

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.

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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 ↓ ↑ ↔