

Date: 29 June 2009
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To: Members of the Licensing & Enforcement Sub-Committee
(Councillors: Graham Godbeer, Chris Gibbings)
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

Wednesday 8 July 2009 at 9.30 am Council Chamber, Knowle, Sidmouth

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

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

A G E N D A

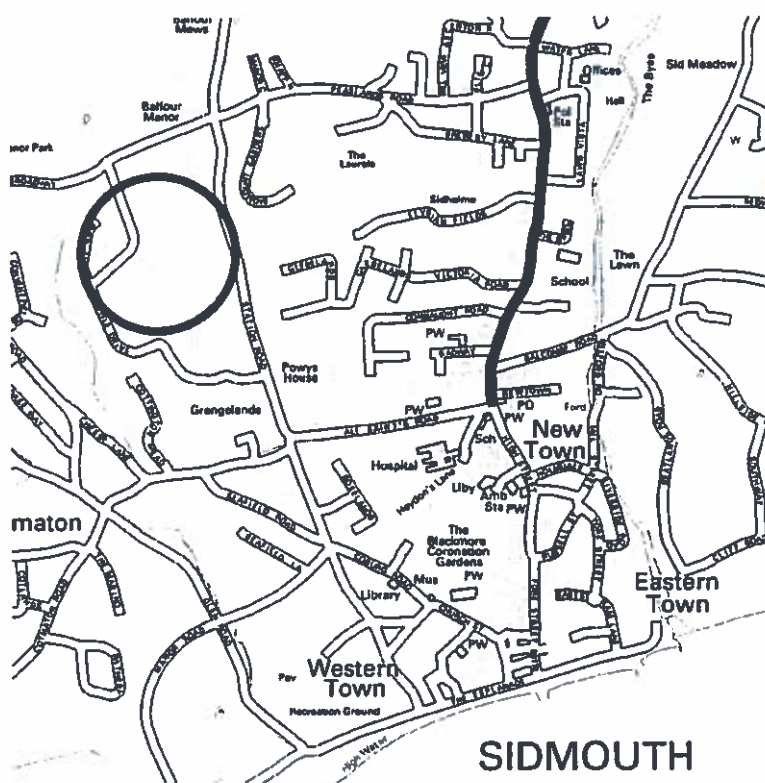
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|---|---|--------|
| 1 | To receive the minutes of the meeting held on 9 June 2009 | 3 - 7 |
| 2 | To receive any apologies for absence from Members of the Sub Committee. | |
| 3 | To consider any items which in the opinion of the Chairman should be dealt with as matters of urgency because of special circumstances. | |
| | (Note: Such circumstances need to be specified in the minutes; any Member wishing to raise a matter under this item is requested to notify the Chief Executive in advance of the meeting). | |
| 4 | To agree any items to be dealt with after the public (including the press) have been excluded. (There are no items which the Officers recommend should be dealt with in this way are shown under Part B of the agenda). | |

- 5 Schedule of application for Sub Committee approval where an agreed position has been reached and all Parties have agreed a hearing is unnecessary. Senior Licensing Officer 8 - 9

Members Remember!

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

Getting to the Meeting – for the benefit of visitors



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

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

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

Please check your local timetable for times.

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

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

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Licensing & Enforcement Sub Committee held at Knowle, Sidmouth on Tuesday 9 June 2009

| | |
|------------------|--|
| Present: | Councillors: Graham Godbeer (Chairman) Jim Knight Ken Potter |
| Officers: | Ian Carter - Senior Licensing Officer Andrew Ennis – Environmental Health Manager Giles Salter – Assistant Solicitor Alethea Thompson - Democratic Services Officer |
| Apology: | Chris Gibbings |

The meeting started at 11.35 am and finished at 2.00 pm.

*1 **Minutes**

The minutes of the meetings of the Licensing & Enforcement Sub Committee held on 11 May and 20 May 2009, were confirmed and signed as a true record.

*2 **Application to grant a time limited Premises License under the Licensing Act 2003 at Beautiful Days, Escot Park, Ottery St Mary**

The Sub Committee gave consideration to the application for the grant of a time limited Premises Licence under the Licensing Act 2003 to permit the provision of regulated entertainment, entertainment facilities and late night refreshment and the sale by retail of alcohol for consumption on and off the premises at Beautiful Days, Escot Park, Ottery St Mary.

The Chairman identified members of the Sub Committee, Officers, applicants and interested parties present. The applicant was Mr David Farrow. The applicant was represented by Mr Tim Selley, Crosse and Crosse Solicitors, and Mr Steve Anderson, Acoustic Consultant of Anderson Mitchell.

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. Consideration was given to the particular locality of the premises in a rural location and its physical relationship with residential in the vicinity.

The Sub Committee considered it relevant that no representations had been received from the police in relation to the Licensing Act objectives that had been the subject of representations, in other words, public nuisance. From this they 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.

*2

Application to grant a time limited Premises License under the Licensing Act 2003 at Beautiful Days, Escot Park, Ottery St Mary (Cont)

The applicant at the hearing outlined his business experience, stating that the event was to be held for the seventh consecutive year. The event had followed the same format for the past four years. There was ongoing discussion through the year and a de-brief after the festival in November each year to review the event to which interested parties and Responsible Authorities were invited. Security had been tightened following complaints about noise from fireworks in the early hours of the morning. The event was worth over £2 million to the local economy and catered for 11,000 people and 1,500 staff, using local businesses to provide services.

The applicant expressed his concerns that he did not want an event that caused a noise nuisance and as a result had employed Mr Anderson as the event noise consultant for the previous year's event. The applicant felt that the hours applied for with the various licensable activities were proportionate and drew the Sub Committee's attention to the Permitted Hours schedule, clarifying some points.

Mr Anderson stated that complaints were important. A noise hotline was in place where complainants could be responded to and complaints investigated. It was important that there was little disturbance and annoyance to the average, reasonable person. Escot was a rural, isolated community, typical of locations for music festivals. Mr Anderson noted the distance and spread of the complaints received over the past years. There was some considerable distance to the villages where noise from the festival was audible, although he doubted that there was a nuisance. Complaints at Tipton St John, 3km from the festival site were noted, although no complaints had been received from residents within 800m of the site.

Mr Anderson stated that a level of audibility was acceptable on some occasions to most people. He referred to the objective criteria in the Noise Council Guidance, although this was not a definitive standard. The Noise Council Guidance set a level of 65 dB for green field festivals. However Mr Anderson felt that this was probably too lax and that a more realistic and appropriate level was 55 dB.

There was an agreement for the objective levels for the period up to midnight as set out in the proposed conditions 1 & 2 of Appendix E. The applicant and his representatives felt that condition 3 was unacceptable, unwarranted and unachievable because there was no objective criteria agreed for 12:00 (midnight) to 4:00am. The objective idea of virtual audibility outside to achieve inaudibility inside and not at monitoring points was preferred by Mr Anderson. He felt that audibility was too sensitive and nothing could be done if an individual complainant was extra sensitive to the audibility question.

The applicant's solicitor, Mr Selley, drew the Sub Committee's attention to the Guidance and section 182 of the Licensing Act 2003. There had been no representations from "interested parties". The hearing was going ahead because of representations from Environmental Health.

Mr Andrew Ennis, Environmental Health Manager set out East Devon District Council's Environment Health position regarding the prevention of public nuisance, the management of noise emanating from festival events and in particular after midnight in two festival venues. It was noted that EDDC received about 1000 noise complaints a year and of those up to 25 resulted in a Noise Abatement Notice being served. Mr Ennis clarified for the Sub Committee that it was the low frequency of an amplified bass beat that would intrude and lead to the potential for noise nuisance.

*2

Application to grant a time limited Premises License under the Licensing Act 2003 at Beautiful Days, Escot Park, Ottery St Mary (Cont)

Mr Ennis explained that acoustic terminology was complex, but basically it was about how a loud noise was measured by its dB and the character or nature of the noise and its frequency. Mr Ennis raised three issues. The first was guidance. There was an absence of precise guidance on audibility. However reference could be made to the non statutory guidance of Environmental Noise Management at Concerts and research from the Institute of Acoustics. People tolerated 45 dB but it was very difficult to measure a distant thumping bass beat. The bass beat penetrated buildings and travelled further than higher frequency music. The Local Authority's duty was to balance enjoyment of those attending the festival with the amount of noise nuisance to local residents and to limit the amount of broken sleep over the course of 72 hours activity. It was noted that weather conditions governed audibility.

The second issue raised by Mr Ennis was complaint history. It was reported that the weather at the previous year's festival had been inclement and the noise conditions could have been worse. Complaints had been received after the event and had been difficult to log, with the exact time that the nuisance occurred difficult to record. Mr Ennis also referred to the complaints received in 2007.

The third issue raised by Mr Ennis was the role of the Environmental Health Officer. This was to advise on preventing public nuisance. It was reported that a precautionary approach should be adopted. It was reasonable for any festival to give some respite to residents surrounding the event. Mr Ennis suggested a cut off time for the louder events at midnight as not all attendees at the festival would be in the dance tent after midnight.

The Sub Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application. In relation to the evidence they had heard regarding the history of the premises the Sub Committee considered that the event was well managed and controlled with good policies in place and adequate supervision of festival staff.

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 East Devon District Council's Environmental Health Manager about the future operation by ensuring that suitable conditions were imposed and that noise emanating from the festival site after midnight was sufficiently monitored and controlled.

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.

*2

Application to grant a time limited Premises License under the Licensing Act 2003 at Beautiful Days, Escot Park, Ottery St Mary (Cont)

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 is as indicated by the legends on the applicant's plan.
 - (b) Permitted hours for the various licensable activities will be as set out in the amended Appendix B.
 - (c) The conditions will now be as shown in Appendix E at Conditions 1 & 2.
 - (d) Amended condition 3 to read:
"music noise level such as not to exceed 40 dB (A) over any fifteen minute period between 12:00 (midnight) and 02:00 am from Thursday 20 August to Monday 24 August 2009".
 - (e) Condition 4 to read:
"Music noise arising from the premises shall be virtually inaudible, as defined at C4 of the applicant's Noise Management Plan, at any of the 7 monitoring locations shown on the plan as submitted, between 02:00 am and 09:00 am from Thursday 20 August to Monday 24 August 2009.
 - (f) All other conditions for licensable activities have been agreed between the parties for the regulation and conditioning of the Premises License on the application.
- 2) that whilst the Sub Committee acknowledged the concerns expressed by the responsible authority before them, they believed 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 which the Sub Committee believed were necessary and proportionate.
- 3) that the Designated Premises Supervisor would be Patrick McCraig of Hills Farm, Cotleigh, Honiton, Devon, EX14 9HE.

*3

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

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

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

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

| Type of Application | Name of premises and address | Agreed position reached by the parties |
|---|---|---|
| Application for a premises licence to be granted | Branscombe Airfield Higherlands Farm, Branscombe | <p>Following mediation the applicant and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.</p> <p>The application be approved as submitted subject to:</p> <ol style="list-style-type: none"> 1. All licensable activity to cease at 0100 hrs. 2. The hours the premises are open to the Public to be 1800 hrs to 01:30 hrs. 3. Replace the conditions offered at Section 'P' for the Operating Schedule with a condition of 'The Licence Holder must comply with the Event Management Plan Submitted in Writing to and approved by the Licensing Authority.' |
| Recommend approval of application subject to the amended operating schedule and the relevant mandatory conditions of the Licensing Act 2003 | | |
| Application for a premises licence to be granted | Tale Valley Farm Shop, Escot. Ottery St Mary. | <p>Following mediation the applicant and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.</p> <p>The application be approved as submitted subject to the inclusion within the operating schedule of the following conditions</p> <ol style="list-style-type: none"> 1. 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. 2. Irresponsible drinks promotions must not be carried out. 3. All staff must be made aware of the social and legal obligations and their responsibilities regarding the sale of alcohol. 4. A proof of age policy must be enforced. 5. The premises must operate a 'challenge 21' policy to ensure that under 18 year olds are not sold/supplied alcohol. |
| Recommendation | Recommend approval of application subject to the amended operating schedule and the relevant mandatory conditions of the Licensing Act 2003 | |

Chairman Date

Agenda Item 5

Licensing Sub Committee

8 July 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 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 premises licence | Sidholme Hotel, Elysian Fields, Sidmouth, EX10 8UJ | Following mediation the applicant and the Interested Parties have agreed that they consider a hearing to be unnecessary if the following agreed position is approved. The proposed operating schedule be amended to include the following conditions. <ol style="list-style-type: none">1. Prominent, legible notices requesting people to leave the premises and the area quietly must be displayed at all exists.2. The licence holder must ensure that when functions are taking place at the premises staff regularly patrol the premises both indoors and out to supervise the orderly conduct of patrons. |
| Recommendation | Recommend approval of application subject to the amended operating schedule | |

Legal Implications

Included within the report

Financial Implications

No apparent financial implications

Background Papers

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

Ian Carter Ext.2080

Licensing Sub Committee

Senior Licensing Officer

8 July 2009

