

Report to: **Licensing Sub-Committee**
Date: **25 April 2016**
Title: **APPLICATION FOR NEW PREMISES LICENCE
FOR GASTROBUS TREATS, BANTHAM**
Portfolio Area: **Customer First**
Wards Affected: **Thurlestone**
Relevant Scrutiny Committee:

Urgent Decision: **Y** Approval and clearance obtained: **Y**

Author: **Naomi Wopling** Role: **Specialist – Licensing**

Contact: **01803 861268 / naomi.wopling@swdevon.gov.uk**

RECOMMENDATION

That the Sub-Committee consider the application for a new Premises Licence and makes 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 contained within the Licensing Act 2003.

1. Executive summary

- 1.1 The purpose of the Licensing Sub-Committee meeting is to determine an application for a new Premises Licence at **Gastrobus Treats, Bantham Beach Car Park, Bantham, Kingsbridge, TQ7 3AN** in accordance with Section 18 of the Licensing Act 2003.
- 1.2 The Licensing Authority received an application for a new Premises Licence for the above on 26 February 2016. A copy of the application is attached at **Appendix A**. The application is for the sale of alcohol for consumption on and off the premises, Monday to Sunday from midday to 8.30pm. This is restricted to the summer season of May to September and during school holidays at other times of the year.
- 1.3 The premises is a mobile catering van which will be parked in a designated area within Bantham Beach Car Park. The plan showing the proposed location and a diagram of the van is at **Appendix A**. It is intended that the van will be run alongside the original Gastrobus which sells food and soft drinks. The van will be located within the area hatched in red on the plan. There may be slight variation of its location within this area due to weather conditions.
- 1.4 Four representations were received during the consultation period. These were from the local District Councillor, two parish councils and a local resident (**Appendix B**). The main cause for concern is the proximity of the van to the beach and the potential danger of customers swimming in the sea after consuming too much alcohol. There is also reference to the potential for a public nuisance to be caused due to anti-social behaviour from customers that have consumed alcohol and concern about underage drinking.
- 1.5 During the consultation period the Police visited the intended location of the premises with the Licensing Specialist and met with the applicant. Following this meeting, the Police requested some amendments to the application including additional conditions to address the licensing objectives. These changes have been agreed in writing by the Applicant and are listed at **Appendix C**. The main change to the application is that alcohol will be sold for consumption on the premises only, within the area marked on the plan. Seating will be provided in this area, adjacent to the van. In addition, food will be available when alcohol is for sale and all alcohol will be served in plastic containers.
- 1.6 During the consultation period the Coastguard was contacted for their view on the application. They confirmed that they would not wish to object to the application, on the basis that they would not foresee any greater risk posed by this premises than any other premises on the waterfront at Dartmouth, Salcombe or Hope Cove.
- 1.7 A plan of the location of the premises is at **Appendix D**.

1.8 We have not been able to mediate between parties and so a satisfactory conclusion has not been possible. The Licensing Sub-Committee will now need to consider this application.

2. Background

2.1 As a relevant representation in respect of this application has been received, which has not been withdrawn and mediation has not been possible, the Licensing Sub-Committee acting on behalf of the Licensing Authority must make a determination on this application. When coming to a decision, the Licensing Sub-Committee must give consideration to the Council's Statement of Licensing Policy (the Policy) and Home Office guidance issued under Section 182 Licensing Act 2003 (revised March 2015).

2.2 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 appropriate to achieve the licensing objectives).

2.3 The four licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

2.4 Section 2.2 of the Policy states: A licence (or club premises certificate) will only be granted where the Licensing Authority is satisfied that these objectives have been met.

2.5 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.

2.6 Sections 2.5 & 2.6 of the Policy set 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.

2.7 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in March 2015 state: 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 it is appropriate to impose conditions to promote one or more of the four licensing objectives (paragraph 10.8 of the guidance).

2.8 The following responsible authorities are statutory consultees under the Licensing Act 2003:

- Devon and Cornwall Police
- Devon and Somerset Fire and Rescue Service
- Devon Safeguarding Children's Board
- Devon County Council Trading Standards
- Devon Drug and Alcohol Action Team, NHS Devon
- South Hams District Council Planning Department
- South Hams District Council Environmental Health (Health & Safety)
- South Hams District Council Environmental Health (Pollution Control)

Out of the above responsible authorities, representations were only received from the Police and amendments have been agreed with the Applicant.

2.9 In addition to the above responsible authorities, any person may make a representation in relation to a premises licence application.

3. Outcomes/outputs

3.1 When determining an application for a premises licence, particularly when considering appropriate conditions and operating hours, the following sections of the Statement of Licensing Policy (the policy) and Section 182 Guidance (the guidance) are especially relevant:

3.2 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 2.18 of the guidance).

3.3 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.

3.4 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.

- 3.5 Paragraph 10.14 of Guidance issued under Section 182 of the Licensing Act 2003 states: where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 3.6 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.
- 3.7 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.
- 3.8 The desired outcome is a determination of the application with reasons provided which relate to the four licensing objectives and when conditions are imposed, that these are appropriate to address the licensing objectives.

4. Options available and consideration of risk

- 4.1 The Licensing Authority may decide to impose additional conditions to address the four licensing objectives, or to amend or remove requested licensable activities. When coming to their decision the Licensing Sub-Committee must give consideration to the Section 182 Guidance and the Statement of Licensing Policy. Reasons must be given which relate to the licensing objectives for any decision made.

- 4.2 The Sub-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 (if applicable), the evidence provided 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. The 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.
- 4.3 A decision made by the Licensing Sub-Committee may be appealed by the applicant or any person who has made relevant representations. The right of appeal is to the Magistrates' Court by virtue of Section 181 and Schedule 5 of the Licensing Act 2003. 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.
- 4.4 The Licensing Act 2003 contains a provision which enables a responsible authority or any other person to apply to this Licensing Authority for a review of the premises licence once granted. A hearing follows which enables the Sub-Committee to use the normal powers available, but also to suspend the licence for a period of up to three months or to withdraw it.

5. Proposed Way Forward

- 5.1 That the Sub-Committee consider the application for a new Premises Licence and make a determination in respect of this application, namely to:
- a) grant the licence as submitted, subject to:
 - i) any Mandatory Conditions required;
 - ii) conditions consistent with the operating schedule and any modifications the authority considers appropriate for the promotion of the licensing objectives;
 - b) exclude from the scope of the licence any of the licensable activities to which the application relates;
 - c) refuse to specify a person in the licence as the premises supervisor;
 - d) reject the application

in line with the licensing objectives (Section 4) contained within the Licensing Act 2003.

6. Implications

| Implications | Relevant to proposals Y/N | Details and proposed measures to address |
|------------------|---------------------------|---|
| Legal/Governance | Y | <p>The Licensing Act 2003 gives Licensing Authorities the responsibility for determining applications submitted under this provision. This is a statutory obligation.</p> <p>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, by responsible authorities or any other person. The Licensing Sub-Committee must disregard any information or evidence not relevant to the licensing objectives.</p> <p>The Licensing 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.</p> <p>The Act requires (Section 18) that in dealing with a new premises licence application, the committee takes any of the following steps which are appropriate for the promotion of the licensing objectives:</p> <ul style="list-style-type: none"> (a) to grant the licence subject to:- <ul style="list-style-type: none"> i) the conditions mentioned in section 18 (2)(a) [ie as applied for] modified to such as extent as the authority considers necessary for the promotion of the licensing objectives, and ii) any conditions which must under section 19, 20 or 21 be included in the licence; (b) to exclude from the scope of the licence any of the licensable activities to which the application relates; (c) to reject the application |

| | | |
|--|---|--|
| | | <p>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.</p> <p>The applicant or any person who has made relevant representations has the right to appeal a decision made by the Licensing Sub-Committee to the Magistrates' Court by virtue of Section 181 and Schedule 5 of Licensing Act 2003.</p> <p>On appeal, the Magistrates' Court may:</p> <ul style="list-style-type: none"> a) dismiss the appeal; b) substitute for the decision appeal against another decision which could have been made by the Licensing authority; c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court. |
| Financial | N | There are no direct financial implications to the Council from this Report. However, should a decision be challenged this could result in the Council facing an appeal to the Magistrates Court with the risk of costs being awarded against the Council. |
| Risk | Y | <p>The Licensing Authority must follow strict legislation in accordance with the Licensing Act 2003 and adhere to the statutory instruments contained with the Act.</p> <p>All decisions must be taken in consideration of the four licensing objectives (section 2.3). These objectives are in place to give protection to the public from the potential negative impacts caused by licensed premises.</p> <p>Decisions may be appealed (see financial and legal/governance sections above).</p> |
| Comprehensive Impact Assessment Implications | | |
| Equality and Diversity | | Compliance with the Human Rights Act 1998 – Article 6: right to a fair trial. |
| Safeguarding | | All decisions must take into consideration the 'protection of children from harm' licensing objective. |
| Community Safety, Crime and Disorder | | Section 17 Crime and Disorder Act 1998 applies. Decisions made must relate to the four licensing objectives as detailed in section 2.3 of this report. |

| | | |
|------------------------------|--|---|
| Health, Safety and Wellbeing | | All decisions must take into consideration the four licensing objectives, including 'public safety' and 'protection of children from harm'. |
| Other implications | | |

Supporting Information

Appendices:

Appendix A – copy of premises licence application

Appendix B – copies of representations

Appendix C – amendments agreed between the Police and the Applicant

Appendix D – location plan

Background Papers:

[under provisions of the Local Government Act 1972]

The Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003

South Hams District Council's Statement of Licensing Policy

Responses to Notices of Hearing

Agreement from Applicant to Police amendments

Consent to be DPS form