

Date: 3 October 2011
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To: Members of the Licensing & Enforcement Sub-Committee
(Councillors: Steve Hall, Steve Gazzard, Tom Wright)

Licensing Officer
Assistant Solicitor

Dear Sir/Madam

www.eastdevon.gov.uk

Licensing & Enforcement Sub-Committee, Tuesday 11 October 2011 at 9.30am

The Licensing & Enforcement Sub Committee meeting will take place in the Council Chamber, Knowle, Sidmouth, to consider the matters detailed on this agenda.

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).

A G E N D A

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|--|------------------------------|
| 1. To confirm the minutes of the meetings of the Licensing and Enforcement Sub Committee held on 13 September 2011. | 3 - 9 |
| 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 consider an application for a premises licence to be granted under the Licensing Act 2003 - To permit recorded music, late night refreshment on and off the premises and the sale of alcohol for consumption on and off the premises at The Manor, 5 St Andrews Road, Exmouth. | Licensing Officer
10 - 90 |
| 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
91 - 93 |

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 – 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 Tuesday, 13 September 2011

- Present: Councillors:
Steve Hall (Chairman)
Pat Graham
Ken Potter
- Also present: Councillors:
Roger Giles
Steve Gazzard
Tom Howard
Tom Wright
- Officers: Douglas Jackson – Licensing Officer
Chris Lane – Democratic Services
Officer
Giles Salter – Assistant Solicitor
Neil McDonald – Licensing Officer
- Apologies: Councillor
Bob Buxton
John Jeffery

The meeting started at 9.30 am and ended at 3.40 pm.

*16 Minutes

The minutes of the meeting of the Licensing and Enforcement Sub-Committee held on 6 September 2011, were confirmed and signed as a true record.

*17 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.

*18 Application for Review of a Premises Licence under the Licensing Act 2003 – Gerrard Arms, Colyton

Consideration was given to the report of the Licensing Officer on an application for review of the Premises Licence for Gerrard Arms, St Andrews Square, Colyton requested by Devon & Cornwall Constabulary under Section 51 of the Licensing Act 2003.

The Sub Committee discussed the events in which the Review application had been brought before it. Members accepted that the Police were correct to insist that the matter was brought to the Licensing authority's attention as the tragic

*18 Application for Review of a Premises Licence under the Licensing Act 2003 – Gerrard Arms, Colyton (Cont)

circumstances surrounding a death involving the consumption of alcohol linked to one of its licensed premises was a most serious issue.

The Sub Committee's thinking was based on the Police Licensing Officer's helpful contribution during the hearing. The thorough investigation and interviewing of the various parties involved, the absence of historic complaints from the local residents linked to issues of mismanagement, had aided the Sub Committee in making the following decision.

The cooperation throughout of the Designated Premises Supervisor in taking on board the recommendations of the Police was noted. In particular with regard to the implementation of the Challenge 25 policy and the voluntary decision to record all challenges of young persons in a ledger.

It was noted that an apology from the Designated Premises Supervisor to the Licensing Authority would have been appropriate at the hearing. It was considered important that any DPS realises the ultimate responsibility for the management of premises where alcohol is on sale resided with them.

RESOLVED

1. That CCTV be installed at the premises to the satisfaction of the Police and Licensing Authority in line with the Council's policy as soon as possible and no later than three months from the date of the hearing.
2. That all challenges to young persons attempting to purchase alcohol be noted in a ledger.
3. That the Premises be placed on the Licensing Authorities High Risk Register for a period of 12 months so that the Designated Premises supervisor can demonstrate to the Licensing Authority that he has taken the issues surrounding the tragic circumstances of 14 November 2010 seriously.

*19 Application to grant a Premises Licence under the Licensing Act 2003 at Sainsbury's, Hind Street, Ottery St Mary

The Sub Committee gave consideration to an application for a Premises Licence under the Licensing Act 2003 to permit the provision of sale by retail of alcohol for consumption off the premises and late night refreshment on and off the premises at Sainsbury's, Hind Street, Ottery St Mary.

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

- *19 Application to grant a Premises Licence under the Licensing Act 2003 at Sainsbury's, Hind Street, Ottery St Mary (Cont)

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 the particular locality of the premises in a small market town centre and its physical relationship with other residential and commercial properties in the vicinity. It was considered relevant that representations had been received from the Police in relation to the Licensing Act objectives that had been the subject of comments and observations made at the hearing, that is to say: public safety, public nuisance, prevention of crime and disorder and protection of children from harm. The applicant had now reduced the hours originally asked for.

The applicant's case was that the application was in line with their nationwide standard application. The store intended to open for the sale of alcohol from 6.00am to 12.00 midnight. The applicant offered an amendment to Late Night Refreshment – this would now be indoors only (later withdrawn following reduction of licensing hours offered). The licensing application was an umbrella application to cover all eventual possibilities to incorporate the sale of alcohol and in particular for the Easter, or more likely the Christmas period of trading, and also any future changes in licensing or trading legislation.

The Sainsbury's store was 22,000sq ft, CCTV could not cover every part of the business. The applicant stated that there was a Think 25 policy in operation on a nationwide basis. Every person who looked under 25 must be challenged; staff were trained regularly and reminded of the policy at six monthly periods, at staff huddles etc. The store also advertised the policy to the public, particularly in the till areas.

The issue of proxy sales was addressed; the applicant stated that unscrupulous adults could purchase alcohol and pass it to underage persons at any time away from the store. Sainsbury's could not control this and the presence of Sainsbury's in OSM would not make the issue go away however much the licence might be conditioned.

Regarding the issue of CCTV, the applicant drew the Sub Committee's attention to the conditions offered in the application. It was stated that whilst Home Office policy and Government guidance were available it was a view that standard conditions should be avoided and any specific conditions should reflect the size, style and characteristics of the premises. Conditions should be clear and enforceable. It was stated that there would be 33 cameras in the retail area, 15 back office cameras.

The applicant would have difficulties with the imposition of a 25 frames per second system with images being retained for 30 days because of the amount of storage necessary, but they could see the merits of a system that captured 12 frames per second for a 30 day period. The East Devon CCTV policy was at odds with what was believed to be necessary and proportionate. The applicant was prepared to offer a system that would provide reasonable satisfaction to the Police.

*19 Application to grant a Premises Licence under the Licensing Act 2003 at Sainsbury's, Hind Street, Ottery St Mary (Cont)

The applicant made an offer to amend the proposed hours for the sale of alcohol from 8.00am to 10.00 pm on 7days a week but subject to current Sunday trading laws.

The police case was that in conditioning the CCTV to the Police minimum standard as set out in the Licensing Authority's policy document would future proof all applications for licences and allow applicants to 'husband' their equipment. A 25 frame/sec system would provide the Police with better evidence should there be licensing issues at the premises.

The interested parties' case was:

Cllr Roger Giles who spoke for a number of local residents as well as representing himself- He attended the meeting to oppose 24 hour opening, he was concerned about potential issues of Anti Social Behaviour in the Hind St car park and the Land of Canaan area. He felt that Sainsbury's was not listening to local opinion and it would not deal with issues and concerns because it was not a local business.

Cllr Tony Howard, representing Ottery Rural Ward was concerned for local business, the heavier use of roads, and issues linked to planning concerns with the hours of proposed trading. Ms Lorna Bryce-Nye- applauded the Police on the insistence of minimum standards for CCTV, but also thanked Sainsbury's for amending their application during the hearing.

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

At the present time there was no real evidence that the operation the applicant proposed to run would cause the unacceptable impact local residents suggested because of a lack of evidence specifically related to Sainsbury's which was a new premise and because of the revised timings the applicant proposed.

For this particular operation and the trading characteristics the Sub Committee accepted the applicants CCTV proposals and the conditions offered with some minor amendments which were offered during the hearing. The Sub Committee believed that the equipment currently offered would address the licensing objectives at the present time.

All parties were reminded of the closure and review powers which the Government brought into force once new premises licences were operational from 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.

- *19 Application to grant a Premises Licence under the Licensing Act 2003 at Sainsbury's, Hind Street, Ottery St Mary (Cont)

RESOLVED

- 1) that the Premises Licence be granted as follows:
 - (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 8.00am to 10.00pm Monday to Sunday.
 - (c) The conditions will be shown in Appendix E.
 - (d) CCTV conditions amendments will be offered:
'Sub Committee accepts the addition of the word 'digital' at Condition1 of the CCTV proposed conditions at Section P (pp72-73) in the report.

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

- 3) that the Designated Premises Supervisor would be Joanne Surgury, 16 Bleadon Road, Bexley, Kent.

- *20 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.

The Licensing Officer explained the background of the application and the negotiations carried out.

RESOLVED

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

Type of Application	Name of premises and address	Agreed position reached by the parties
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<p>Application for a premises licence to be granted</p>	<p>Manor Gardens, Exmouth, EX8 2AG</p>	<p>Following mediation the applicant, Devon & Cornwall Constabulary and the Councils 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 addition of the following conditions</p> <ol style="list-style-type: none"> 1. There will be no more than 2000 tickets sold for the event. 2. SIA Registered Doorstaff will be employed as follows: <ul style="list-style-type: none"> • 12.00 Hrs to 16.00 Hrs a minimum of 5 doorstaff • 16.00 Hrs to 18.00 Hrs a minimum of 7 doorstaff • 18.00 Hrs to 30 minutes after closing a minimum of 9 doorstaff 3. All drinks will be sold in plastic or toughened containers. 4. All bottles will be decanted. 5. There will be a challenge 25 policy in force. 6. There will be a contingency plan to supplement the numbers of SIA staff if there is any intelligence of potential disorder or the minimum staffing level for the event is not sufficient. 7. There will be a contingency plan for dealing safely with those persons entering or attempting to enter the licensed area without a ticket or permission (gatecrashers). 8. There will be a contingency plan for stewarding all entrances/exits to ensure the safe evacuation of the licensable area. 9. There will be no Techno or drum and bass music. 10. The sound level throughout the
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		<p>event at Manor Gardens Exmouth on 17 September shall not exceed 65dB(A) 15 LAeq at any time throughout the event.</p> <p>11. The sound levels shall be continuously monitored and the 15min logs available for checking by EHO on demand.</p> <p>12. The recording meter shall be located at the entrance on Alexandra Terrace and Beacon Hill.</p>
	<p>Recommend approval of application subject to the amended operating schedule and the relevant mandatory conditions of the Licensing Act 2003</p>	

*21 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.

*22 Private Hire Driver's Licence Application

Consideration was given to whether an applicant was a fit and proper person to be licensed as Private Hire driver. Members considered the Council's policy guidelines that stated that applicants for a Private Hire Drivers licence should be free of conviction for 3-5 year for either/and/or dishonesty and violence. The overriding duty of the Sub Committee was protection of the public.

RESOLVED that Mr GHK's request to be licensed as a Hackney Carriage Driver be granted, subject to him passing his Driving Standards Agency test.

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

Chairman Date

Agenda Item

Licensing & Enforcement Sub Committee

11 October 2011

NMc

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 recorded music indoors, late night refreshment on and off the premises and the sale of alcohol for consumption on and off the premises at The Manor, 5 St Andrews Road, Exmouth, EX8 1AP.

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 The Manor Exmouth Limited of 5 St Andrews Road, Exmouth, EX8 1AP for the grant of a premises licence for The Manor, 5 St Andrews Road, Exmouth, EX8 1AP.
- 1.2 The applicants have to apply for the grant of a new premises licence as the previous licence for the premises lapsed in 2010.
- 1.3 The proposed timings and licensable activities applied for are produced in table form at **Appendix A**.

- 1.4 The application is to allow recorded music indoors and the sale of alcohol for consumption on and off the premises Monday to Sunday and late night refreshment on and off the premises Fridays and Saturdays.
- 1.5 The premises are a two storey building situated just off the town centre of Exmouth in a mixed commercial and residential area. The area for public trade is on the ground floor with a bar area and outside gardens to the side and rear of the premises.
- 1.6 A full copy of the application is reproduced at **Appendix B**.
- 1.7 The premises previously held a Justices 'on licence' under the old licensing regime that was subsequently converted into a Premises Licence number PLWA0406 in November 2005 under the new licensing system.
- 1.8 On 1 October last year (2010) the premises licence lapsed under section 27(1)(c) of the Licensing Act 2003 following the insolvency of the premises licence holders. A copy of the licence is attached for information of the committee at **Appendix E**.
- 1.9 A plan of the premises will be available at the meeting to show the layout of the site and the areas of licensable activity.

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Constabulary
Representations received.
- 2.2 Devon & Somerset 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 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 Representations have been received from the Devon and Cornwall Constabulary, the Councils Environmental Health Section and three local residents. Details of the representations are attached at **Appendix C**.
- 3.2 Details of the responses to the statutory Notice of Hearing (including supporting documents submitted by the applicant and Ms Elizabeth Flint) are attached at **Appendix D**.
- 3.3 The police have reached an agreed position with the applicant and will not be attending the hearing. Responses to the notice of hearing were received from the applicant, the Environmental

Health Section and two local residents Ms Hole and Ms Flint who indicated that they were attending the hearing. The applicant has also given notice that she will be represented at the hearing by her solicitor Mr Williams from Vine Orchards Solicitors.

- 3.4 One other response to the notice of hearing from a Mr Pashley indicating he would be attending the hearing and including key points was received by fax at 1619hrs on 21 September 2011. This was received outside the required time frame as the specified date for return of the notices was 19 September 2011.
- 3.5 Late responses to the notice of hearing can only be considered if all the other parties to the hearing agree. If Mr Pashley attends the hearing as indicated on his response form then the committee will have to consider whether he can be heard prior to commencing the hearing.

4 Proposed Operating Schedule and Mediation

- 4.1 The proposed operating schedule offered by the applicants has been reproduced at **Appendix F** and numbered for ease of reference.
- 4.2 Following mediation the police have reached an agreed position with the applicant and they have asked for six extra conditions details of which are reproduced at **Appendix G**.
- 4.3 Following mediation the Environmental Health Section have agreed a noise limiter condition with the applicant details of which are reproduced at **Appendix H**. Mrs Wheller from the Environmental Health Section will be attending the hearing.
- 4.4 The applicant declined a mediation meeting with the local residents as she felt that the number of amendments and conditions requested by them was such that mediation would not be successful.

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.

Nuisance

- 5.8 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.

Capacity

- 5.9 Section 18.1 of the Policy states: Where it is considered necessary to control the maximum numbers of persons attending premises for the purpose of preventing crime and disorder or for public safety the licensing authority will expect this to be addressed in the operating schedule. The licensing authority, if relevant representations are made and only then if

such conditions are deemed necessary proportionate and reasonable, may impose a condition stipulating a maximum number of persons permitted to attend premises where it considers it necessary to prevent crime and disorder or for public safety purposes.

6. Observations

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

- the supply of alcohol for consumption on and off the premises
- recorded music indoors
- Late night refreshment on and off the premises (Fridays and Saturdays only).

6.2 The representations received relate to all four of the licensing objectives. The interested parties are mainly concerned that if the premises licence is granted it will increase the noise and general anti social drunken behaviour already existing in that area of the town. Concern has also been expressed that the premises will be a pub type business rather than a restaurant which the previous owners had operated. They are also concerned about the possible noise nuisance created by the number of people being able to use the large outside beer garden areas until late at night. Issues have also been raised concerning possible noise break out from the premises when recorded music is being played.

6.3 Following attempts to arrange mediation both the applicant and one of the interested parties have referred to a beer garden adjacent to the applicants' premises which is a beer garden shared jointly between two neighbouring licensed premises. These two premises are The Bank Public House (licence number PLWA0412) and No 9 Sports Bar (licence number PLWA0264). The locations of these premises are shown marked 1 and 2 respectively on the location plan at **Appendix J**.

6.4 Both of these premises licences are reproduced at **Appendix I** in order to assist the committee with the times the premises and outside areas can be used and any conditions attached to the licences.

6.8 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.

6.9 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 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

- 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
- 2. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children -
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to-
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

- (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
- (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
- (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on-
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
- (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

Source: Section 19 & 19A Licensing Act 2003

3. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

Source: Section 19 & 19A Licensing Act 2003

4. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

Source: Section 19 & 19A Licensing Act 2003

5. (1) The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Source: Section 19 & 19A Licensing Act 2003

6. The responsible person shall ensure that-
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures-
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and
 - (b) customers are made aware of the availability of these measures.

Source: Section 19 & 19A Licensing Act 2003

(b) Section 20 - Mandatory condition relating to exhibition of films – Not required

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 - Not required

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 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 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 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 apparent financial implications

Appendices

- Appendix A – Requested times and activities in table form.
- Appendix B – Copy of licensing application.
- Appendix C – Details of representations received.
- Appendix D – Details of responses to the Notice of Hearing.
- Appendix E – Copy of lapsed licence – Manor Cottage Club.
- Appendix F – Applicants proposed operating schedule.
- Appendix G – Agreed Police conditions.

- Appendix H – Agreed Environmental Health condition.
- Appendix I – Premises Licences – PLWA0412 & PLWA0264.
- Appendix J – Location Plan.

Background Papers

- Licensing Application dated 11 August 2011
- The District Council's Statement of Licensing Policy
- Amended S. 182 Guidance of the Licensing Act 2003

Neil McDonald ext 2079
Licensing Officer

Licensing & Enforcement Sub Committee
11 October 2011

Agenda Item 6

Licensing and Enforcement Sub Committee

11 October 2011

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 a variation of a premises licence	The Famous Old Barrel, 1 Princes Street, Exmouth, EX8 1JA	<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 reduction of the hours for the provision of late night refreshment and the sale of alcohol to end at 12 midnight on Fridays and Saturdays. Opening hours for the premises will be 10:00hrs to 00:00hrs Monday to Sunday and with the addition of the following conditions:-</p> <ol style="list-style-type: none"> 1. CCTV must be installed, operated and maintained to the satisfaction of the Licensing Authority and the Chief Officer of Police in accordance with the requirements set out in the EDDC Licensing Policy. 2. CCTV images must be retained for a minimum of 14 days and to be produced on the request of the Police or a Licensing Officer of East Devon District Council. Recording media must be set to 25 frames per second. 3. The CCTV system must be operational at all times the premises are trading. If the system is faulty or not working then the Police and East Devon District

		<p>Licensing Service must be informed immediately. Details of the malfunction must be recorded in the premises incident book.</p> <p>4. A4 sized warning notices must be displayed in public areas of the premises and at all entrances advising that CCTV is in operation. The signs located at entrances should be located on the exterior of the building at, and adjacent to, all public access doors. All signs must comply with the requirements of the Data Protection Act 2002.</p> <p>5. There will be a thirty minute period prior to the premises closing when alcoholic beverages will not be sold.</p> <p>6. There will be no exhibition, demonstration or performance of hypnotism at the premises as defined in the Hypnotism Act 1952.</p>
	<p>Recommend approval of application subject to the amended operating schedule and the relevant mandatory conditions of the Licensing Act 2003</p>	

Legal Implications

Included within the report

Financial Implications

No apparent financial implications

Background Papers

- The relevant licensing applications
- Representations 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.2079

Licensing Sub Committee

Licensing Officer

11 October 2011

Agenda Item 6

Licensing Sub Committee

11 October 2011

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.
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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 variation of a premises licence to be granted	The Heavitree Arms, High Street, Exmouth, EX8 1NP	<p>Following mediation the applicant and the Councils 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 following amendments:</p> <p>To withdraw the request to extend licensable activities and opening times on Sundays to Thursdays.</p> <p>To allow an extension of licensable activities and opening times until 01:00 on Fridays, Saturdays and Bank Holiday Sundays.</p>
	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
- 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.2079

Licensing Sub Committee

Licensing Officer

11 October 2011