

AGENDA  
ITEM

**4**

## SOUTH HAMS DISTRICT COUNCIL

AGENDA  
ITEM

**4**

<b>NAME OF COMMITTEE</b>	Licensing Sub-Committee
<b>DATE</b>	Wednesday 13 June 2012
<b>REPORT TITLE</b>	Application for a new Premises Licence
<b>Report of</b>	The Licensing Officer
<b>WARDS AFFECTED</b>	Dartmouth

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### Summary of report:

To determine an application for a new Premises Licence at **Bakers Bar, 37 Victoria Road, Dartmouth, TQ6 9RT**, 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 17 April 2012 from Miss Lorna Churchill for **Bakers Bar, 37 Victoria Road, Dartmouth, TQ6 9RT**. A copy of the application is attached (**Appendix 'A'**).

1.2 The application is for:

<b>Activity</b>	<b>Days</b>	<b>Hours</b>
<b>B) Films</b>	Monday to Sunday	9am to 12.00am
<b>E) Live music</b>	Monday to Sunday	9am to 12.30am
	Non-standard timings	9am to 1.30am
<b>F) Recorded music</b>	Monday to Sunday	9am to 12.30am
	Non-standard timings	9am to 1.30am
<b>H) Anything of a similar description to that within E), F) or G)</b>	Monday to Sunday	9am to 12.30am
	Non-standard timings	9am to 1.30am
<b>I) Provision of facilities for making music</b>	Monday to Sunday	9am to 12.30am
	Non-standard timings	9am to 1.30am
<b>K) Provision of facilities for entertainment of a similar description to I or J</b>	Monday to Sunday	9am to 12.30am
	Non-standard timings	9am to 1.30am
<b>L) Late night refreshment</b>	Monday to Sunday	11pm to 1.30am
	Non-standard timings	11pm to 1.50am
<b>M) Supply of alcohol</b>	Monday to Sunday	9am to 1.00am
	Non-standard timings	9am to 1.30am
<b>O) Opening hours</b>	Monday to Sunday	9am to 1.30am
	Non-standard timings	9am to 1.50am

Non-standard timings are: Bank Holiday Weekends (Friday-Monday inclusive); Dartmouth Regatta Days; Dartmouth Music Festival; Dartmouth Food Festival; Christmas Eve; Christmas Day; Boxing Day; Royal Celebrations.

All licensable activities (excluding films) to be provided from end of licensing hours on New Year's Eve to the commencement of licensing hours on New Year's Day.

1.3 As the applicant wishes to provide the sale of alcohol and the provision of regulated entertainment, under the Licensing Act 2003 a premises licence is required. Because the application was received before changes to the Act, only Interested Parties, Responsible Authorities or District Councillors may make representations. Since 25 April 2012, anybody is able to make a representation to a new premises licence application and not restricted to persons living within the vicinity.

- 1.4 The Licensing Department received seventeen representations in respect of the application from Interested Parties. These can be found in **Appendix 'B'**. The main cause for concern is in relation to the Prevention of Public Nuisance licensing objective, there are also concerns in relation to the Prevention of Crime and Disorder. The representations refer to noise disturbance from music and from customers standing outside and leaving the premises late at night. There are also references to disorderly behaviour demonstrated by previous customers of the premises.
- 1.5 The premises was run as a bar from 2004 and held a premises licence until February 2011, when it was surrendered by the previous owners. Most of the representations received relate to nuisance experienced during the years that the premises were open.
- 1.6 The Environmental Health Department received a number of complaints from nearby residents about noise from music and from customers outside when the premises was run by the previous owners. The new applicant was made aware of these issues and therefore sought the advice of an acoustic sound engineer. Several modifications have been recommended to improve the acoustic integrity of the building, which the applicant intends to carry out before opening. These recommendations can be found as part of her application in '**Appendix A**'. The Environmental Health Officer (EHO) has read through these sound proofing measures and is satisfied that the works would alleviate the majority of noise from music, providing that music noise levels are kept to a reasonable volume. The EHO has made further suggestions for conditions to be included, these are intended to address the Prevention of Public Nuisance licensing objective and relate to noise from both music and people, see **Appendix 'C'**.
- 1.7 The Licensing Department has received comments from the Police requesting that amendments are made to the hours permitted for licensable activities and to the opening hours. They have also requested that additional conditions be included on the premises licence, including the provision of CCTV. These requested amendments can be found in **Appendix 'D'**. Following discussion between the Police and the applicant, the applicant has agreed to these amendments being implemented on the premises licence.
- 1.8 On 29 May 2012, the Licensing Officer and Business Support Manager visited the applicant at the premises to discuss the issues raised in the representations received. It was suggested to the applicant that further conditions may be required in her operating schedule to fully address the Prevention of Public Nuisance licensing objective. There are currently no conditions which specifically relate to controlling noise and disturbance arising from customers standing outside and leaving the premises.
- 1.9 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 Interested Parties 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, representations have been received from seventeen Interested Parties, in objection to this application. The main cause for concern is that noise from music and from customers will be a nuisance to those living nearby. The representations (**Appendix 'B'**) received specifically mention noise and anti-social behaviour demonstrated by customers while standing outside the premises. While the applicant has attempted to address the noise nuisance caused by music playing in the bar, it is not clear how noise and disturbance from customers will be controlled.
- 2.2 Environmental Health have considered the application and have made suggestions for further conditions to be included on the premises licence, if granted (**Appendix 'C'**). In addition to conditions addressing noise from music, the EHO also suggests that customers are not encouraged to congregate outside the bar and that 'consumption of drink' should not be permitted outside the premises.
- 2.3 The Police have discussed their concerns with the applicant and have proposed additional conditions and also a reduction in the hours permitted for licensable activities/opening hours – see **Appendix 'D'**. The applicant has agreed to these amendments.
- 2.4 The Sub Committee will now need to consider this application.

## **3. STATUTORY BODIES' RESPONSE**

- 3.1 Devon & Cornwall Constabulary  
Comments have been received and agreed amendments.
- 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)  
Comments have been received with suggested conditions.
- 3.6 South Hams District Council, Environmental Health Department (Health & Safety)  
No representations have been received.

- 3.7 South Hams District Council, Planning Department  
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 that the Licensing Authority will have regard to and 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 Licensing Act 2003 which was revised and re-published in April 2012 also states:
- 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 to promote one or more of the four licensing objectives (paragraph 10.12 of the guidance).
- 4.7 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances conditions relating to noise in the immediate vicinity of the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.37 of the guidance).

- 4.8 Conditions relating to public nuisance caused by anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives. However, premises should have adequate dispersal policies (where appropriate) in place to ensure that customers leave the premises promptly and with minimal disruption to those in the surrounding area (paragraph 2.40 of the guidance).

### **Licensing Hours**

- 4.9 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.
- 4.10 Section 6.3 of the Policy states: When relevant representations are made to the Licensing Authority by Interested Parties or Responsible Authorities, concerning the prevention of crime and disorder licensing objective, the discretion of the Licensing Authority will be engaged. When considering the representations the Licensing Authority will give due weight to the alcohol related violence statistics, especially on a Friday and Saturday evening and generally expect premises used for the sale or supply of alcohol or the supply of hot food or hot drinks that wish to operate after midnight, to have CCTV installed inside and outside the premises included in their operating schedule.
- 4.11 Section 6.4 of the Policy states: In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.
- 4.12 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. The Licensing Authority will generally require there to be a greater time gap between the terminal hour for the sale or supply of alcohol in premises used primarily for the consumption of alcohol on the premises such as nightclubs and pubs, than those premises where alcohol is very much ancillary to a substantial meal, and the closing time stated on the Premises Licence or Club Premises Certificate.

## Children

- 4.13 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.
- 4.14 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 in respect of children 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 those under 18
  - 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 the new premises application and parties consider a hearing is necessary, 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 interested parties or responsible authorities). 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 Interested Parties or Responsible Authorities 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 the licence is granted, the Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them or any of the responsible authorities 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

7.1 The risk management implications are:

<b>Corporate priorities engaged:</b>	There is a link to the Council's priority of improving Community Life and developing the local Economy.
<b>Statutory powers:</b>	Licensing Act 2003
<b>Considerations of equality and human rights:</b>	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair hearing
<b>Biodiversity considerations:</b>	Not applicable
<b>Sustainability considerations:</b>	As above under corporate priorities engaged
<b>Crime and disorder implications:</b>	Section 17 of Crime and Disorder Act 1998 applies.
<b>Background papers:</b>	<p>Responses to Notices of Hearing from Interested Parties</p> <p>Summary of Key Points</p> <p>Guidance on Meeting the Licensing Objectives</p> <p>The Licensing Act 2003</p> <p>Guidance issued under Section 182 of the Licensing Act 2003 – revised 25 April 2012</p> <p>The District Council's Statement of Licensing Policy</p> <p>Agreement from the applicant to the suggested Police amendments.</p>

<b>Appendices attached:</b>	Appendix A – application for new premises licence Appendix B – representations Appendix C – comments and suggested conditions from Environmental Health Appendix D – comments and agreed amendments with Police
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## 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 made by 'Interested Parties' and / or 'Responsible Authorities' in line with the Licensing Objectives, namely:-</p> <p>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 ↓ ↑ ↔