

AGENDA  
ITEM

**4**

## **SOUTH HAMS DISTRICT COUNCIL**

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<b>NAME OF COMMITTEE</b>	Licensing Sub-Committee
<b>DATE</b>	Thursday 19 April 2012
<b>REPORT TITLE</b>	Application for a new Club Premises Certificate
<b>Report of</b>	The Licensing Officer
<b>WARDS AFFECTED</b>	Totnes Town

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### **Summary of report:**

To determine an application for a new Club Premises Certificate at **Drift Record Club, 103b-103c High Street, Totnes, TQ9 5SN**, in accordance with Section 72 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 Club Premises Certificate together with the amendments agreed following representations and to make a determination in respect of this application, namely to:**

- a) grant this certificate subject to:**
  - i) the conditions mentioned in section 72 (2)( a) [i.e. as applied for] modified to such an extent as the authority considers necessary for the promotion of the licensing objectives, and**

ii) any conditions which must under section 73 (2) to (5) or 74 be included in the Certificate [i.e. The supply of alcohol must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with a club premises certificate, to members for the club for consumption on the premises; any alcohol for consumption off the premises must be in a sealed container; and any supply of alcohol for consumption off the premises must be made to a member of the club in person.]

b) to exclude from the scope of the certificate any of the qualifying club activities to which the application relates;

c) 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

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## 1. BACKGROUND

1.1 The Licensing Authority received an application for a new club premises certificate on 27 February 2012 from Drift Record Club. The application is for:-

Supply of alcohol – Monday to Friday from 3pm to 10pm; Saturday from 2pm to 10pm; Sunday from 2pm to 9pm.

Films – Monday to Friday from 5pm to 9pm; Saturday from 2pm to 10pm; Sunday from 2pm to 9pm.

Live music – Monday to Thursday from 5pm to 10pm; Friday from 2pm to 10pm; Saturday from 12pm to 10pm; Sunday from 12pm to 9pm.

Recorded music – Monday to Friday from 5am to 10pm; Saturday from 2pm to 10pm; Sunday from 12pm to 10pm.

A copy of the application is in **Appendix A**. As the premises is primarily used as a shop, the Licensing Department must be notified at least two weeks before a club event so that we are aware when the club premises certificate is in effect.

1.2 With regard to the above application, only Interested Parties, Responsible Authorities or District Councillors may make representations.

- 1.3 The Licensing Department received one relevant representation from Environmental Health in relation to the Prevention of Public Nuisance licensing objective. The Environmental Health Officer (EHO) requested a number of conditions be included on the licence, to ensure a public nuisance would not arise from music events (see **Appendix B**). After further discussion with the EHO about the nature of the business and operation of music events, the applicant decided to withdraw their request for recorded music completely. The conditions requested by the EHO were also amended following these discussions (**Appendix C**). The applicant has agreed to these amendments.
- 1.4 Both parties have agreed, subject to these amendments being implemented on the licence that a hearing is unnecessary.

**(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 Environmental Health were concerned that noise from music events could cause a public nuisance. They are satisfied that their concerns will be addressed through the implementation of the agreed amendments.
- 2.2 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. LEGAL IMPLICATIONS**

- 3.1 As there has been a relevant representation in respect of the new club premises certificate 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.
- 3.2 The sub-committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The Licensing Authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.

3.3 The Act requires (Section 72) in determining an application for a new club premises certificate where relevant representations are made, for the authority to take the following steps:

a) to grant the certificate subject to:

i) The conditions as are consistent with the club operating schedule accompanying the application as modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

ii) any conditions which must under Section 73 (2) to (5) or 74 to be included on the certificate, (these sections refer to authorising the supply of alcohol for consumption off the premises and a mandatory condition about the exhibition of films.)

b) to exclude from the scope of the certificate any of the qualifying activities to which the application relates.

c) 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.

3.4 If the Sub-Committee rejects the application, or modifies the conditions of the certificate, 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 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.

3.5 The Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them, any of the responsible authorities or a District Councillor to apply to this Licensing Authority for a review of the certificate. Under the review proceedings the authority may:

- a) modify the conditions of the certificate;
- b) exclude a qualifying club activity from the scope of the certificate;
- c) suspend the certificate for a period not exceeding three months;
- d) withdraw the certificate;

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.

#### 4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications to the Council from this Report unless the matter is appealed to the Magistrates Court.

#### 5. RISK MANAGEMENT

- 5.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template:

<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>	The Licensing Act 2003  Guidance issued under Section 182 of the Licensing Act 2003  The District Council's Statement of Licensing Policy  Confirmation from applicant and Environmental Health Officer that they agree to the amendments to the application and that a hearing is not necessary.
<b>Appendices attached:</b>	Appendix A – application for new club premises certificate  Appendix B – Environmental Health representation  Appendix C – Agreed amendments

## 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</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>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 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 ↓ ↑ ↔