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SOUTH HAMS LICENSING SUB-COMMITTEE - THURSDAY, 17TH OCTOBER, 2013

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. **Agenda Letter** (Pages 1 - 2)

2. **Reports**

Reports to Licensing Sub Committee:

- a) Dartmouth and District Conservative Club, 8 Victoria Road, Dartmouth TQ6 9SA
(Pages 3 - 12)
- b) Oasis Café (previously Thrive Café), 47 Fore Street, Totnes, TQ9 5NJ (Pages 13 -
24)

3. **Minutes** (Pages 25 - 32)

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Agenda Item 1

To: Members of the Licensing Sub-Committee
(Cllrs Baverstock, Pannell and Wright)

Our Ref: CS/KT

9 October 2013

Usual Officer and Press Circulation and local Ward Members

Dear Councillor

A meeting of the **Licensing Sub-Committee** will be held in the **Cary Room**, Follaton House, Plymouth Road, Totnes on **Thursday, 17 October 2013 at 10.00 am** when your attendance is requested.

Yours sincerely

Kathryn Trant
Member Services Manager

<p>FOR ANY QUERIES ON THIS AGENDA, PLEASE CONTACT DKATHRYN TRANT, MEMBER SERVICES MANAGER ON DIRECT LINE 01803 861185</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 disclosable pecuniary 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 variation of a Premises Licence at Dartmouth and District Conservative Club, 8 Victoria Road, Dartmouth TQ6 9SA, in accordance with Section 85 of the Licensing Act 2003** (pages 1 to 41).
5. **To determine an application for a new Premises Licence at Oasis Café (previously Thrive Café), 47 Fore Street, Totnes, TQ9 5NJ, in accordance with Section 18 of the Licensing Act 2003** (pages 42 to 98).

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 of the public shall be permitted to record the proceedings of any meeting in sound and pictures and broadcast them whether by electronic means or otherwise, **subject to receiving the prior approval of the Chairman of the Committee, in consultation with the Chief Executive** (or Monitoring Officer in his/her absence)

MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER

THIS AGENDA HAS BEEN PRINTED ON ENVIRONMENTALLY FRIENDLY PAPER

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AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

4

NAME OF COMMITTEE	Licensing Sub-Committee
DATE	Thursday 17 October
REPORT TITLE	Application to vary a Club Premises Certificate
Report of	The Licensing Officer
WARDS AFFECTED	Dartmouth

Summary of report:

To determine an application for the variation of a Club Premises Certificate at **Dartmouth and District Conservative Club, 8 Victoria Road, Dartmouth, TQ6 9SA** in accordance with Section 85 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 to vary the Club Premises Certificate 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 certificate;**
- iii reject the whole or part of the application;**
and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

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

Officer contact:

Naomi Wopling

naomi.wopling@southhams.gov.uk

01803 861336

1. BACKGROUND

- 1.1 The Licensing Authority received an application from Dartmouth & District Conservative Club for the variation to their club premises certificate on 22 August 2013. A copy of the application is attached (**Appendix 'A'**).
- 1.2 The application is to extend the hours for licensable activities and for opening hours. Their existing certificate can be found in **Appendix 'B'**. A table showing a comparison between their current hours and the hours requested can be found in **Appendix 'C'**.
- 1.3 We have received three representations in respect of the application which are shown in **Appendix 'D'**. The representations mainly relate to concerns about noise nuisance caused by music and from people leaving the premises later into the night.
- 1.4 The representations mention the lack of sound proofing at the premises and suggest that the building is not suitable for use as a late night entertainment venue. It has also been noted that windows have been kept open during musical entertainment in the past; there is the concern that this practice may continue if the later hours are granted.
- 1.5 Although the current club premises certificate only permits live music Friday, Saturday, Sunday, New Year's Eve and special occasions, under the Live Music Act 2012 live amplified music is permitted at the club Monday to Sunday from 8am to 11pm with no restriction, as it is a licensed premises. However, recorded music would not fall under the same exemption and is currently only permitted on Saturday, New Year's Eve and special occasions.
- 1.6 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 person 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 The representations received primarily relate to concerns about public nuisance which may arise from loud music and people noise if later hours are granted.
- 2.2 The current club premises certificate has a number of conditions relating to prevention of public nuisance (**Appendix 'A'**) which would remain on the certificate should the variation be granted. An additional condition relating to the windows being kept closed during entertainment has been put forward as an additional condition by the applicant on their application (**Appendix 'B'**).
- 2.3 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.

3. STATUTORY BODIES' RESPONSE

- 3.1 Devon & Cornwall Constabulary
No representations have been received.
- 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.
- 3.8 Primary Care Trust/Local Health Boards, Devon Drug and Alcohol Action Team
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).
- 4.2 Section 2.2 of the Policy states: A certificate 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 to which the Licensing Authority will have regard. Section 4 of the policy sets out what the Sub-Committee should consider before imposing conditions on a certificate.

- 4.5 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in June 2013 state:
- 4.6 The Licensing Authority may not impose conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that is appropriate to impose conditions to promote one or more of the four licensing objectives (paragraph 10.8 of the guidance).
- 4.7 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.22 of guidance).

Licensing Hours

- 4.8 Section 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 other persons 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 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 6.5 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 [appropriate], proportionate and reasonable to restrict the hours required. The Licensing Authority may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area.
- 4.10 Paragraph 10.13 of Guidance issued under Section 182 of the Licensing Act 2003 states: shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

Children

- 4.11 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 harm.
- 4.12 Section 7.2 of the Policy states: When deciding whether or not to limit access to children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern and warrant restrictions in the operating schedule 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 minors
 - with a reputation for allowing 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 The Act requires mandatory conditions to be imposed (if applicable) on the certificate, the wording of which is prescribed by the Act but may be summarised as follows:

(a) Section 73A – Mandatory conditions relating to the supply of alcohol to members or guests

- (i) Any supply of alcohol must be made at a time when the premises are open for the purpose of supplying alcohol, in accordance with this certificate, to members of the club for consumption on the premises.
Source S.73(3) Licensing Act 2003
- (ii) Any alcohol supplied for consumption off the premises must be made in a sealed container.
Source S.73(4) Licensing Act 2003
- (iii) Any supply of alcohol for consumption off the premises must only be made to a member of the club.
Source S.73(5) Licensing Act 2003

(b) Section 73A - Irresponsible drinks promotions

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

(c) Section 73A - 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 73A - Free drinking water

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

(e) Section 73A - 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.

5.2 As there have been relevant representations in respect of the variation application which have not been resolved, 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, responsible authorities or any other person). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.

5.3 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.

5.4 The Act requires (Section 85) that in determining a variation application, the committee takes any of the following steps which are necessary for the promotion of the licensing objectives. The steps are:

- (a) To grant the Certificate subject to:-
 - i grant the application as submitted, subject to any Mandatory Conditions required;
 - ii modify the conditions of the certificate;
 - iii reject the whole or part of the application;

and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

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.

- 5.5 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.
- 5.6 If the Sub-Committee rejects the application, or modifies the conditions of the certificate, the applicant or any person who made relevant representation in relation to the application 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 certificate should not have been varied, or that, when varying the certificate, 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.
- 5.7 If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable a responsible authority or any other person to apply to this Licensing Authority for a review of the certificate. A hearing follows which enables the sub-committee to use the normal powers at a hearing (set out above) but also to suspend the certificate 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

Corporate priorities engaged:	There is a link to the Council's priorities of improving Community Life and developing the local Economy.
Statutory powers:	Licensing Act 2003
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair hearing
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	<p>Responses to Notices of Hearing</p> <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>
Appendices attached:	<p>Appendix A – Application to vary club premises certificate</p> <p>Appendix B – Existing club premises certificate</p> <p>Appendix C – Comparison table</p> <p>Appendix D – Representations</p> <p>Appendix E – Location map</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 in line with the Licensing Objectives, namely:- 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 ↓ ↑ ↔

AGENDA
ITEM

5

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

5

NAME OF COMMITTEE	Licensing Sub-Committee
DATE	Thursday 17 October 2013
REPORT TITLE	Application for a new Premises Licence
Report of	The Licensing Officer
WARDS AFFECTED	Totnes Town

Summary of report:

To determine an application for a new Premises Licence at **Oasis Café, 47 Fore Street, Totnes, TQ9 5NJ**, 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 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 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

01803 861336

1. BACKGROUND

1.1 The Licensing Authority received an application for a new premises licence on 29 August 2013 from Dr Stephen Hopwood for **Oasis Café, 47 Fore Street, Totnes, TQ9 5NJ**. A copy of the application is attached (**Appendix 'A'**).

1.2 The application is for:

Activity	Day	Time
Plays	Monday to Sunday	10am to 11pm (indoors) 10am to 10pm (forecourt E)
Films	Monday to Sunday	10am to 11pm (indoors)
Live Music	Monday to Sunday	10am to 11pm (indoors) 10am to 10pm (forecourt E)
Recorded Music	Monday to Sunday	10am to 11pm (indoors) 10am to 10pm (forecourt E)
Performances of Dance	Monday to Sunday	10am to 11pm (indoors) 10am to 10pm (forecourt E)
Supply of Alcohol (consumption on and off the premises)	Monday to Saturday Sunday	10am to 11.30pm 10am to 11pm
Opening Hours	Monday to Sunday	8am to Midnight

1.3 In addition to the steps described in Section M of the application form detailing how the applicant intends to operate the business to ensure the promotion of the licensing objectives, a 'Noise Management Statement' has also been provided. This gives further details about how the applicant intends to prevent noise from the premises causing a nuisance to nearby residents. The layout plan illustrates the different areas of the premises referred to in the 'Noise Management Statement', as can be seen it is not intended to provide regulated entertainment in the rear outside areas (Areas C&D), only inside (Area A) and outside the front of the premises (Area E).

1.4 The Licensing Department received eleven representations in respect of this application; these can be found in **Appendix 'B'**. These include representations from Totnes Town Council, Environmental Health, Planning, local residents and three District Councillors. The objections mainly relate to concerns about the potential for public nuisance and crime and disorder resulting from the use of the front forecourt (Area E) for provision of regulated entertainment and consumption of alcohol. There is particular concern about the close proximity of this area to residential properties and to the neighbouring 'Shady Garden'. It has also been suggested in several of the objections that the hours requested for the use of the outside areas (both for regulated entertainment and consumption of alcohol) are too late into the evening and would cause a disturbance to people living nearby and possibly lead to disorder issues.

- 1.5 The Police have also raised concerns about the application with the applicant. They have suggested some amendments which are detailed in **Appendix 'C'**, which the applicant has provisionally accepted.
- 1.6 Although the Police have agreed these amendments with the applicant, the other objectors, including Environmental Health, are not satisfied that the changes go far enough to satisfy the licensing objectives. The other parties are not willing to withdraw their representations subject to these amendments being included on the licence application and therefore a hearing is still required for a determination to be made.
- 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 person 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, eleven representations have been received from: three District Councillors, Totnes Town Council, Environmental Health, Planning, local residents and amendments to the application have been suggested by the Police which have been provisionally agreed with the applicant.
- 2.2 Issues raised in the representations relate to the potential for a public nuisance to be caused by noise from music and people, mainly emanating from the outside areas. The possibility that crime and disorder issues may arise has also been suggested in several of the representations due to large crowds gathering on the forecourt and the hours of operation.
- 2.3 The Sub-Committee may wish to consider the implications of the Live Music Act 2012 which came into effect on 1 October 2012. Under this Act, live music ceases to be 'regulated entertainment' anywhere:
 - when it is **unamplified** and takes place between 8am and 11pm.In addition, live music ceases to be 'regulated entertainment' in venues licensed for the sale of alcohol for consumption on the premises in the following circumstances:
 - when it is **amplified** and takes place in the presence of an audience of 200 persons or less and is provided between 8am and 11pm.Any conditions on a premises licence relating to live music are suspended between 8am and 11pm and cannot be enforced, unless the Licensing Authority decides otherwise following a Review Hearing.
- 2.4 If an outside area, such as a 'beer garden' is included on the premises licence plan and therefore forms part of the relevant licensed premises (as with the Oasis Café), live amplified music which takes place in this area would also fall under the exemptions afforded by the Live Music Act 2012.

2.5 The Sub-Committee may have taken note of the reference made to the 'no drinking zone' in a couple of the representations. Fore Street does fall within the Designated Public Places Order 2005 area. However, a place is not a designated public place for the purposes of the Order if it is 'a place within the curtilage of premises with a premises licence or club premises certificate'. Should the premises licence be granted, the forecourt (area E) of Oasis Café would be within the curtilage of the premises and therefore would not be affected by this Order.

2.6 To give a better idea of the situation of the premises, a location map of the premises can be found in **Appendix 'D'**.

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

3. STATUTORY BODIES' RESPONSE

3.1 Devon & Cornwall Constabulary
Amendments to the application have been suggested.

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)
Representation has 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
Representation has been received.

3.8 Primary Care Trust/Local Health Boards, Devon Drug and Alcohol Action Team
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).

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 to which the Licensing Authority will have regard. 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 of the Licensing Act 2003 which was revised and re-published in June 2013 state:

4.6 The Licensing Authority may not impose conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that is appropriate to impose conditions to promote one or more of the four licensing objectives (paragraph 10.8 of the guidance).

4.7 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.22 of guidance).

Licensing Hours

4.8 Section 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 other persons 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 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 6.5 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 [appropriate], proportionate and reasonable to restrict the hours required. The Licensing Authority may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area.

- 4.10 Paragraph 10.13 of Guidance issued under Section 182 of the Licensing Act 2003 states: shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours

Children

- 4.11 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 harm.
- 4.12 Section 7.2 of the Policy states: When deciding whether or not to limit access to children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern and warrant restrictions in the operating schedule 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 minors
 - with a reputation for allowing 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 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 licence holder.

(b) Section 19A - Irresponsible drinks promotions

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

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

- (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

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.

- 5.2 As there have been relevant representations in respect of this application which have not been resolved, 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, responsible authorities or any other person). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.

- 5.3 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.
- 5.4 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.

- 5.5 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.
- 5.6 If the Sub-Committee rejects the application, or modifies the conditions of the licence, the applicant or any person who made relevant representation in relation to the application 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.

5.7 If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable a responsible authority or any other person 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

Corporate priorities engaged:	There is a link to the Council's priorities of improving Community Life and developing the local Economy.
Statutory powers:	Licensing Act 2003
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair hearing
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	Responses to Notices of Hearing Summary of Key Points Guidance on Meeting the Licensing Objectives The Licensing Act 2003 Guidance issued under Section 182 of the Licensing Act 2003 The District Council's Statement of Licensing Policy
Appendices attached:	Appendix A – Application for a new premises licence Appendix B – Representations Appendix C – Police suggested amendments Appendix D – Location map

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 in line with the Licensing Objectives, namely:- 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 17 OCTOBER 2013

Present: Councillors Baverstock, Pannell and Wright
T Johnson, Solicitor
K Trant, Member Services Manager, SHDC
N Wopling, Licensing Officer, SHDC

Also in attendance:

For agenda item 4: Mr Banner (representing the Applicant), Mr May and Mr Brown.

For agenda item 5: Cllr A S Gorman (local Ward Member); a representative from Environmental Health; Dr Hopwood (the Applicant), Mr Arnold, Mr and Mrs Smith and Mrs Edwards (local residents).

LSC.07/13 **APPOINTMENT OF CHAIRMAN**

RESOLVED

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

LSC.08/13 **DECLARATIONS OF INTEREST**

Members were invited to declare any interests in the items of business to be considered during the course of the meeting but none were made. The Solicitor did advise that the Conservative Group Members, and in fact all Members of the Sub Committee, were not required to declare a personal interest in relation to the application Applicant being the Conservative Club because the Sub Committee was a regulatory non-political function and evidence based.

LSC.09/13 **TO DETERMINE AN APPLICATION FOR VARIATION OF A CLUB PREMISES CERTIFICATE AT DARTMOUTH AND DISTRICT CONSERVATIVE CLUB, 8 VICTORIA ROAD, DARTMOUTH TQ6 9SA, IN ACCORDANCE WITH SECTION 85 OF THE LICENSING ACT 2003**

1. Licensing Officer's Report

The Licensing Officer introduced the report to the Sub-Committee and advised that the application was for a variation to the existing club premises certificate as set out in the presented agenda pages. The summary of proposed changes was listed at appendix C of the papers and appendix D set out the representations, most of which focused on issues of noise. A number of conditions were already in place and these would remain.

Complaints had been received but these related to the nearby premises not the Conservative Club. To conclude, the Applicant agreed to lock the windows whilst any form of entertainment was taking place.

2. Address by the Applicant

The Applicant began by confirming to the Sub Committee that boards and soundproofing for the windows would be provided during entertainment. The windows would also be locked to prevent inadvertent opening by customers. The majority of issues raised in the objections related to the neighbouring premises; it was noted that most of the members of the Conservative Club were older and they tended to leave by taxi and stay in the Club until their taxi arrived. Those who left on foot moved swiftly away from the area. Members joined the Conservative Club for a safe and secure environment, not a pub atmosphere. He outlined the strict vetting procedure prior to Members being allowed to join. He also advised the Sub Committee that agreeing to the variations would not be setting a precedent as other venues in the vicinity had the same opening hours.

In response to questions the Applicant advised that the venue responsible for a number of complaints was immediately next door and separated only by a narrow lane in between. Many who left the other venue tended to gather outside and sit on the windowsills of the Conservative Club. He added that alcohol was not allowed outside. In response to another question he confirmed that sometimes the members from the Conservative Club found the other venue intimidating. He also confirmed that whilst the Club would like to be able to cater for events such as weddings, a member of the Club would have to be involved and no advertising would be allowed.

3. Address by the Representatives

Mr Brown advised that he owned the nearby hotel. The Conservative Club was mainly on the first floor of its building, opposite the hotel bedrooms. There was no suggestion of the Conservative Club being a bad place or being badly run, and it was in fact, one of the better licensed premises. However, it was situated next to a pub that continued to be problematic and it may be perceived to be difficult to tell who was causing the trouble. Mr Brown was quite clear about when and who was causing the disturbance. The Conservative Club had not been the subject of any formal objection, unlike other premises that were more problematic. The existing hours granted to the Conservative Club for music were felt to be just about bearable. There was a concern to him and to residents that mid week weddings were a new business opportunity that would attract a younger clientele.

There were two main issues, one was the music. Whilst the windows were closed when asked, the Conservative Club had to be asked and did not close them as a matter of course.

The music was extremely loud and could be heard over the TV in a guest bedroom. From a business point of view Mr Brown's guests were out and about until a certain time. However for some residents the level of music was substantial. The buildings were old and could only be soundproofed so far as any planning constraint allowed. Live music was always played loudly. At the moment, he could tell his guests that the music would finish at 2330 hours. The extension of hours did not seem much but if the music was clearly audible then people could not get to sleep.

The second issue was the street noise. Three or four people in the street talking loudly made a great deal of noise. Continuous groups leaving premises over a 45 minute period caused a disturbance. Although not enough for it to be a police matter, and not displaying disgraceful behaviour, but coming out of a venue where music was being played loudly made people talk loudly. Extending the opening hours to a later time becomes much more sensitive as the level of music was already at nuisance level.

Mr May explained where he lived in relation to the Conservative Club. He resided in an upstairs flat and it was more likely that he would be affected by noise in the street. The buildings in the street were old and the sound proofing was not entirely effective. The noise of the music had to be put up with until it finished. In addition, double glazing was not allowed therefore the noise of people talking outside was loud. People outside tended to sit on the windowsill of the downstairs flat. There was an old people's home in the vicinity whose residents have felt intimidated. The thought of more noise was unbearable.

4. Sub-Committee's Deliberations

During the deliberations, the Chairman sought clarification on the opening hours of the neighbouring venue. The Licensing Officer confirmed that some licences had a set noise level, however, this was not in place for the majority of premises.

(At this point, the meeting was adjourned to enable the Sub-Committee, in the presence of the Council Solicitor, to determine this application).

5. The Decision

The Sub Committee reconvened and the Chairman then proceeded to announce the decision as follows:

“We have considered the application for a variation to a club premises certificate. We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today.

We have decided that it would not be appropriate for the Club to provide live and recorded music later into the evening than nearby premises, thus adding to noise disturbance in the area. Therefore we have decided that live and recorded music should be provided during the same hours as permitted in the neighbouring public house. We have decided that the earlier start times requested for alcohol and opening should be granted, as this would not cause a nuisance to nearby residents. The hours granted are as follows:

Live and recorded music from 7.00 pm to 11.00 pm Monday to Wednesday, from 7.00 pm to 11.30 pm Thursday and Friday, from midday to 11.30 on Saturdays and from midday to 11.00 pm on Sundays, with the condition that during musical entertainment windows must be kept closed and locked.

Sale of alcohol from 9.00 am to 11.30 pm Sunday to Friday, 9.00 am to midnight on Saturdays, with closing times half an hour later.

Full details of all the activities and hours granted will be provided in the Decision Notice sent to all parties.

LSC.10/13 **TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE AT OASIS CAFÉ (PREVIOUSLY THRIVE CAFÉ), 47 FORE STREET, TOTNES, TQ9 5NJ, IN ACCORDANCE WITH SECTION 18 OF THE LICENSING ACT 2003**

1. Licensing Officer's Report

The Licensing Officer introduced the report to the Sub-Committee and advised that the application was for a new premises licence as set out in the agenda papers. A number of representations had been received and further information had been submitted by the Applicant. Consequently the license application had undergone a number of changes. The current position was that regulated entertainment would only take place inside the premises and there were changes to the opening hours. The changes had been agreed with the Police and there were additional conditions such as CCTV being fitted to cover the outside of the premises. The changes proposed had not addressed all concerns. Following representations about the use of the upper terrace area at the back of the premises it had been proposed to withdraw that area from the licence.

The majority of representations related to noise nuisance. The Environmental Health Department had also registered their concerns. There was also the issue of the outside steps at the rear which were once a fire escape but that was no longer the case as the upstairs area was no longer being used as a residential flat. The Fire Officer had visited and was satisfied with the escape procedures. The Applicant had requested alcohol sales on and off the premises and confirmed only sealed containers could be taken off the premises.

2. Address by the Applicant

The Applicant addressed the Committee and advised that following a successful planning application for a café/ restaurant he would now like to offer an alfresco dining area. He hoped to create a café based on health that offered organic produce and wines and a more European atmosphere. The amendments to the licence application had arisen from a number of meetings and he appreciated that his initial application included elements that he did not need to include as he did not require them. He agreed to withdraw use of the upper terrace in the evenings but would still like to use the back garden as well as the seating outside the front of the property.

3. Address by the Environmental Health representative

The Environmental Health Officer advised that concerns had been raised with the initial planning application over the transformation of the premises. Assurances were given at the time that the premises would be used as a health café to support treatment. However, now there was an application for an entertainment licence which was a departure from the original ethos and a noise management plan had been requested but not received. The current request was for background music only although a previous request had referred to youth nightclub nights. There were a number of residential properties in the area and there were concerns over whether the building could contain the noise. If the intention was for a bar/restaurant it would be acceptable as there would be no need for live or recorded music. However, if the proposed use was for social entertainment, bands etc. the premises would not be suitable. If the Sub Committee were minded to approve the application then he would suggest conditions to prevent public nuisance, and that noise emanating from the premises would not cause a nuisance and that a diary or log be kept by the Designated Premises Supervisor. Finally, an acoustic survey should be undertaken to assess how well the shutters contained noise.

At this point and in response to questions from the Chairman, the Applicant confirmed that he did not require a licence for bands but had in mind perhaps a solo musician such as a guitarist playing whilst customers were dining. The Licensing Officer confirmed that music that was not amplified could be played anywhere at any time.

4. Address by the representatives

A statement was read out that had been received by the Council from the representatives.

5. Address by the District Council Ward Members

Cllr Gorman stated that he sensed the Applicant had made great efforts to accommodate concerns raised and perhaps it would have been wise to do this before the application had reached this stage. It was a little confusing to have so many changes made to the application and perhaps a tick box list to summarise would have been helpful. Living in a town centre would result in some noise, but there was a question of proportionality. The fact that the licence could be revoked was an influencing factor and the CCTV would help with the collection of evidence. His inclination would be to support the licence application but with any conditions attached to it to be explicit and clear.

6. Sub-Committee's Deliberations

The Sub-Committee discussed the application during which clarification was sought in respect of the size of the premises. Confirmation was also given that the request was now for background music and music without amplification. This lessened the objection of the Environmental Health Officer. In respect of the wish for a youth nightclub the Applicant advised that there was nowhere in Totnes for young people to go and he was aiming at the 18 to 25 years age group, not those who were under legal age for drinking.

(At this point, the meeting was adjourned to enable the Sub-Committee, in the presence of the Council Solicitor, to determine this application).

7. The Decision

The Sub Committee reconvened and the Chairman then proceeded to announce 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 licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today.

We have decided that it would not be appropriate for live or recorded music to be included on the premises licence. The provision of plays, films and performance of dance indoors only will be permitted as requested, with the condition that all doors and windows must be kept closing during entertainment.

We have decided that to support the licensing objectives, it would be appropriate to incorporate the additional conditions agreed between the Applicant and the Police as listed in appendix C.

To reduce the public nuisance caused to those residing in the flats behind the premises, we have decided to include an additional condition preventing people from smoking in the outside rear areas (area C & D on the premises plan) and to restrict the hours of use of the 'upper terrace' (area D). Full details will be given in the Decision Notice, provided to all parties.

(Meeting commenced at 10.00 am and concluded at 12.55 pm)

Chairman

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