

Report to: **Licensing Sub-Committee**

Date: **27th June 2016**

Title: **Application for new premises licence for Morrisons Petrol Filling Station, Totnes**

Portfolio Area: **Customer First**

Wards Affected: **Totnes**

Relevant Scrutiny Committee:

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

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Recommendations:

That the Sub-Committee consider the application for a new Premises Licence and make determinations in respect of this application, namely to:

- a) consider whether premises would be “excluded premises” as defined under Section 176 Licensing Act 2003 as: premises used primarily as a garage or which form part of premises which are primarily so used. (If so determined then (b) below may be omitted, if not ‘excluded premises’ to continue with (b) below).**
- b) 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) to 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 **Morrisons Petrol Filling Station, Totnes, TQ9 5JR** in accordance with Section 176 and Section 18 of the Licensing Act 2003.
- 1.2 The Licensing Authority received an application for a new Premises Licence for the above on 5 May 2016. A copy of the application is attached at **Appendix A**. The application is for the sale of alcohol for consumption off the premises to be available 24hrs a day, seven days a week and for the provision of late night refreshment Monday to Sunday from 23:00 to 05:00.
- 1.3 The premises is a shop at a petrol filling station. The shop is due to be extended, the plan of the premises is at **Appendix A**. If the premises licence is granted, alcohol would not be able to be sold until the extension works had been completed.
- 1.4 Eight representations were received during the consultation period (**Appendix B**), including from Totnes Town Council, two District Councillors and the local MP. The main areas for concern are in relation to the proposed 24 hour alcohol sales, particularly the availability of alcohol in the early hours of the morning. There are fears that access to alcohol at this time could lead to both a public nuisance and crime and disorder in the vicinity. Highlighted is the potential for persons who have been drinking at premises in the town to walk to the petrol station after closing time to purchase more alcohol. Also raised in the representations is the likelihood for a noise nuisance to be caused to people living in nearby residential properties and nuisance from bright lights throughout the night.
- 1.5 The premises is located on the A385 through Totnes and is on the main route for children walking to and from school. Several of those objecting to the application have concerns about the availability of alcohol at this location and how access to alcohol by children will be managed.
- 1.6 During the consultation period, the Police requested that additional conditions were included to address the licensing objectives. These include restrictions on where alcohol is displayed within the store. The changes have been agreed in writing by the Applicant and are listed at **Appendix C**
- 1.7 As the premises is on a main road and forms part of a petrol filling station, several objectors have raised concerns about an increase in drink driving should alcohol be available. Section 176 of the Act prohibits the sale of alcohol at 'excluded premises', these are defined as 'those premises used primarily as a garage or which form part of premises which are primarily so used.' The Applicant

has provided information on their projected customer footfall following the extension works. These indicate that the majority of customers will be visiting the premises for 'store items' rather than for fuel (**Appendix D**). Further information relating to the current composition of sales at the store has been requested, so that a comparison can be made and an understanding of how the projections have been reached.

- 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 relevant representations in respect of this application have been received, which have 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 3.1 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 3.2 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 3.3 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 Section 4.1 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.
- 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.

2.10 Under Section 176 Licensing Act 2003 a premises licence does not authorise the sale of alcohol if sold or supplied at motorway service areas and from premises used primarily as a garage, or are part of premises used primarily as a garage. Premises are used as a garage if they are used for one or more of the following:

- the retailing of petrol;
- the retailing of derv;
- the sale of motor vehicles; and
- the maintenance of motor vehicles.

2.11 Section 5.23 of the Guidance states if a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage. The licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises is.

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 6.4 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 Paragraph 10.15 of the Guidance then continues: 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. Section 6.8 of the Policy gives the following as reasons for a restriction: This could be if an individual shop is known to be a focus of disorder and disturbance and relevant representations have been received. Another such reason may be a particularly early opening time, where there are reasons to believe that the availability of alcohol at that hour could impact adversely on the licensing objectives.
- 3.7 Section 10.1 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.

- 3.8 Section 10.2 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.
- 3.9 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) consider whether premises would be "excluded premises" as defined under Section 176 Licensing Act 2003 as:
premises used primarily as a garage or which form part of premises which are primarily so used. (If so determined then (b) below may be omitted, if not 'excluded premises' to continue with (b) below).
 - b)
 - 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) to 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.

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</p>

		<p>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 – premises licence application and plan

Appendix B – representations

Appendix C – amendments agreed between the Police and the Applicant

Appendix D – information relating to primary use

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

Process checklist	Completed
Portfolio Holder briefed	Yes/No
SLT Rep briefed	Yes/No
Relevant Exec Director sign off (draft)	Yes/No
Data protection issues considered	Yes/No
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	Yes/No