

Date: 8 June 2009
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To: Members of the Licensing & Enforcement Sub-Committee
(Councillors: Graham Godbeer, Jim Knight and Ken Potter)
Remaining members of the Licensing and Enforcement Committee
for information)

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

Meeting of the Licensing & Enforcement Sub-Committee

Tuesday 16 June 2009 at 9.30 am Council Chamber, Knowle, Sidmouth

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

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

A G E N D A

Page/s

- 1 To receive any apologies for absence from Members of the Sub Committee.
- 2 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).

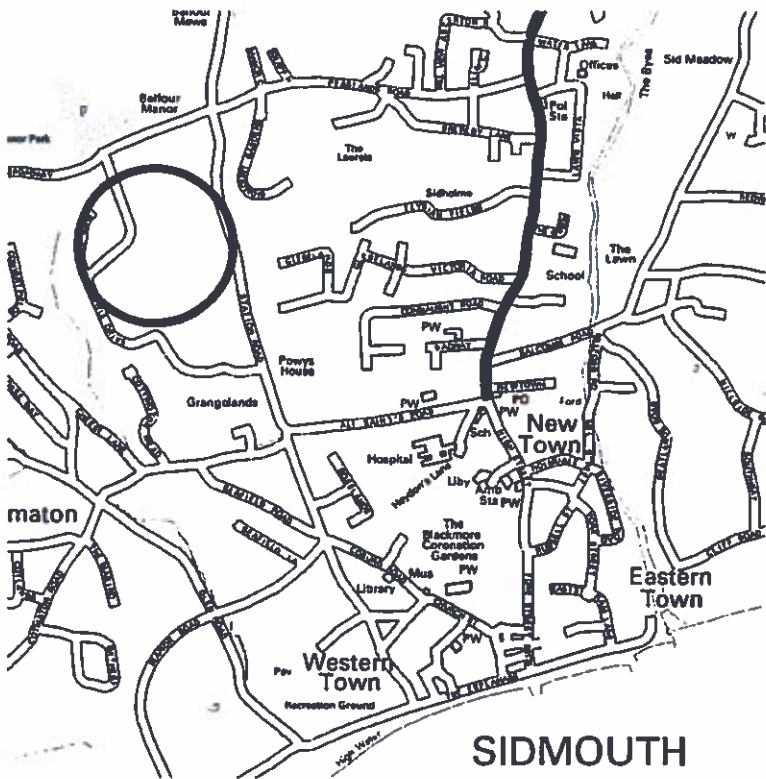
- 3 To agree any items to be dealt with after the public (including the press) have been excluded. (There are no items which the Officers recommend should be dealt with in this way are shown under Part B of the agenda).

4. Application for the grant of a premises licence under the Licensing Act 2003 to permit the provision of regulated entertainment, entertainment facilities and late night refreshment and the sale of alcohol for consumption both on and off the premises at Musbury Garage, Marlborough Road, Musbury Senior Licensing Officer 3 - 18
5. Schedule of applications for Sub Committee approval where an agreed position has been reached and all Parties have agreed a hearing is unnecessary. Senior Licensing Officer 19 - 21

Members Remember!

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

Getting to the Meeting – for the benefit of visitors



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

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

The following buses all terminate at the Triangle in Sidmouth, From the Triangle, walk up Station Road until you reach the Council Offices (approximately ½ mile).
From Exeter – 52A, 52B
From Honiton – 340 (Railway Station), 387 (Town Centre)
From Seaton – 52A, 899
From Ottery St Mary – 382, 387

Please check your local timetable for times.

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

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Agenda Item 4

Licensing & Enforcement Sub Committee

16 June 2009

Application for a premises licence to be granted under the Licensing Act 2003

Summary

The report summarises an application for a premises licence to be granted.

Recommendation

That members consider the application for a premises licence to be granted under the Licensing Act 2003 - To permit the sale of alcohol for consumption off the premises at Musbury Gargae, Marlborough Road, Musbury, Axminster, EX13 8AX.

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 Musbury Gargae Ltd for the grant of a premises licence at Courtlands House, Courtlands Lane, Exmouth EX8 3NZ.
- 1.2 The premises are a convenience store within a garage complex located within the village of Musbury. The area for public trade is proposed to consist of display units both within the shop and behind the counter.
- 1.3 The proposed timings and licensable activities applied for are produced in table form at **Appendix A**.
- 1.4 A plan of the premises will be available at the meeting to show the layout of the establishment and the areas of licensable activity.

Mediation Meeting & Amended Application

- 1.5 A mediation meeting chaired by the Licensing Authority and attended by the Applicant's Agent and the Interested Parties was held at Musbury Village Hall on 28 May 2009. All matters of the application and representations were discussed but no agreed position was reached.

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Constabulary
No 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
Agreed position reached following mediation meeting.
- 2.6 East Devon District Council, Planning & Countryside Service
No representations have been received

3 Representations and Responses to Notices of Hearing

- 3.1 Representations were received from three interested parties. Details of the representations are attached at **Appendix B**.
- 3.2 Following receipt of the Notice of Hearing one interested party has withdrawn their representation. Details of the remaining two responses to the statutory Notice of Hearing are attached at **Appendix C**.

4 Proposed Operating Schedule and Designated Premises Supervisor

- 4.1 The applicants have prepared an Operating setting out the steps they propose to take to promote the licensing objectives. A copy of the proposed Operating Schedule, numbered for ease of reference is attached at **Appendix D**.
- 4.2 The proposed Designated Premises Supervisor is Julian Leonardo Rinaldi. Mr Rinaldi holds a personal licence reference EDVE1315 issued by East Devon District Council.

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.
- 5.4 Section 2.9 of the Policy states: The licensing authority will also have regard to wider considerations affecting the residential

population and the amenity of any area. These include littering and fouling, noise, street crime and the capacity of the infrastructure and police resources to cope with the influx of people, particularly at night.

Conditions

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

5.6 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

5.7 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.

5.8 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.

Nuisance

5.9 Section 17.1 of the Policy states: To promote the licensing objectives, applicants for licences for licensable activities will be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of interested parties.

6. Observations

- 6.1 The application being considered is for the grant of a Premises Licence to permit :
 the supply of alcohol for consumption off the premises
- 6.2 Representations have been received from two interested parties who believe that if the licence is granted it will fail to promote all four licensing objectives.
- 6.3 The representations received are concerned that there may be road safety issues with increased use of the premises. There are also concerns that the sale of alcohol from the premises may result in on street drinking in the locality leading to drunken or rowdy behaviour and vandalism. The Interested Parties are also concerned that the premises will attract young people and increase the likelihood of underage drinking particularly through proxy purchasing.
- 6.4 The interested parties have suggested that the installation of CCTV cameras to the rear of the premises may assist in reducing instances of disorder and criminal behaviour.
- 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 E**.
-

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 18 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 person 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 – Requested times and activities in table form
- Appendix B – Details of representations received
- Appendix C – Details of responses to the Notice of Hearing

- Appendix D – Applicants proposed Operating Schedule
- Appendix E – Plan

Background Papers

- Licensing Application dated 11 April 2009
- The District Council's Statement of Licensing Policy

Ian Carter ext 2080
Licensing Officer

Licensing & Enforcement Sub Committee
16 June 2009

APPENDIX A

Musbury Garage

Proposed timings	
m) sale of alcohol for consumption on the premises	Hours premises are open to the public
Monday	7.00 am - 10.00 pm
Tuesday	7.00 am - 10.00 pm
Wednesday	7.00 am - 10.00 pm
Thursday	7.00 am - 10.00 pm
Friday	7.00 am - 10.00 pm
Saturday	7.00 am - 10.00 pm
Sunday	7.00 am - 10.00 pm

Representations Received

1. Mr M L and Mrs P A Brock, Malvern House, The Street, Musbury, Axminster, EX13 8AU	
Objective	Representations
Prevention of Crime & Disorder	<p>As owners of a neighbouring property, we write to object to the grant of an off-licence Musbury Garage on the following grounds -</p> <p>a) traffic safety considerations;</p> <p>b) potential disturbance, congestion and loss of amenity in the immediate vicinity;</p> <p>b) that there are already two other licensed premises in this small village and therefore no obvious call for an additional outlet.</p> <p>These are our reasons -</p> <p>1) Musbury garage is on a corner site, at the junction of Monmouth Road (A358) and The Street, in Musbury village. This is a busy crossroads. There is little space for parking on the forecourt or nearby. In particular, visibility at the crossroads for vehicles coming out of The Street is regularly obstructed by stationary vehicles on or adjacent to the garage premises.</p> <p>2) At the side of the garage there is a patch of green, a low wall and a 'millennium' seat. This area is regularly used by children and young people for social purposes, usually in the late afternoon, early evening. There is a real possibility that it could become used for alcohol consumption and, additionally, much later at night, with the attendant risks of unruly behaviour and unpleasant litter.</p> <p>3) We have a particular personal interest in this area, as, apart from the fact that it borders our garden, we are currently keeping the grass mown on a voluntary basis, by arrangement with the Parish Council.</p> <p>4) At present the garage shop and fuel closes at 20.00 hours. Later opening hours would add to traffic in the area, parking problems and consequent disturbance.</p> <p>5) However, our final contention is that there would be no benefit to the community sufficient to offset the disadvantages outlined above since there are already two licensed premises trading in the village:-</p> <p>(1) A village post office and stores located a few hundred yards up the Street,</p> <p>(2) A village pub immediately across the road from the garage.</p> <p>In all these circumstances, we ask you to reject the application.</p>
Public Safety	
Prevention of Public Nuisance	
Protection of Children from Harm	
2. D C Eldridge, 1 Marlborough Close, Musbury, Axminster, EX13 8AP	
Objective	Representations
Prevention of Crime & Disorder	<p>As we live next door to Musbury Garage we strongly object to any expansion or extension of the business. It would mean an increase in noise and in winter the lighting on till late at night would cause problems with sleeping. We already get disturbed with early morning deliveries without extra disturbance late evening. There is also an issue with security, as the owners do not live in the village. In the past we have had the burglar alarm going off and on all evening till late at night and neither the police or the on call environmental health officer had any idea who the key holder was, selling alcohol will only increase the security issues.</p> <p>The following issues also affect the rest of the residents.</p> <p>There are already major problems with parking on this site, the forecourt is full with vans and cars both for hire or awaiting repair.</p> <p>Because of this the staff park in our close causing a nuisance to residents and visitors alike. As it is not a very wide road we have concerns that the emergency services may also have difficulty. Garage vehicles are also parked on the road outside the Golden Hind public house, all this takes place around a T-Junction and a busy Crossroads. Any increase in traffic will only</p>
Public Safety	
Prevention of Public Nuisance	
Protection of Children from Harm	

	<p>make these already serious problems worse.</p> <p>The second objection we have is an extension of hours from the present opening times of 8-am to 8 pm causing more noise and general disturbance to local residents in what is essentially a small rural village.</p> <p>Our third objection is that we already have two outlets for alcoholic drinks and feel a third is totally unnecessary given the size of the village, we feel it will only take trade away from the Post Office/Shop which we cannot afford to lose.</p> <p>The fourth issue concerns young people, some with rucksacks and sleeping bags. who congregate on the street corner behind the garage leaving litter and drawing on the pavement, easier access to alcohol can only increase this problem .</p>
<p>3.</p>	<p>B J Parkman, Malvern Cottage, The Street, Musbury,</p>
<p>Objective</p>	<p>Representations</p>
<p>Prevention of Crime & Disorder</p>	<p>WITHDRAWN</p>
<p>Public Safety</p>	
<p>Prevention of Public Nuisance</p>	
<p>Protection of Children from Harm</p>	

Musbury Garage – Responses to Notice of Hearing

Applicant

Musbury Garage Ltd, Marlborough Road, Musbury Axminster, EX13 8AX	
Hearing Unnecessary	No
Attending	Yes
Represented by	Graham Gover Solicitor, 10 Southernhay West, Exeter, EX1 1JG
Supporting documents	None
Summary of key points	<p>The terms of and reasons for the application are evident from the application form itself. The premises are to undergo a significant change in order to trade as a convenience store under the SPAR brand and logo. Both SPAR and the proprietors are to invest significant capital sums to bring this about.</p> <p>The application for a premises licence is a small but significant part of the overall operation.</p> <p>There are no planning restrictions preventing the conversion of the premises to a convenience store or the proposed hours of opening. The later hours of opening are sought in order to improve the offering to the residents of Musbury and beyond.</p> <p>The operating schedule indicates how the licensing objectives are to be met and it has not been the subject of objection, comment or improvement by any responsible authority.</p> <p>Three local residents have voiced their concerns. They are broadly covering the same issues that I have identified and then commented on below:</p> <p>Traffic safety</p> <p>It is important to stress that these concerns relate to the operation of a shop generally, not the sale of alcohol specifically. The store will operate as a convenience store, not a specialist off-licence. Most transactions will not involve the sale of alcohol and therefore concerns about vehicle movements, increased traffic, reduced visibility, parking, and congested forecourts relate to the use of the shop, not the licensable activity of the sale of alcohol itself.</p> <p>In any event the licensing authority has recently ruled that traffic issues are beyond the remit of the Licensing Act 2003 such that it is not possible to refuse the application or impose conditions in respect of vehicle movements.</p> <p>Noise and general disturbance</p> <p>This is linked to the traffic issues and the same considerations apply. Any additional noise or disturbance as a result of increased trade is a possible result of the improvements of the shop, not the sale of alcohol. The sale of alcohol for consumption away from the premises does not cause noise or disturbance. If it did, there would be no convenience stores in any residential area of the country.</p> <p>The existence of two other licensed outlets in Musbury</p> <p>The Guidance issued under s182 of the Licensing Act 2003 does not regard need or competition to be relevant considerations when determining an application for an additional premises licence. At paragraph 13.23 it states</p>

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	<p><i>"Need" concerns the commercial demand for another pub or restaurant or hotel.</i></p> <p><i>This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy. "Need" is a matter for planning committees and for the market.</i></p> <p>Children and young people</p> <p>The residents' concerns is really only directed at consumption of alcohol by youngsters at the "Millennium Seat" area next to the premises.</p> <p>The applicant company has in its operating schedule put forward a stringent system to prevent the sale of alcohol to children. Not only is this a criminal offence but it can also lead to the loss of the premises licence. It is not in the applicants' interest to sell alcohol to children.</p> <p>The police have raised no fears or concerns about the proposed system to prevent sales or about the consumption of alcohol in the village. The residents are unsupported by the principal agency that deals with such issues.</p> <p>For the reasons I have already stated it is not possible to address any of these issues by the imposition of conditions or the refusal of the licence application. The only possible area of concern is the hours applied for. Paragraph 10.21 of the Guidance states:</p> <p style="padding-left: 40px;"><i>Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.</i></p> <p>The store will be open until later than now in any event, and there are no police objections on the grounds of disorder or disturbance.</p> <p>It is respectfully suggested that the representations received should have no bearing on the application or the discretion of the authority to grant the licence as applied for as they do not relate to the proper consideration of the licensing objectives and their application to convenience stores.</p> <p>Graham Gover Solicitor</p>
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Interested Parties

1.	Mr M L & Mrs P A Brock, Malvern House, The Street, Musbury, Axminster, EX13 8AU
Hearing Unnecessary	No
Attending	Yes
Represented by	-
Permission requested for attendance of	
Supporting documents	
Summary of key points	Yes
Public Safety	Our concerns relate to road safety around the garage premises, particularly at the crossroads (Marlborough Road and The Street)Whitford

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	<p>Road). These concerns are based on the following factors:-</p> <ul style="list-style-type: none"> • no obvious provision (or scope) for additional off-road parking • limited free parking space on the garage forecourt due to existing workshop parking and parking of the hire business vehicles • limited roadside parking in the village, the area is already congested visibility is already restricted by garage activities when turning out of The Street • absence of any marked pavement area on Marlborough Road in front of the garage • absence of street lighting along Marlborough Road <p>If the expansion of the business is to be commercially viable, it must necessarily generate more trade, and particularly more "passing" trade and, therefore, added road hazard.</p>
<p>Prevention of Public Nuisance</p>	<p>Our concerns relate particularly to the likelihood of on-street drinking in the communal area around the "millennium seat" which is beside the garage, and also the areas behind the garage premises (ie. outside our own property and on mown grass areas which we maintain voluntarily for the Parish Council). These areas are already frequented by the young people in the village for general social purposes. We would stress that:</p> <ul style="list-style-type: none"> • lighting is poor in these areas • with an adjacent off-licence they would become doubly attractive to unwelcome elements with serious risk of nuisance in gateways. etc. • this would apply particularly in the evenings and during the tourist season • litter would no doubt increase <p>Again, it would be the existence of the off-licence that needs must attract strangers to the area if it is to be commercially Viable.</p> <p>We acknowledge that an efficient CCTV system to the rear of the garage premises would be a distinct deterrent. In addition and in the alternative, our representation would be that any extension of opening hours beyond the present 8.00pm closing time would of itself be liable to create a nuisance in a generally quiet residential village. .</p>
<p>Protection of Children from Harm</p>	<p>We understand the measures to be put in place to control of the sale of alcoholic drink to under-age children on the premises and have no specific concerns in this respect, but we would draw attention to the following factors:</p> <ul style="list-style-type: none"> • availability of alcoholic drink where children returning from school regularly purchase soft drinks and snacks • proximity to areas where children living in the village tend to meet and socialise • the risk of under-age drinking outside the premises when alcohol may apparently have been purchased legitimately.
<p>2.</p>	<p>Mr D C Eldridge, 1 Marlborough Close, Musbury, EX13 8AP</p>
<p>Hearing Unnecessary</p>	<p>No</p>
<p>Attending</p>	<p>No</p>
<p>Represented by</p>	<p>-</p>
<p>Permission requested for attendance of</p>	

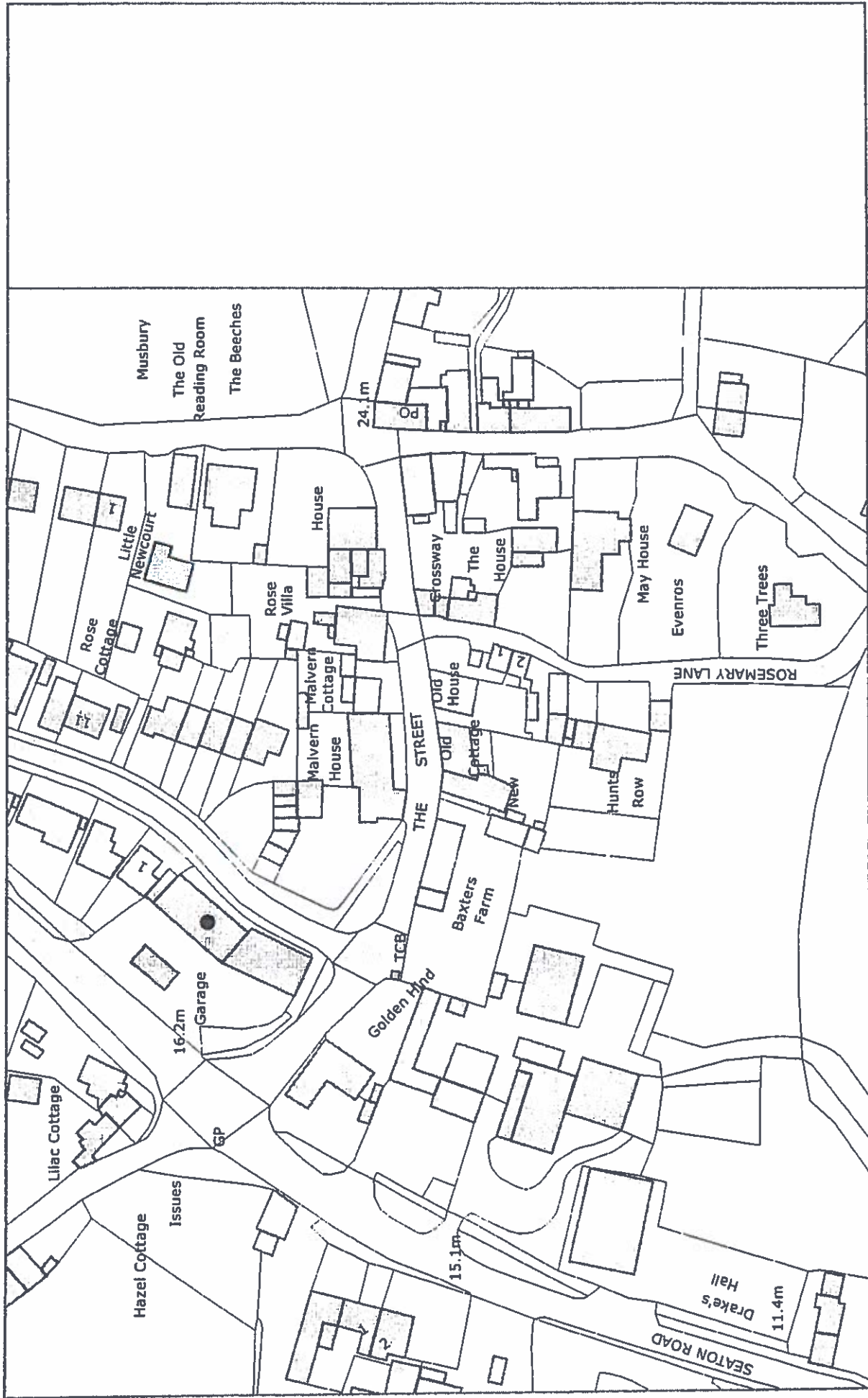
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Supporting documents	None
Summary of key points	Yes
Prevention of Crime and Disorder	There is no street lighting or surveillance to the rear of the property. Therefore making a break in more likely with alcohol on premises. Nobody lives on site
Public Safety	Apparently our concerns over parking and road safety do not apply as far as this application is concerned
Prevention of Public Nuisance	Easier availability of alcohol will make the likelihood of more problems with young people hanging around more likely.

APPENDIX D

Applicants Proposed Operating Schedule

1. A fully recording CCTV system will be installed, maintained and operated to the satisfaction of the police and licensing authority.
2. If a person who appears to be 25 years of age or younger attempts to buy alcohol they will be required to prove their age before they may be sold unless the staff member is certain either from personal knowledge or because they have seen an approved proof of age document on a previous occasion that the person is 18 years old or over.
3. Approved documents for proof of age are a passport, a photo driving licence, a proof of age card that bears the PASS hologram or such other form or means as may then be approved by the police and the licensing authority.
4. All staff are to be trained on the store's due diligence and proof-of -age systems at induction and regular intervals thereafter. A written record of training will be kept on the premises and will be produced on demand to the police or any officer of a responsible authority.
5. A scanning till will be used that is set up to recognise age sensitive products and prompts the operator to call for approved forms of proof of age.
6. Notices will be displayed in the shop and in staff areas of the challenge 25 policy in existence at the store.
7. A record of refusal of alcohol and all age-sensitive products will be kept at the premises and will be produced on demand to the police or any officer of a responsible authority.



Map Tile: SY2794NW Full Reference: SY2728 9461
 Scale 1:1250

Appendix E

Agenda Item 5

Licensing Sub Committee

16 June 2009

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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 the 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 a premises licence to be granted	East Devon Tennis Centre, Exmouth	<p>Following mediation the applicant and East Devon District Council's Environmental Health service have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.</p> <p>The application be approved as submitted subject to the operating schedule being amended to include the following conditions:</p> <ol style="list-style-type: none"> 1. No music or amplified sound to be played except within the fitness suite and bar area and then not later than 21.00 hours on any day of the year unless the applicant has first submitted a comprehensive noise report detailing noise containment and materials to be used to acoustically insulate the licensed premises, and a noise limiter installed in each room and the levels to be set by an Environment Health Officer for Pollution from East Devon District Council. 2. The designated smoking area to be the small patio immediately adjoining the fitness suite (this applies now under the existing provisions for use of the building) 3. Customers will be asked not to stand around talking in the street outside the premise or car park and will be asked to leave the vicinity quickly and quietly 4. Suitable signage will be displayed at the patio entrance requesting patrons to respect the amenities of local residents (There are no garden areas within the control of the applicant) 5. An announcement will be made prior to closing requesting patrons co-operation in leaving the premises and vicinity as quietly and quickly as possible
	Recommend approval of application subject to the amended operating schedule and the relevant mandatory conditions of the Licensing Act 2003	

Legal Implications

Included within the report

Financial Implications

No apparent financial implications

Background Papers

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

Ian Carter Ext.2080

Senior Licensing Officer

Licensing Sub Committee

16 June 2009

