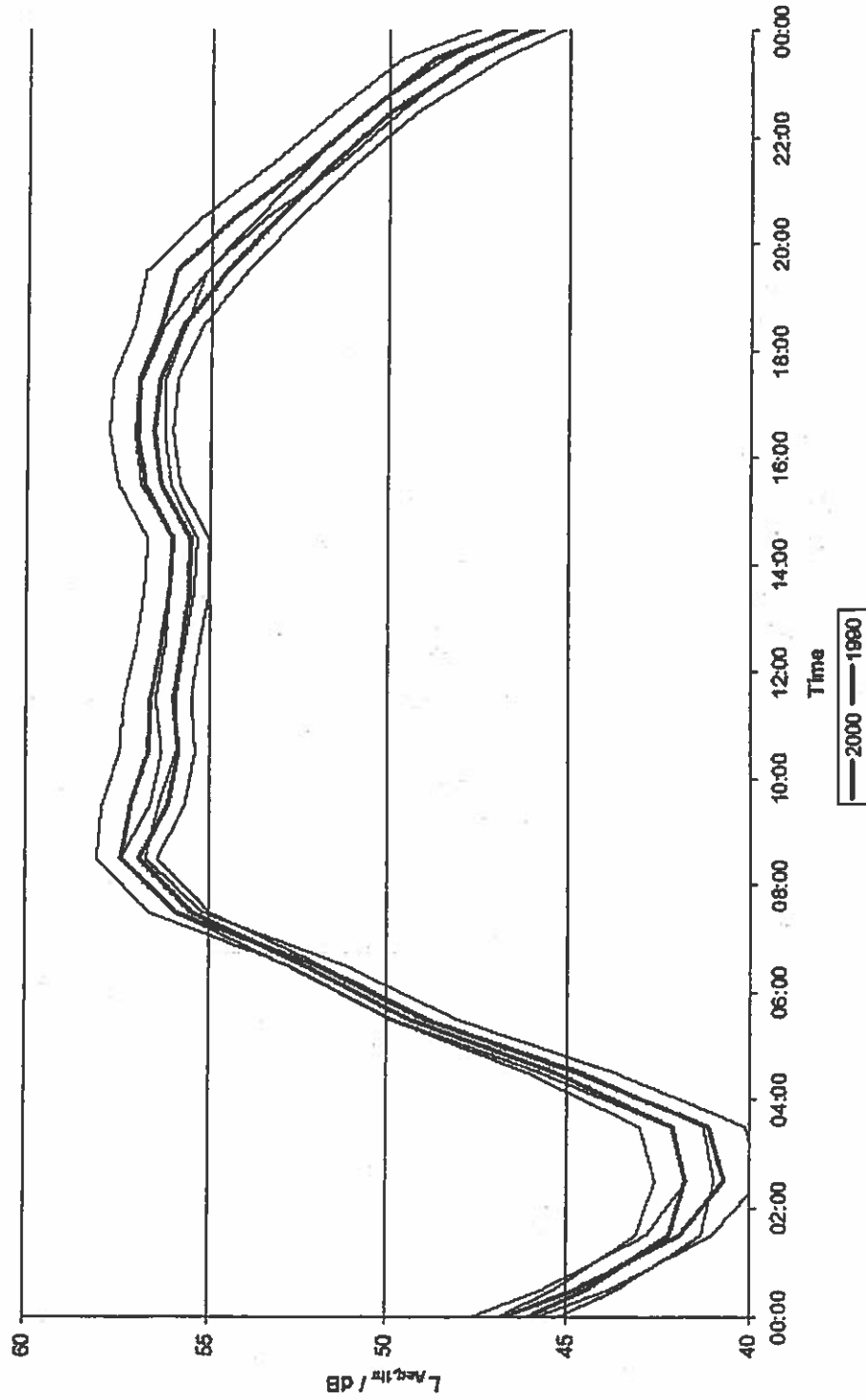
Reference b

PPG24 1994 Planning and Noise.

Reference c

The National Noise Incidence Study 2000/2001 (United Kingdom): Volume 1 – Noise Levels Prepared for : Department for the Environment, Food and Rural Affairs, The National Assembly for Wales, The Scottish Executive, Department of the Environment for Northern Ireland February 2002

7.19 Figure 19 – Mean L_{Aeq} time histories



Environmental Protection Advice Note 3

- Prevention of Public Nuisance Risk Assessment Process

- 1 All applicants must demonstrate the steps they will take to prevent public nuisance arising from activities both in and in the vicinity of the premises. These steps must be outlined in the Operating Schedule (new applications) and in variation applications.
- 2 The Environmental Protection Team considers that the matters outlined below are relevant to the promotion of this licensing objective and expects relevant matters to have been addressed in suitable risk assessments. As a matter of best practice, risk assessments should be undertaken. These should be specific to the premises, proposed licensable activities and proposed hours of trading. Generic risk assessments will not suffice. Relevant matters may include the following:
 - 2.1 The location and the anticipated number of persons attending the premises. Particular regard will be had to the likely impact of the licensable activities on people living and working in the vicinity of the premises and stricter requirements with regard to noise will be imposed on premises that are located close by residential accommodation.
 - 2.2 The times of day when licensable activities that give rise to noise and vibration are carried out.
 - 2.3 Whether adequate measures are being taken to control the risk of late-night noise caused by customers and staff entering and leaving the premises. Particular regard will be paid to the following.
 - Queuing arrangements.
 - Arrangements for customers who use mini-cab services when leaving the premises.
 - 2.4 Whether adequate measures are being taken to control possible noise nuisance by persons eating food and/or consuming alcohol sold at the premises but consumed in outdoor areas of the premises, for example beer gardens, forecourts and other areas adjacent to the premises.
 - 2.5 Where licensable activities give rise to the risk of customers dropping litter in the vicinity of the premises (for example the sale of take away food or the distribution of promotional material to customers visiting the premises), whether adequate arrangements are in place to prevent littering and to clear up any litter that is dropped.
 - 2.6 Whether adequate measures are being taken to prevent noise and noise induced vibration being emitted from the premises.
 - 2.7 Whether measures are being taken to adequately control possible noise and smell nuisances arising from the use of air handling units, ventilation/extraction ducting and other equipment used at the premises.

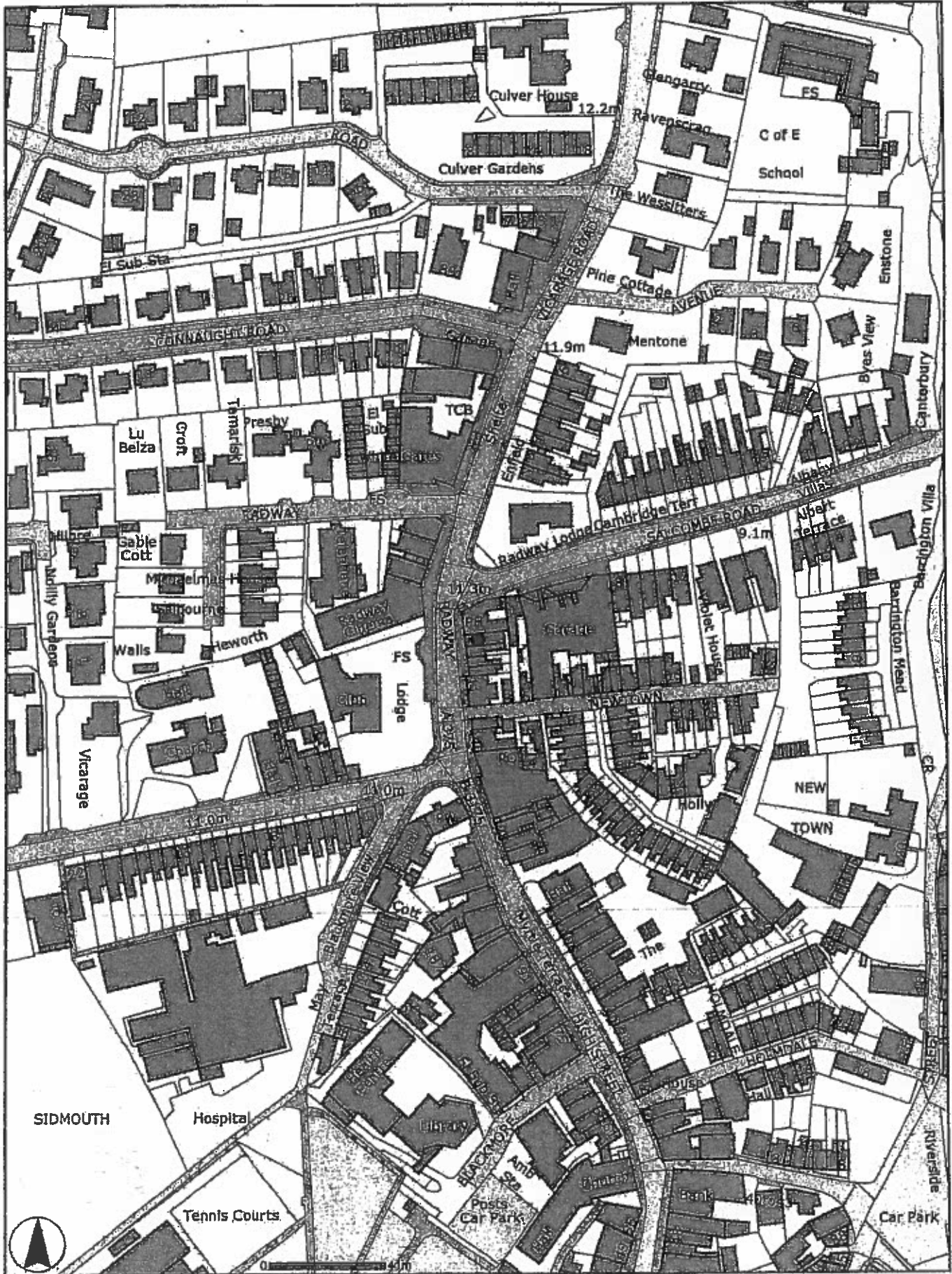
- 2.8 Whether adequate measures are being taken to control any possible nuisance arising from the storage and collection of waste.
- 2.9 Whether adequate measures are being taken to control any possible noise nuisance arising from deliveries or collections.
- 2.10 Whether adequate measures are being taken to control the risk of nuisance from the use of excessive artificial lighting outside the premises.
- 3 The steps reasonably required to prevent public nuisance necessarily vary according to the individual style and characteristics of the premises, the nature of the proposed licensable activities and the proposed times when the licensable activities are undertaken. Further guidance on noise and examples of the kind of licence conditions that the Authority may consider necessary to control anticipated nuisance are set out in Annex G of the Guidance to the Act see www.culture.gov.uk/NR/rdonlyres/D3C5FBCF-B4C1-4A5C-BAA6-FEDD9A1382C6/0/AnnexGConditionsrelatingtotheventionofpublicnuisanc e.pdf)

Environmental Protection Advice Note 4

- The impact on noise from the comings and goings of customers

1. In terms of dealing with licensing applications, Environmental Protection and Planning have the following roles:
 - Environmental Protection generally deal with conditioning noise "from within" the premises –including setting conditions for numbers and times of events, providing mitigation measures such as sound insulation i.e. dealing with the effects of noise propagating from within to the outside of the premises.
 - Planning deal with noise "from the environs" of the premises – including setting closing times – i.e. dealing with the effects of people noise outside the premises, which includes noise from outside of people talking, laughing and occasional shouting, car doors shutting and cars starting up etc
2. Environmental Protection have not traditionally provided "expert" advice on the effects of people coming and going from premises etc – Primarily because measurements and other "technical" noise descriptors are not always appropriate and relevant. The subjective approach is more useful in these circumstances.
3. I have attached a relevant planning decision, and I have inserted paragraph 9 from this decision, which is relevant and makes the point that an "objective" report regarding is not always helpful.

9. I accept that your noise survey provides an objective measure of noise levels and that the peak noise events arising from the comings and goings of customers to a restaurant would be unlikely to exceed the peak maximum of passing cars. However, I consider that noise outside from talking, laughing and occasional shouting, car doors shutting and cars starting up would be readily distinguished by residents from the noise of passing traffic, even if there was no increase in overall noise levels. In my view, the noise from such activity would be disturbing to local residents in the late evening in an area where such activity did not normally occur and which was otherwise quiet.
7. Clearly extending the hours of a premises will result in local residents being affected by various noise, including people talking, laughing and occasional shouting, car doors shutting and starting up etc



Pizza Pronto, 3 Radway Place
 Application for a Variation of a Premises Licence

Map Title: SY1287NE Full Reference: SY1261.8773

