

# Public Document Pack



## **SOUTH HAMS LICENSING SUB-COMMITTEE - THURSDAY, 3RD MAY, 2012**

Agenda, Reports and Minutes for the meeting

### **Agenda No    Item**

1.    **Agenda Letter** (Pages 1 - 2)

2.    **Reports**

Reports to Licensing Sub Committee:

a)    Shell Carew, A38 South Brent, South Brent TQ10 9ER (Pages 3 - 24)

b)    Dart Marina Hotel & Spa, Sandquay Road, Dartmouth TQ6 9PH (Pages 25 - 32)

3.    **Minutes** (Pages 33 - 34)

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# Agenda Item 1

To: Members of the Licensing Sub - Committee  
(Cllrs Baverstock, Carson and Gilbert)

Our Ref: CS/DW

26 April 2012

Cc: Usual Officer and Press Circulation

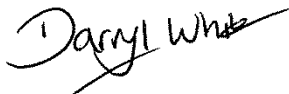
For Item 4 only: Cllrs Barber, Holway, Pannell, Smerdon and Squire

For Item 5 only: Cllrs Bastone, B Cooper, Hawkins and Stone

Dear Councillor

A **re-convened** meeting of the **Licensing Sub-Committee** will be held in the **Cary Room**, Follaton House, Plymouth Road, Totnes on **Thursday, 3 May 2012 at 2.00 pm** when your attendance is requested.

Yours sincerely



Darryl White  
Democratic Services Manager

<p><b>FOR ANY QUERIES ON THIS AGENDA, PLEASE CONTACT DARRYL WHITE DEMOCRATIC SERVICES MANAGER ON DIRECT LINE 01803 861247</b></p>
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## A G E N D A

1. **Appointment of Chairman;**
2. **Division of Agenda** - to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;
3. **Declarations of Interest** - Members are invited to declare any personal or prejudicial interests, including the nature and extent of such interests; they may have in any items to be considered at this meeting;
4. **To determine an application for a new Premises Licence – Shell Carew, A38 South Brent, South Brent TQ10 9ER** (*NOTE: Members have previously been asked to retain their copies of the agenda papers from the initial Sub-Committee meeting held on 7 December 2011 and 7 February 2012. The minutes arising from these meetings are attached at pages 1 to 6 and 7 to 8 respectively*).
5. **To determine an application for a new Premises Licence – Dart Marina Hotel & Spa, Sandquay Road, Dartmouth TQ6 9PH** (pages 9 to 48)

**Members of the public may wish to note that the Council's meeting rooms are accessible by wheelchairs and have a loop induction hearing system**

**MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER**

**THIS AGENDA HAS BEEN PRINTED ON ENVIRONMENTALLY FRIENDLY PAPER**

If you or someone you know would like this publication in a different format, such as large print or a language other than English, please call Darryl White on 01803 861247 or by email at: [darryl.white@southhams.gov.uk](mailto:darryl.white@southhams.gov.uk)

AGENDA  
ITEM

**4**

## SOUTH HAMS DISTRICT COUNCIL

AGENDA  
ITEM

**4**

<b>NAME OF COMMITTEE</b>	Licensing Sub-Committee
<b>DATE</b>	Wednesday 7 December 2011
<b>REPORT TITLE</b>	Application for a new Premises Licence
<b>Report of</b>	The Business Support / Licensing Manager
<b>WARDS AFFECTED</b>	Erme Valley

**Summary of report:**

To determine an application for a new Premises Licence at **Shell Carew, A38 South Brent, South Brent, TQ10 9ER**, firstly in accordance with Section 176 of the Licensing Act 2003 to decide the primary use of the premises. If the premises are primarily used as a 'garage' selling petrol or diesel then the applicants are prohibited from selling alcohol. If determined the primary use of the premises is not a 'garage' but a 'shop' that also sells fuel, to continue and determine the application in accordance with Section 18 of the Licensing Act 2003.

**Financial implications:**

There are no direct financial implications to the Council from this Report.

**RECOMMENDATIONS:**

**That the Sub-Committee consider the application for a new Premises Licence and make determinations in respect of this application, namely to:**

- a) consider whether premises would be "excluded premises" as defined under Section 176 Licensing Act 2003 as:
  - i) premises used primarily as a garage or which form part of premises which are primarily so used. (If so determined then (b) below may be omitted, if not 'excluded premises' to continue with (b) below).
- b)
  - i) grant the application as submitted, subject to any Mandatory Conditions required;
  - ii) modify the conditions of the licence;
  - iii) exclude any of the licensable activities to which the application relates;

- iv) to refuse to specify a person in the licence as the premises supervisor:
- v) reject the application,

in line with the licensing objectives (Section 4) contained within the Licensing Act 2003.

**Officer contact:**

Graham Munson

[graham.munson@swdevon.gov.uk](mailto:graham.munson@swdevon.gov.uk)

01803 861336

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**1. BACKGROUND**

- 1.1 The Licensing Authority has received an application for a new premises licence from Lockett & Co on behalf of Shell UK Oil Products Limited for **Shell Carew, A38 South Brent, South Brent, TQ10 9ER**. A copy of the application is attached (**Appendix 'A'**).
- 1.2 The applicant also enclosed a document named 'Analysis of Customer Flow Shop v Forecourt' providing data showing the number of customer transactions from the premises relating to fuel and number of transactions relating to shop items over the period 1<sup>st</sup> March to 31<sup>st</sup> May 2011 (**Appendix 'B'**). In addition, further information has been provided from the applicant relating to the gross margin on fuel and convenience store sales for the same period (**Appendix 'B'**).
- 1.3 The application is for the sale and supply of alcohol for consumption off the premises, every day, 24hrs per day. Also for the provision of late night refreshment every day from 11pm to 5am. (The applicants already have a licence for late night refreshment).
- 1.4 As the applicants wish to provide the sale of alcohol and provision of late night refreshment, under the Licensing Act 2003 they require a premises licence. As regards to this application, only interested parties, responsible authorities or district councillors may make representations.
- 1.5 After discussion with the Police, the applicant has agreed to amend the hours for sale of alcohol to every day from 6am to 11pm and also to amend the condition in section P(b) in relation to CCTV (see **Appendix 'C'**). Subject to these amendments being included on the premises licence, the Police make no objection to the application.
- 1.6 We have received representations from four District Councillors in respect of this application. These can be found in **Appendix 'D'**. The representations relate to all four of the licensing objectives: prevention of crime and disorder; public safety; prevention of public nuisance; protection of children from harm.

- 1.7 It has not been possible for the Licensing Department to mediate with all parties therefore a satisfactory conclusion has not been possible.

**(Please note that due to the amount of paperwork contained within these appendices, full copies have only been circulated to the Sub-committee Members. Any Interested Parties who would like to receive full (or part) copies are asked to contact Member Support Services on (01803) 861273.)**

## **2. ISSUES FOR CONSIDERATION**

- 2.1 As mentioned above, representations have been received from four District Councillors. Their representations are in **Appendix 'D'**. As can be seen, their objections relate to all four of the licensing objectives.
- 2.2 Under Section 176 Licensing Act 2003 alcohol is prohibited from being sold or supplied at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages. Premises are used as a garage if they are used for one or more of the following:
- the retailing of petrol;
  - the retailing of derv;
  - the sale of motor vehicles; and
  - the maintenance of motor vehicles.
- 2.3 National guidance issued under Section 182 Licensing Act 2003 (see 5.1 - 5.4 below) states that to establish primary use, the approach so far endorsed by the courts is based on intensity of use.
- 2.4 We have received from the applicant an 'Analysis of Customer Flow, Shop v Forecourt' (**Appendix 'B'**) which presents data representing number of customer transactions for shop items, number for fuel and total number of transactions over period 1<sup>st</sup> March to 31<sup>st</sup> May 2011. When both shop items and fuel items were purchased a transaction is logged under both categories. The applicant has confirmed that the sale of more than one shop items in one transaction would only be logged as one shop transaction.
- 2.5 The applicant has also provided information regarding gross margin on fuel and convenience sales for the same period 1<sup>st</sup> March to 31<sup>st</sup> May 2011. It has been confirmed that the shop is a franchise and as such makes a profit of "0.005 pence" per litre on fuel which equates to ½p per litre. Profit made on shop items is 22%.
- 2.6 The Licensing Department has requested that further information be provided before the hearing, showing the breakdown of customer transactions purchasing fuel only, purchasing shop items only and number of mixed transactions for both fuel and shop items. It has also been requested that data for the period 1<sup>st</sup> June to 31<sup>st</sup> August 2011 be provided.

2.7 The Sub Committee will now need to consider this application.

### **3. STATUTORY BODIES' RESPONSE**

3.1 Devon & Cornwall Constabulary  
No representations subject to the agreed amendments.

3.2 Devon & Somerset Fire & Rescue Service  
No representations have been received.

3.3 Area Child Protection Committee and Local Safeguarding Children Board  
No representations have been received.

3.4 Devon Trading Standards  
No representations have been received.

3.5 South Hams District Council, Environmental Health Department (Pollution)  
No representations have been received.

3.6 South Hams District Council, Environmental Health Department (Health & Safety)  
No representations have been received.

3.7 South Hams District Council, Planning Department  
No representations have been received.

### **4. RELEVANT LICENSING POLICY CONSIDERATIONS**

#### **Licensing Objectives**

4.1 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).

(This is having first determined whether the premises are 'excluded' or not).

4.2 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.

4.3 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**

- 4.4 Sections 2.5 & 2.6 of the Policy sets out additional legislation, strategies, policies and guidance that the Licensing Authority will have regard to and Section 4 of the policy sets out what the Sub-Committee should consider before imposing conditions on a licence.
- 4.5 The Guidance issued under Section 182 Licensing Act 2003 which was revised and re-published in October 2010 also states:
- 4.6 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 such 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 (paragraph 10.11 of guidance).

## **Licensing Hours**

- 4.7 Sections 6.1 & 6.2 of the Policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When the Authority's discretion is engaged, consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or Interested Parties on the basis of the licensing objectives. However, when dealing with licensing hours beyond midnight it is more likely that relevant representations will be made unless there are higher standards of control included within operating schedules to promote the licensing objectives, especially for premises which are situated near residential areas or in areas where anti-social disorder takes place.  
There is no presumption within the legislation for longer opening hours.
- 4.9 Section 6.3 of the Policy states: When relevant representations are made to the Licensing Authority by Interested Parties or Responsible Authorities, concerning the prevention of crime and disorder licensing objective, the discretion of the Licensing Authority will be engaged. When considering the representations the Licensing Authority will give due weight to the alcohol related violence statistics, especially on a Friday and Saturday evening and generally expect premises used for the sale or supply of alcohol or the supply of hot food or hot drinks that wish to operate after midnight, to have CCTV installed inside and outside the premises included in their operating schedule.
- 4.10 Section 6.4 of the Policy states: In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal

with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.

- 4.11 Section 6.5 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.
- 4.12 Section 6.7 of the Policy states: Shops, stores and supermarkets will generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance.

### **Children**

- 4.13 Section 7.1 of the Policy states: The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. Access by children to all types of premises will not be limited unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm.
- 4.14 Section 7.2 of the Policy states: When deciding whether to limit access of children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children include premises: -
- where entertainment of an adult or sexual nature is provided
  - where there is a strong element of gambling taking place
  - with a known association with drug taking or dealing
  - where there have been convictions of the current management for serving alcohol to those under 18
  - with a reputation for underage drinking
  - where the supply of alcohol for consumption on the premises is exclusive or primary purpose of the services provided at the premises.

## **5. LEGAL IMPLICATIONS**

- 5.1 Section 176 of Licensing Act 2003 prohibits the sale of alcohol at motorway service areas and restricts the circumstances in which alcohol may be sold at garages. The sale of supply of alcohol is prohibited from premises that are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used as a garage if they are used for one or more of the following:
- the retailing of petrol;
  - the retailing of derv;

- the sale of motor vehicles; and
- the maintenance of motor vehicles.

5.2 National Guidance issued under Section 182 Licensing Act 2003 part 5.23 -5.25 states:

5.3 The Licensing Authority must decide whether or not any premises is used primarily as a garage. The approach endorsed so far by the courts is based on intensity of use to establish primary use. For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers purchasing the products or services listed above, it may be eligible to seek authority to sell or supply alcohol.

5.4 Where there is insufficient evidence to establish primary use, it is for the Licensing Authority to decide whether to grant the licence and deal with any issues through enforcement action or to defer granting the licence until the primary use issue can be resolved to their satisfaction.

5.5 The Act requires mandatory conditions to be imposed (\*if applicable) on the licence, the wording of which is prescribed by the Act but may be summarised as follows:

**(a) Section 19 - Mandatory conditions relating to the supply of alcohol  
(\*This condition is applicable)**

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 19A - Irresponsible drinks promotions  
(\*This condition is not applicable to an off sales application)**

Staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

**(c) Section 19A - No alcohol to be dispensed directly into the mouth of another person**

**(\*This condition is not applicable to an off sales application)**

No alcohol is dispensed directly by one person into the mouth of another

**(d) Section 19A - Free drinking water**

**(\*This condition is not applicable to an off sales application)**

That free tap water is provided on request to customers where it is reasonably available.

**(e) Section 19A - Age verification policy  
(\*This condition is applicable)**

- (1) The premises licence holder or club premises certificate 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.

**(f) Section 19A - Minimum measures for alcoholic beverages**

**(\*This condition is not applicable to an off sales application)**

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.

**(g) Section 20 - Mandatory condition relating to exhibition of films**

**(\*This condition is not applicable to an off sales application)**

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.

**(h) Section 21 - Door Supervision**

**(\*This condition is applicable)**

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

- 5.6 As there have been relevant representations in respect of the new premises 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.
- 5.7 The sub-committee must consider this application firstly in accordance with Section 176 of the Act and make a determination whether the premises are used primarily as a garage selling petrol or diesel or are part of premises used

primarily used for selling petrol or diesel. If this is so determined then there is a prohibition on selling alcohol. If the determination is the premises are a shop that sells petrol or diesel then the matter may proceed 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.

- 5.8 The Act requires (Section 18) that in dealing with a new application, the committee takes any of the following steps which are necessary for the promotion of the licensing objectives:
- (a) To grant the Licence subject to:-
    - i any Mandatory Conditions required;
    - ii modifying the conditions which have been specified in the operating schedule;
  - (b) to exclude 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 Sub-Committee must give its reasons for its decision to take any of these steps. Similarly, if the application is rejected, the Sub-Committee must give its reasons.

- 5.9 The committee will need to consider the hours of operation proposed, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential properties, the history of the management of the premises, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities, public transport, taxi availability, the right the applicant has to operate a business and balancing the rights of residents to the quiet enjoyment and privacy of family life. That South Hams relies on tourism, with the population in the district doubling in the summer months with holidaymakers both from this country and international visitors who are, in the main, families with young children and retired people – the very segment of society who would perhaps be deterred by anti-social behaviour. These issues, and any other relevant ones, may be explored at the hearing in so far as it reflects the four licensing objectives.

- 5.10 If the Sub-Committee rejects the application, determines the premises are a primarily a 'garage retailing petrol or diesel' or modifies the conditions of the licence, the applicant or Interested Parties or Responsible Authorities may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may also appeal if they believe that the licence should not have been varied, or that, when varying the licence, the

Licensing Authority ought not to have modified the conditions, or ought to have modified them in a different way. 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.

5.11 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.

## 6. FINANCIAL IMPLICATIONS

6.1 There are no direct financial implications to the Council from this Report.

## 7. RISK MANAGEMENT

7.1 The risk management implications are:

Opportunities	Benefits
<p>To review the application in line with:</p> <ul style="list-style-type: none"> <li>• The Licensing Act;</li> <li>• National Guidance issued by the Secretary of State, and,</li> <li>• The South Hams District Council Statement of Licensing Policy.</li> </ul> <p>To create an increased opportunity for employment in the district.</p> <p>An opportunity to maintain the districts distinctive environment whilst enabling access and sensitive development.</p> <p>To consider whether the proposal would promote tourism. The population doubles in the summer months with tourists and international visitors who are, in the main, families with young children and retired people – the very segments of society who would perhaps</p>	<p>To be able to give consideration to representations made by 'Interested Parties' and / or 'Responsible Authorities' in line with the Licensing Objectives, namely:-</p> <ul style="list-style-type: none"> <li>• The prevention of Crime and Disorder;</li> <li>• Public Safety;</li> <li>• The prevention of public nuisance; and</li> <li>• The Protection of children from harm.</li> </ul>

be deterred by anti-social behaviour.	
<b>Issues/Obstacles/Threats</b>	<b>Control measures/mitigation</b>
<p>The need to address the four Licensing Objectives written within the Act namely:</p> <ul style="list-style-type: none"> <li>• The prevention of Crime and Disorder;</li> <li>• Public Safety;</li> <li>• The prevention of public nuisance; and</li> <li>• The Protection of children from harm.</li> </ul> <p>(Also listed above as a benefit)</p> <p>Due consideration should be given to Guidance issued by the Secretary of State under section 182 of the said Act 2003.</p> <p>Due consideration should be given to the Council's Licensing Policy Statement.</p> <p>Failure to adequately consider these issues could result in the Council facing an appeal to the Magistrates Court.</p>	<p>The Licensing Authority follows strict legislation in accordance with the Licensing Act 2003 and adheres to the statutory instruments contained within the Act.</p>

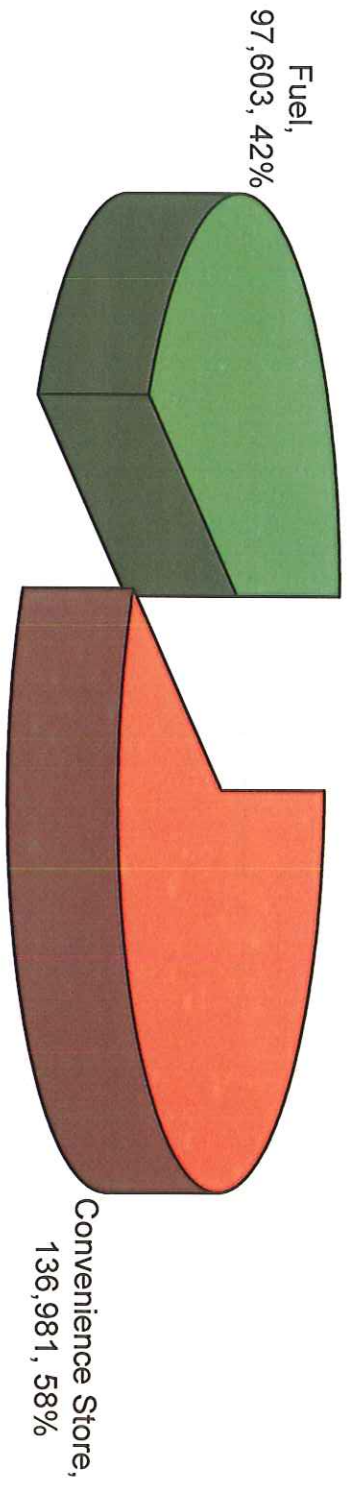
<b>Corporate priorities engaged:</b>	There is a link to the Council's priority of improving Community Life.
<b>Statutory powers:</b>	Licensing Act 2003
<b>Considerations of equality and human rights:</b>	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair hearing
<b>Biodiversity considerations:</b>	Not applicable
<b>Sustainability considerations:</b>	As above under corporate priorities engaged
<b>Crime and disorder implications:</b>	Section 17 of Crime and Disorder Act 1998 applies.
<b>Background papers:</b>	Responses to Notices of Hearing from Interested Parties

	<p>Summary of Key Points</p> <p>Guidance on Meeting the Licensing Objectives</p> <p>The Licensing Act 2003</p> <p>Guidance issued under Section 182 of the Licensing Act 2003</p> <p>The District Council's Statement of Licensing Policy</p>
<p><b>Appendices attached:</b></p>	<p>Appendix A – application for new premises licence</p> <p>Appendix B – data provided by applicants relating to intensity of use of the shop</p> <p>Appendix C – police agreed amendments</p> <p>Appendix D - representations</p>



Analysis of Intensity of Use.

Shell Carew, A38 South Brent, South Brent, Devon, TQ10 9ER.



### Analysis of Intensity of Use.

Shell Carew, A38 South Brent, South Brent, Devon, TQ10 9ER.

Source: EPOS -1st September 2011 to 31st January 2012 incl.

	<u>Convenience Store</u>	<u>Fuel</u>	<u>Total</u>
1st September to 30th September 2011 incl	30388	21408	51796
1st October to 31st October 2011 incl	30788	21502	52290
1st November to 30th November 2011 incl	26478	17456	43934
1st December to 31st December 2011 incl	25841	19080	44921
1st to 31st January 2012 incl	23486	18157	41643
<b>Total</b>	<b>136981</b>	<b>97603</b>	<b>234584</b>

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT  
FOLLATON HOUSE, TOTNES ON WEDNESDAY 7 DECEMBER 2011**

Present: Cllrs Baverstock, Carson and Gilbert  
N Hill, Solicitor  
G Munson, Business Support Manager  
T Johnson, Solicitor  
D White, Democratic Services Manager  
N Wopling, Licensing Officer

Members also in attendance and participating (for Minute LSC.17/11 only):  
Cllrs Barber, Holway, Pannell and Smerdon

Also in attendance and participating (for Minute LSC.17/11 only):  
Leo Charalambides (Ely Place Chambers), Corrigan Lockett (Lockett & Co.) and Claire Kelly (Designated Premises Supervisor)

**LSC.15/11 APPOINTMENT OF CHAIRMAN**

**RESOLVED**

That Cllr Carson be appointed Chairman for the duration of the meeting.

**LSC.16/11 DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting. These were recorded as follows:-

Whilst not a Member of the Sub-Committee, Cllr Pannell declared a personal interest in Item 4: "*To Determine an Application for a New Premises Licence – Shell Carew, A38 South Brent, South Brent TQ10 9ER*" (minute LSC.17/11 below refers) by virtue of being a licensee at the South Brent Village Hall and remained in the meeting and took part in the debate thereon.

Mr T Johnson declared a prejudicial interest in Item 4: "*To Determine an Application for a New Premises Licence – Shell Carew, A38 South Brent, South Brent TQ10 9ER*" (minute LSC.17/11 below refers) by virtue of knowing Mrs Kelly who, following agenda publication, had now been named as the proposed Premises Supervisor and proceeded to leave the meeting during consideration of this item.

**L.SC.17/11 TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE – SHELL CAREW, A38 SOUTH BRENT, SOUTH BRENT TQ10 9ER**

**1. Business Support Manager's Report**

The Business Support Manager introduced the report to the Sub-Committee and specifically advised that the application was two-fold. Firstly, the Sub-Committee would need to determine whether or not to grant the application for the sale and supply of alcohol for consumption off the premises, every day, twenty-four hours per day. The second element sought the Sub-Committee to consider the licence for the provision of late night refreshments every day from 11.00 pm to 5.00 am. It was confirmed that the applicants already had a licence for late night refreshment.

In so doing, and in accordance with Section 176 of the Licensing Act 2003, the Sub-Committee was informed that it would need to consider the primary use of the premises. If the premises were deemed to be primarily used as a 'garage' selling petrol / diesel, then the applicants were prohibited from selling alcohol. In the event that the Sub-Committee determined the primary use of the premises to be a 'shop' which also sold fuel, then it would need to continue and determine the application in accordance with Section 18 of the Licensing Act 2003.

**2. Address by the Applicants' Legal Representatives**

In their address, the applicants' legal representatives urged the Sub-Committee to determine that the primary use of the site was as a convenience store and made specific reference to:-

- (a) the need for evidential proof to be provided by the interested parties in order to satisfy the Sub-Committee that crime and disorder would occur as a result of this application. The representatives argued that this had not been provided;
- (b) this area of the law not being particularly clear. The Sub-Committee was informed that there were currently three appeals lodged to the Magistrates Court in respect of Section 176 of the Licensing Act 2003;
- (c) the letter from the local MP. With regard to the comments in the letter regarding safety, and specifically, being a 'danger to the community', the Sub-Committee was advised that, legally, this did not include health or road safety. The legislation defined 'public safety' as either the public safety of the people using the premises or the store itself (e.g. whether or not it was safe for the public).

When questioned on this point, the representatives stated that for the purposes of the application, the site was defined as the convenience store only and did not take into account access to and from the site. Having said that, it was acknowledged that there was ambiguity in relation to whether a site could also be defined as including its curtilage.

In respect of whether there was a justifiable need for this application, the representatives stated that this was only relevant for planning committees and the open market. Therefore, reference to need was both an irrelevant and unlawful representation;

- (d) the number of service stations who already sold alcohol. In addition, the Sub-Committee was informed that, to date, none of these licences had ever been reviewed;
- (e) the recent 'Thwaites' Case. Having advised the Sub-Committee of the relevance of this case, some Members responded that, at a recent seminar they had attended, it was suggested that this case should not be given any credence when determining such matters;
- (f) the commitment to both adequate security and staff training provision. In addition, the premises retained an incident log which was available for the Sub-Committee to inspect;
- (g) the relationship between the organisation and the franchisee. The representatives confirmed that the organisational arrangement for this particular site was that the franchisee held eight sites within their portfolio (including this site) and (s)he would employ an individual manager for each of these premises.
- (h) the business model. Members were informed that based upon the accounts, it was apparent that the franchisee only made a minimal income from the sale of fuel. In rural areas, it was noted that the number of forecourt sites had reduced from 30,000 to 9,000 and it was therefore deemed essential to fully utilise the convenience store element of each site;
- (i) the lack of representations received from the Environmental Health service and the Police Authority also being content with the application. In addition, the representatives did not consider there to be any particularly strong (if any) representations submitted that stated that the primary use of the site was a garage and not a convenience store;
- (j) in planning terms, there being only three elements to the site. These three elements were: the pumps, the canopy and the convenience store;

- (k) the difficult nature of this application. A Member commented that this was a particularly difficult application to determine and made reference to the degree of hypothesis and ambiguity which were subjective matters for interpretation. In reply, the representatives accepted the difficulties faced by the Sub-Committee and stated that it was an option to grant the application subject to a condition being imposed whereby a six month review be undertaken. As a compromise, the representatives felt that this would be a far more cost effective way forward for all parties to proceed and would enable the matter to be revisited in due course.

### **3. Points raised by the Interested Parties**

The Interested Parties proceeded to raise the following points:-

- (i) In light of the on-site car parking being extremely limited, a Member could not see how the primary use of the premises could be anything but a garage. In highlighting how competitively priced the fuel was at this location, a Member reminded the Sub-Committee that this site was used as the barometer when reviewing taxi fare rates;
- (ii) A Member advised the Sub-Committee that there had been a recent fatality at this site. The Member considered that the potential for similar types of incidents to arise would only increase by granting this licence;
- (iii) If the garage did not exist, it was considered that the shop would no longer be viable, particularly as there were a number of other rival convenience stores in close proximity;
- (iv) A Member felt that since the application had been submitted from Shell, it was reasonable to expect that the primary use of the premises was as a garage. In addition, the premises would not be in its current location as a stand alone convenience store and the view was expressed that customers would not consider visiting the site if it was only a shop due to the danger of the access on and off the A38. In reply, the legal representatives stated that case law had proven that simply because premises resembled a garage, did not mean it should be defined as one;
- (v) In expressing a number of concerns in relation to the figures quoted in the agenda papers, which notably included the gross profit margin figures, a Member considered it was almost impossible to determine this matter today. Therefore, the Member felt that a decision should be deferred to enable for a proper analysis of the figures to be undertaken;

(vi) A Member emphasised that a number of the sales generated by the shop would be attributed to it also being a garage and cited examples including engine oil, screen wash and travelling refreshments and snacks. In countering this point, the legal representatives replied that the statutory definition of a garage was the 'retail of petrol/diesel and the sale (and/or) maintenance of cars.' Therefore, reference to the sale of engine oil etc and the purpose of a visit were deemed irrelevant.

Once all parties were satisfied that they had no further comments or questions, the meeting was adjourned at 11.10 am to enable the Sub-Committee to deliberate the application, in the presence of the Council Solicitor only, who attended in an advisory capacity.

(The meeting was subsequently re-convened at 1.00 pm).

The Chairman then announced the decision of the Sub-Committee.

#### **4. The Decision**

The Chairman announced the decision as follows:

"We have debated this application for some considerable time. We are undecided on whether this is a convenience store or garage and we need further information to enable us to apply the test as set out in Merco Petroleum Ltd.

In particular, we would like information on:

1. Gross profit to Shell versus the gross profit to the franchise on all sales.
2. Further clarification between convenience store sales and garage sales.
3. Total number of fuel only customers (i.e. customers who only buy fuel) compared to total number of convenience store only customers (i.e. customers who only buy items from the convenience store).
4. What proportion of profits on convenience store sales go to Shell compared to the franchise."

Upon announcing the decision, it was agreed that in order to provide the applicants with sufficient time to gather this information, the meeting should be reconvened to further consider this application at **2.00pm on Tuesday, 7 February 2012.**

Finally, the Democratic Services Manager requested that, due to the volume of paper accrued for this application, all parties in attendance retain their copies of this agenda for the reconvened meeting.

**LSC.18/11 TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE –  
DARTMOUTH YACHT CLUB, 22 SOUTH EMBANKMENT, DARTMOUTH  
TQ6 9BB**

**1. Licensing Officer's Report**

The Licensing Officer introduced the report to the Sub-Committee and advised that the Police Authority had initially made representations requesting that the opening hours be reduced. Since these amendments had subsequently been agreed by all parties, it had therefore been deemed that a formal hearing would not be necessary.

The Chairman then announced the decision of the Sub-Committee.

**2. The Decision**

The Chairman announced the decision as follows:

“We have considered the application for a new premises licence.

We have considered the Statement of Licensing Policy, the government guidance, and our obligations that relate to the promotion of the four licensing objectives.

Following representation and the agreement reached between parties, we now note all parties consider a hearing unnecessary. We agree.

It is our decision therefore to grant this application subject to the agreed amendments being incorporated into the operating schedule.”

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Chairman



**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT  
FOLLATON HOUSE, TOTNES ON TUESDAY 7 FEBRUARY 2012**

Present: Cllrs Baverstock, Carson and Gilbert  
G Munson, Business Support Manager  
T Johnson, Solicitor  
D White, Democratic Services Manager  
N Wopling, Licensing Officer

Members also in attendance and participating:  
Cllrs Barber, Holway, Pannell and Smerdon

Also in attendance and participating:  
Leo Charalambides (Ely Place Chambers), Corrigan Lockett (Lockett & Co.) and Claire Kelly (Designated Premises Supervisor)

**LSC.25/11 APPOINTMENT OF CHAIRMAN**

**RESOLVED**

That Cllr Carson be appointed Chairman for the duration of the meeting.

**LSC.26/11 DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting, but there was none made.

**LSC.27/11 TO RECONSIDER AN APPLICATION FOR A NEW PREMISES LICENCE –  
SHELL CAREW, A38 SOUTH BRENT, SOUTH BRENT TQ10 9ER**

**1. Business Support Manager's Report**

As a reminder, the Business Support Manager advised those present that the Sub-Committee had deferred a decision on this application at its meeting on 7 December 2011 (Minute LSC.17/11 refers).

The deferral was sought in light of the Sub-Committee requesting further information on:

1. Gross profit to Shell versus the gross profit to the franchise on all sales.
2. Further clarification between convenience store sales and garage sales.

3. Total number of fuel only customers (i.e. customers who only buy fuel) compared to total number of convenience store only customers (i.e. customers who only buy items from the convenience store).
4. What proportion of profits on convenience store sales go to Shell compared to the franchise.

Before presenting this information, the Applicants' Barrister advised those in attendance that he wished to seek a further adjournment for the following reasons:-

Firstly, it was noted that in response to road safety concerns, planning permission had recently been granted to enable improvements to be made to the access to the premises. These works would include the creation of a new splay road, with the site being closed for four weeks during March. During this closure, the internal layout of the convenience store would be changed, with proposals to include a seating area. Whilst not having the plans readily available, the Barrister felt that the primary use of the site could be affected through these proposals.

Secondly, the Barrister confirmed that some of the sensitive financial and commercial information which had been requested was still awaited. As a consequence, it was considered that a further adjournment would enable Shell more time to consider how it would present this information.

Thirdly, an adjournment to sometime during April/May would enable the outcome of two relevant appeals at the Magistrates Court to be known. Whilst these decisions would not be binding upon the Sub-Committee, it was felt that these could provide guidance to Members before they reached a decision on this application.

The Chairman then announced the decision of the Sub-Committee.

## 2. The Decision

The Chairman proceeded to announce that the Sub-Committee accepted the reasons for deferral, but emphasised the importance of all interested parties being in receipt of the relevant information sufficiently in advance of the re-convened meeting.

Upon announcing the decision, it was agreed that the meeting should be reconvened to further consider this application at **2.00pm on Thursday, 3 May 2012.**

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Chairman

AGENDA  
ITEM

**5**

## SOUTH HAMS DISTRICT COUNCIL

AGENDA  
ITEM

**5**

<b>NAME OF COMMITTEE</b>	Licensing Sub-Committee
<b>DATE</b>	Thursday 3 May 2012
<b>REPORT TITLE</b>	Application for a new Premises Licence
<b>Report of</b>	The Business Support Manager
<b>WARDS AFFECTED</b>	Dartmouth

**Summary of report:**

To determine an application for a new Premises Licence at **Dart Marina Hotel & Spa, Sandquay Road, Dartmouth, TQ6 9PH** in accordance with Section 18 of the Licensing Act 2003. Relevant representation has been received but mediation has taken place with amendments being made to the application. As a result all parties consider a hearing is unnecessary.

**Financial implications:**

There are no direct financial implications to the Council from this Report.

**RECOMMENDATIONS:**

**That the Sub-Committee consider the application for a new Premises Licence and make a determination in respect of this application, namely to:**

- i grant the application as submitted, subject to any Mandatory Conditions required;**
- ii modify the conditions of the licence;**
- iii exclude any of the licensable activities to which the application relates;**
- iv to refuse to specify a person in the licence as the premises supervisor;**
- v reject the application,**

**in line with the licensing objectives (Section 4) contained within the Licensing Act 2003.**

**Officer contact:**

Naomi Wopling

[naomi.wopling@southhams.gov.uk](mailto:naomi.wopling@southhams.gov.uk)

01803 861336

V240412

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## 1. BACKGROUND

- 1.1 The Licensing Authority received an application for a new premises licence on 26 March 2012 for **Dart Marina Hotel & Spa, Sandquay Road, Dartmouth, TQ6 9PH**. A copy of the application is attached (**Appendix 'A'**).
- 1.2 The application is for a new premises licence for:
- sale of alcohol for consumption on and off the premises daily from 11am to 11.30pm (residents 24hrs);
  - late night refreshment daily from 11pm to midnight (residents 11pm to 5am);
  - films daily from 10am to 11.30pm;
  - recorded music and facilities for dancing daily from 11am to 11pm;
  - live music (inside and outside) daily from 11am to 11pm.
- 1.3 As the applicant wishes to provide the sale of alcohol and the provision of regulated entertainment, under the Licensing Act 2003 a premises licence is required. As regards to this application, only Interested Parties, Responsible Authorities or District Councillors may make representations.
- 1.4 We have received three representations in respect of this application. These can be found in **Appendix 'B'**. The representation received from the Police was concerned with the sale of alcohol for consumption off the premises, given the close proximity to the Designation Order zone. The representations received from Environmental Health and the District Councillor were mainly concerned with noise nuisance caused by outside music.
- 1.5 The Police requested that a further condition be included on the premises licence to prevent customers from taking open vessels off the premises. The premises is in very close proximity to Coronation Park which is within the boundary of the Designation Order zone. There was a concern that people may take open vessels containing alcohol from the premises into this area. The Police have requested that only sealed containers of alcohol may be taken outside of the hatched area as marked on the plan.
- 1.6 The Environmental Health Officer (EHO) was concerned with possible noise disturbance arising from live music being performed outside. It was agreed with the applicant to limit outdoor music to a maximum of three days per year. The EHO also requested that further conditions be included on the premises licence to address general noise nuisance from both music and people.
- 1.7 Through discussion and mediation, all parties have agreed to the suggested amendments shown in **Appendix C**. All parties have agreed that subject to these amendments being implemented on the premises licence, a hearing is unnecessary.

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**(Please note that due to the amount of paperwork contained within these appendices, full copies have only been circulated to the Sub-committee Members. Any Interested Parties who would like to receive full (or part) copies are asked to contact Member Support Services on (01803) 861273.**

## **2. ISSUES FOR CONSIDERATION**

- 2.1 A representation was received from the Police in relation to the prevention of crime and disorder licensing objective. They are satisfied that the licensing objectives will be addressed through the implementation of the agreed amendments.
- 2.2 Representations were received from Environmental Health and a District Councillor in relation to the prevention of public nuisance licensing objective. They are satisfied that the licensing objectives will be addressed through the implementation of the agreed amendments.
- 2.3 The Sub-Committee will now need to consider this application.

## **3. LEGAL IMPLICATIONS**

- 3.1 The Act requires mandatory conditions to be imposed (if applicable) on the licence, the wording of which is prescribed by the Act but may be summarised as follows:

### **(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 19A - Irresponsible drinks promotions**

Staff on relevant premises do not carry out, arrange or participate in any irresponsible drinks promotions in relation to the premises.

### **(c) Section 19A - No alcohol to be dispensed directly into the mouth of another person**

No alcohol is dispensed directly by one person into the mouth of another.

**(d) Section 19A - Free drinking water**

That free tap water is provided on request to customers where it is reasonably available.

**(e) Section 19A - Age verification policy**

- (i) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (ii) 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.

**(f) Section 19A - Minimum measures for alcoholic beverages**

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.

**(g) Section 20 - Mandatory condition relating to exhibition of films**

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.

**(h) Section 21 - Door Supervision**

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

**4. FINANCIAL IMPLICATIONS**

4.1 There are no direct financial implications to the Council from this Report.


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## 5. RISK MANAGEMENT

5.1 The risk management implications are:

<b>Corporate priorities engaged:</b>	There is a link to the Council's priority of improving Community Life.
<b>Statutory powers:</b>	Licensing Act 2003
<b>Considerations of equality and human rights:</b>	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair trial
<b>Biodiversity considerations:</b>	Not applicable
<b>Sustainability considerations:</b>	Not applicable
<b>Crime and disorder implications:</b>	Section 17 of Crime and Disorder Act 1998 applies.
<b>Background papers:</b>	<p>The Licensing Act 2003</p> <p>Guidance issued under Section 182 of the Licensing Act 2003</p> <p>The District Council's Statement of Licensing Policy</p> <p>Confirmation from applicant and Environmental Health Officer and interested party that they agree to the amendments to the application and that a hearing is not necessary.</p>
<b>Appendices attached:</b>	<p>Appendix A – application for new premises licence</p> <p>Appendix B – representations</p> <p>Appendix C – agreed amendments</p>

## STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
1	Ensuring the Licensing Objectives are not undermined	<p>To review the application in line with: The Licensing Act; National Guidance issued by the Secretary of State, and The South Hams District Council Statement of Licensing Policy.</p> <p>To create an increased opportunity for employment in the district.</p> <p>An opportunity to maintain the districts distinctive environment whilst enabling access and sensitive development.</p> <p>To consider whether the proposal would promote tourism. The</p>	3	2	6 	<p>To be able to give consideration to representations made by 'Interested Parties' and / or 'Responsible Authorities' in line with the Licensing Objectives, namely:-</p> <p>The prevention of Crime and Disorder; Public Safety; The prevention of public nuisance; and The Protection of children from harm.</p> <p>The Licensing Authority follows strict legislation in accordance with the Licensing Act 2003 and adheres to the statutory instruments contained within the Act.</p>	EH Business Support / Licensing Manager.



No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
		<p>population doubles in the summer months with tourists and international visitors who are, in the main, families with young children and retired people – the very segments of society who would perhaps be deterred by anti-social behaviour.</p> <p>Failure to adequately consider these issues could result in the Council facing an appeal to the Magistrates Court.</p>					

Direction of travel symbols ↓ ↑ ↔

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## MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT FOLLATON HOUSE, TOTNES ON THURSDAY 3 MAY 2012

Present: Cllrs Baverstock, Carson and Gilbert  
D White, Democratic Services Manager  
N Wopling, Licensing Officer

Members also in attendance and participating:  
Cllr J W Squire

### LSC.32/11 **APPOINTMENT OF CHAIRMAN**

#### **RESOLVED**

That Cllr Carson be appointed Chairman for the duration of the meeting.

### LSC.33/11 **DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting, but there was none made.

### LSC.34/11 **TO RECONSIDER AN APPLICATION FOR A NEW PREMISES LICENCE – SHELL CAREW, A38 SOUTH BRENT, SOUTH BRENT TQ10 9ER**

#### **1. Licensing Officer's Report**

As a reminder, the Licensing Officer advised those present that the Sub-Committee had twice deferred a decision on this application at its meetings on 7 December 2011 (Minute LSC.17/11 refers) and 7 February 2012 (Minute LSC.27/11 refers).

The Licensing Officer proceeded to advise the Sub-Committee that the information it had previously requested had still not been supplied to the Council. The renovations to the site, which were due to take place in March 2012, did not happen and the Licensing Officer had been advised by the applicant's solicitor that these would not take place until later in 2012. Therefore, the applicants had formally withdrawn their application.

When questioned, the Licensing Officer confirmed that it was likely that an application for a new premises licence at this site would be re-submitted later in the year, once the outstanding matters had been resolved.

It was then:

**RESOLVED**

That the applicants' decision to withdraw the application be noted.

LSC.35/11 **TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE – DART MARINA HOTEL & SPA, SANDQUAY ROAD, DARTMOUTH TQ6 9PH**

**1. Licensing Officer's Report**

The Licensing Officer introduced the report to the Sub-Committee and advised that appendix B to the presented agenda report outlined the amendments that had been agreed following initial representations made by the Environmental Health Service and Cllr Bastone. Since these amendments had been agreed by all parties (as outlined at appendix C to the presented agenda report), it had therefore been deemed that a formal hearing would not be necessary.

**2. Committee's Deliberations**

The Sub-Committee discussed the application between themselves and the Chairman then announced the decision of the Sub-Committee.

**3. The Decision**

The Chairman announced the decision as follows:

"We have considered the application for a new premises licence.

We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the four licensing objectives.

Following representation and the agreement reached between parties, we now note all parties consider a hearing unnecessary. We agree.

It is our decision therefore to grant this application subject to the agreed amendments being incorporated into the operating schedule".

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Chairman