

AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

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| 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:

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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

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|---|---|
| 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 ↓ ↑ ↔