

NAME OF COMMITTEE	Licensing Sub-Committee
DATE	Tuesday 9 April 2013
REPORT TITLE	Application to vary a Premises Licence
Report of	The Licensing Manager
WARDS AFFECTED	Totnes Town

Summary of report:

To determine an application for the variation of a Premises Licence at **Co-Op, Fore Street, Totnes, TQ9 5RW** 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 Co-operative Group Food Limited for the variation to the premises licence of **Co-Op, Fore Street, Totnes, TQ9 5RW** on 8 February 2013. A copy of the application is attached (**Appendix 'A'**).
- 1.2 The application is to extend the hours for the sale and supply of alcohol for consumption off the premises. Their current licensed hours are: Monday to Saturday from 8am to 11pm and Sunday from 10am to 10.30pm; Christmas Day 12pm to 3pm and 7pm to 10.30pm; Good Friday 8am to 10.30pm. They have applied to change their licensed hours to: Monday to Saturday from 7am to 11pm, Sunday will remain the same. Their existing licence can be found in **Appendix 'B'**.
- 1.3 This application was received at the same time as several other Co-Op variation applications, to extend the licensed hours of six of their other stores within the South Hams area. A representative of Co-operative Food Limited confirmed that they have been amending their licensed hours nationally and these variations form part of this nationwide change.
- 1.4 We have received two representations in respect of the application which are shown in **Appendix 'C'**.
- 1.5 The representations relate mainly to concerns about public nuisance which may arise from an extension to licensed hours. The representation from the local District Councillor mentions the rough sleeper problem in the town which in many cases can be related to alcoholism. It is felt that an increase in the number of hours during which alcohol is available could exacerbate the problem and make it harder to control.
- 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. Anybody 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 the increased access to alcohol.
- 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. 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 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 October 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 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, 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 licensee.

(b) Section 19A - Age verification policy

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

(c) 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, 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 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

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 premises licence</p> <p>Appendix B – Existing premises licence</p> <p>Appendix C – Representations</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 ↓ ↑ ↔