

Report to: **Licensing Sub-Committee**
Date: **25th April 2019**
Title: **Application for a variation to the premises licence at The Boathouse, 28-30 Island Street, Salcombe, TQ8 8DP**
Portfolio Area: **Customer First**
Wards Affected: **Salcombe**
Relevant Scrutiny Committee:

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

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Recommendations:

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

(a) to modify the conditions of the licence;

(b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The decision must be 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 variation to the Premises Licence at **The Boathouse, 28-30 Island Street, Salcombe, TQ8 8DP** in accordance with Section 35 of the Licensing Act 2003.
- 1.2 The Licensing Authority received an application from Salcombe Distilling Company Ltd for a variation to the Premises Licence on 6th March 2019. The purpose of the application is to include the outside courtyard on the licence plan, to enable the sale and consumption of alcohol in this area. A copy of the application and new plan is attached at **Appendix A**.
- 1.3 Two representations have been received during the consultation period (**Appendix C**) and therefore the application must be determined by the Licensing Sub-Committee.

2. Background

- 2.1 The premises is licensed for the sale of alcohol for consumption on and off the premises, a copy of the premises licence and current plan is at **Appendix B**. The premises consists of two areas:
 - Ground floor of front building (shop) which is licensed for off-sales only, Monday to Saturday from 9am to 6pm and Sunday from 10am to 6pm.
 - First floor of rear building (distillery and bar) which is licensed for on and off sales, Monday to Saturday from 9am to 11.30pm and Sunday from 10am to 11.30pm.
- 2.2 The application is to include the outside courtyard located between these two buildings on the licence plan, to allow both the sale of alcohol and consumption of alcohol in this area. The proposed area is shown in red on the plan at **Appendix A(ii)**. Marked on the plan are the two possible locations where a temporary bar would be sited, although the applicant has confirmed that only one bar would be present at any time.
- 2.3 The hours requested for the sale of alcohol from this location are Monday to Sunday between 12pm and 8pm, bringing the area out of use at 8.30pm. Additional conditions to address the licensing objectives have been proposed (**Appendix A(i)**). These include regular monitoring of the area and the removal of tables and chairs from the area at 8.30pm.
- 2.4 The courtyard area was used for the sale and consumption of alcohol during some town events in summer 2018, through the use of temporary event notices (TENs). The Licensing Department did not receive any complaints about these activities and is unaware of complaints received by other authorities.

- 2.5 The courtyard is located between the two currently licensed buildings. Photographs of the courtyard and the surrounding area are at **Appendix D**.
- 2.6 The premises is on Island Street in Salcombe, in close proximity to residential properties and to businesses, including other licensed premises. Plans showing the location of the premises are at **Appendix E**.
- 2.7 During the consultation period two representations were received, these were from Salcombe Town Council and a local District Councillor. Copies of the representations are attached at **Appendix C**.
- 2.8 The representation from the town council predominantly relates to concerns about noise from customers outside disturbing nearby residents, including noise being 'funnelled' from Island Street and affecting residents higher up the town. Also of concern is how the area will be monitored by staff and that customers may 'spill onto the street'.
- 2.9 The representation from the District Councillor is that the use of the proposed outside area as a car park, as is conditioned under the planning permission, would pose a risk to public safety should the area be used for sale and consumption of alcohol.
- 2.10 It should be emphasised that where a premises may not have the correct planning permission in place, this cannot be taken into consideration and used as a reason for a decision under the Licensing Act 2003. If there are planning breaches or changes to be made to planning conditions, these must be investigated separately. Applicants are always advised that they must ensure all relevant regulations are met prior to commencement of activities.
- 2.11 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 2018).
- 2.12 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).
- 2.13 The four licensing objectives are:
- The prevention of crime and disorder

- Public safety
- The prevention of public nuisance
- The protection of children from harm

- 2.14 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.
- 2.15 Section 4.1 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.
- 2.16 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in April 2018 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).
- 2.17 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)
- 2.18 No representations have been received from any of the responsible authorities.
- 2.19 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 emanating from the premises may also be 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.
- 3.7 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.
- 3.9 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 variation to the Premises Licence and make a determination in respect of this application, namely to:

- i) modify the conditions of the licence;
- ii) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The decision must be in line with the licensing objectives 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 35) that in dealing with a variation to a 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"> (i) modify the conditions of the licence; ii) to reject the whole or part of 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; |

| | | |
|--|---|--|
| | | <p>b) substitute for the decision appeal against another decision which could have been made by the Licensing authority;</p> <p>c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.</p> |
| 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 2.12). 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 2.12 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 – variation application and proposed plan

Appendix B – current premises licence and plan

Appendix C – representations

Appendix D – photographs of courtyard and vicinity

Appendix E – location maps

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

| 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 |