

<b>NAME OF COMMITTEE</b>	Licensing Sub-Committee
<b>DATE</b>	Wednesday 19 September 2012
<b>REPORT TITLE</b>	Application to vary a Premises Licence
<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 the variation of a Premises Licence at **Kingsbridge Inn, 9 Leechwell Street, Totnes, TQ9 5SX**, in accordance with Section 35 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 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 reject the whole or part of the application;**  
**and for this purpose the conditions of the licence 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.**

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## 1. BACKGROUND

- 1.1 The Licensing Authority received an application from Kingsbridge Inn (Totnes) Ltd on 31 July 2012 to vary the premises licence for **Kingsbridge Inn, 9 Leechwell Street, Totnes, TQ9 5SY**. A copy of their application is attached (**Appendix 'A'**).
- 1.2 The Kingsbridge Inn is licensed for the sale of alcohol, the provision of late night refreshment and the provision of regulated entertainment (plays, films, live music, provision of facilities for making music). For details of these permissions and other conditions, please see **Appendix 'B'** for a copy of their current premises licence.
- 1.3 The application is to extend the hours for the sale of alcohol and regulated entertainment and the inclusion of recorded music and provision of facilities for dancing. Further conditions are also included, to address the licensing objectives. It is proposed that live and recorded music will take place in the function room only, which is located at the back of the premises. Please see **Appendix 'D'** for a copy of the plan and location of the premises in relation to nearby residential properties. A comparison table showing their current licensed hours compared with those applied for is in **Appendix 'E'**.
- 1.4 In 2005, during the conversion and variation of the licence, one of the conditions agreed by the premises licence holder with Environmental Health, was that live music would take place in the bar area at the front of the premises only and be restricted to non-amplified acoustic music until 23:00 on Friday, Saturday and Sunday. This condition was requested by Environmental Health due to complaints about noise from music being held in the function room at the back of the premises. The applicants have requested that this condition be removed from the premises licence and replaced with the condition that live and recorded music will be performed in the function room only. Music would be both amplified and acoustic.
- 1.5 Since 2005, the Licensing Department and Environmental Health have received a number of complaints relating to noise nuisance (from both music and customers) emanating from the Kingsbridge Inn. The current premises licence holders took over the premises in early 2011 and re-opened the premises in July 2011 after many months of closure. From November 2011 until early 2012, we received ongoing complaints about noise from music, from the owner of the adjoining property. A minor variation was applied for in November 2011 to amend the premises licence to remove the restriction on amplified music, subject to certain additional conditions. Due to the objections of nearby residents and the concerns of the Environmental Health Officer (EHO), the minor variation was not granted as it was deemed that the changes requested may have an adverse impact on the prevention of public nuisance licensing objective.

- 1.6 Although not permitted to have amplified live music under their premises licence, the premises licence holders used temporary event notices to hold 'open mic nights' in the bar area. Due to the noise nuisance caused to their neighbour, these events resulted in the EHO advising the premises licence holders that a Notice may be served if music (both amplified and acoustic) were to continue to take place in the bar area at the front of the premises.
- 1.7 Since this time (February 2012) no further live music has taken place in the bar area of the premises. However, one temporary event notice with amplified music was held in the back function room in April 2012. No complaints were received following this event.
- 1.8 Several meetings have been held with the EHO, Licensing Officer, and representatives of Kingsbridge Inn (Totnes) Ltd, to discuss the noise problems and how these can be resolved. The premises licence holders have employed the services of an acoustic consultant to investigate the problems and to make recommendations for works that may be carried out to allow amplified music to take place in the function room, without causing a public nuisance. Details of these recommendations have not been included as part of the variation application, other than that a 'suitable sound proofed door' will be added to the function room entrance 'subject to listed building consent' which has been put forward as a condition under section P(d) on page 19 of the application form (**Appendix 'A'**). If further information relating to soundproofing works and noise control measures is received from the applicants, it will be circulated to all parties before the hearing.
- 1.9 The Licensing Department has received seven representations in respect of the variation application. These can be found in **Appendix 'C'**. Included in these representations is an objection from Totnes Town Council, an objection from Dr Sarah Wollaston MP and an objection from Environmental Health. The other five representations have been received from residents living in the vicinity of the premises. The main cause for concern is in relation to the Prevention of Public Nuisance licensing objective.

**(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 Those that have made a representation are primarily concerned with public nuisance caused by noise from people and music. Of particular concern are the later hours requested and noise that may then extend later into the evening.
- 2.2 The EHO has concerns about how noise from music and from customers using outside areas will be controlled, to prevent a nuisance being caused to adjoining and neighbouring properties. The EHO also mentions a concern about disturbance caused to neighbouring properties associated with the extension to closing times.
- 2.3 The Sub-Committee may also wish to take into consideration the Live Music Act 2012 which comes into effect on 1 October 2012. Under this Act, 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 unamplified and takes place between 8am and 11pm; and
  - 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.
- 2.4 Under this Act, any condition attached to a premises licence relating to live music ceases to have effect in respect of the live music, unless the Licensing Authority decides otherwise following a Review Hearing. Therefore, any condition attached to the premises licence of the Kingsbridge Inn in relation to live music, will not be enforceable between the hours of 8am and 11pm. However, the provision of recorded music will still be regarded as 'regulated entertainment' and conditions relating to recorded music will still be in effect at any time.
- 2.5 The provision of facilities for making music and for dancing (sections I and J of the application form) will no longer be classified at any time as 'regulated entertainment' under the Live Music Act 2012.
- 2.5 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)  
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  
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 April 2012 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 to promote one or more of the four licensing objectives (paragraph 10.12 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 2.37 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, 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. The Licensing Authority will generally require there to be a greater time gap between the terminal hour for the sale or supply of alcohol in premises used primarily for the consumption of alcohol on the premises such as nightclubs and pubs, than those premises where alcohol is very much ancillary to a substantial meal, and the closing time stated on the Premises Licence or Club Premises Certificate.

### **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 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, by interested parties or responsible authorities). 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 35) 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 Licence subject to:-
- i grant the application as submitted, subject to any Mandatory Conditions required;
  - ii modify the conditions of the licence;
  - iii reject the whole or part of the application;
- and for this purpose the conditions of the licence 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 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

<b>Corporate priorities engaged:</b>	There is a link to the Council's priorities of improving Community Life and developing the local Economy.
<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>	<p>Responses to Notices of Hearing from Interested Parties.</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>
<b>Appendices attached:</b>	<p>Appendix A – Application to vary premises licence</p> <p>Appendix B – Existing premises licence</p> <p>Appendix C – Representations</p> <p>Appendix D – Plan and location of premises</p> <p>Appendix E – Comparison of existing licensed hours with those applied for</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 ↓ ↑ ↔