

Report to: **Licensing Sub-Committee**

Date: **19 March 2018**

Title: **Application for a new premises licence at Bearz Bar, The Kidz & Co, Island Street, Salcombe, TQ8 8DP**

Portfolio Area: **Customer First**

Wards Affected: **Salcombe**

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:

- 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 **Bearz Bar, The Kidz & Co, Island Street, Salcombe, TQ8 8DP** 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 23rd January 2018. The premises is described as a 'lounge bar restaurant serving food and drink.' The premises is over two levels, the main bar and seating area on the ground floor, with a function room and additional seating on the first floor. Also on the first floor of the building and not part of the licensed premises is the 'Kidz & Co' soft play café and crèche. Alcohol purchased in Bearz Bar will not be permitted to be taken off the premises (including into the soft play café). A copy of the application and plan is attached at **Appendix A**.
- 1.3 The application is for:
- Live music: Mon-Thurs from 3pm to 11pm; Fri from 3pm to 11.30pm; Sat from 12pm to 11.30pm; Sun from 10am to 11pm.
 - Recorded music: Mon-Sun from 8am to midnight.
 - Sale of alcohol for consumption on and off the premises: Mon-Sun from 10am to 11.30pm.
 - Opening hours: Mon-Sun from 8am to midnight.
- 1.4 During the consultation period, in liaison with the Police, the applicant has agreed to include additional conditions to address the licensing objectives and reduce the hours for sale of alcohol by 30 minutes to finish at 11pm, with closing time of 11.30pm daily. Details of the changes agreed between the applicant and the Police can be found at **Appendix B**.
- 1.5 In addition to the above, the applicant has confirmed that they are willing to remove their request for the provision of live and recorded music from the premises licence application. However, due to the provisions of the Live Music Act 2012, if a premises licence is granted to allow the sale of alcohol for consumption on the premises, amplified music will automatically be able to be provided between the hours of 10am and 11pm. See further information at 2.7.

2. Background

- 2.1 The premises is located on Island Street in Salcombe, close to the junction with Gould Road. A plan showing the location of the premises and photographs of the area can be found at **Appendix D**.
- 2.2 During the consultation period, fifteen relevant representations were received in objection to the application, including from

Salcombe Town Council and a local District Councillor. Eleven representations were received in support of the application. Copies of the representations are attached at **Appendix C**.

- 2.3 There are concerns raised in relation to all four of the licensing objectives. Issues include noise and disturbance from amplified music and from customers, with particular concern about noise from customers standing outside to smoke. Also mentioned is the safety of customers leaving the premises or standing just outside, due to the fact that there is no pavement on this side of the street and the narrowness of the road itself and the length of time it may take for the Police to attend should there be any anti-social behaviour emanating from the premises.
- 2.4 The fact that part of the building will continue to be used as a soft play café has also been raised as a concern, due to the close proximity of alcohol sales to small children. The applicant has confirmed that the two areas will be run separately and no alcoholic drinks will be permitted in the soft play café area.
- 2.5 Some of the representations have made reference to the 'need' for another licensed premises in the area and the style of the business within the 'Conservation Area.' These are not matters which can be considered under the Licensing Act 2003 which must only take into account issues relating to the four licensing objectives.
- 2.6 Representations received in support of the application list ways in which they believe that the applicant will ensure that the licensing objectives are promoted. These include locating any live music towards the rear of the premises, installing a CCTV system and not allowing drinks to be taken outside of the licensed area.
- 2.7 The Live Music Act 2012 and subsequent amendments, allow the provision of live and recorded amplified music at any premises licensed for the sale of alcohol for consumption on the premises between the hours of 08:00 and 23:00. There is no way to restrict these activities through the premises licence during these hours other than through the review process once a licence has been granted. Music played in the background (at a level where a conversation can be easily held) is never licensable. Should a licence be granted for the sale of alcohol for consumption on the premises from 10am to 11pm as requested, live and recorded amplified music will automatically be permitted during these hours.
- 2.8 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 April 2017).

- 2.9 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).
- 2.10 The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 2.11 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.
- 2.12 Section 4.1 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.
- 2.13 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in April 2017 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).
- 2.14 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)
- 2.15 Out of the above responsible authorities, representations were only received from the Police and amendments have been agreed with the applicant.
- 2.16 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 2.19 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.
- 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, 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, and any other relevant issues, 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:
 - 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 an 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>
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		<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 – amendments agreed between the Police and the Applicant

Appendix C – representations

Appendix D – location map and photographs

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