

AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

4

NAME OF COMMITTEE	Licensing Sub-Committee
DATE	24 July 2014
REPORT TITLE	Application for the review of a premises licence
Report of	The Licensing Officer
WARDS AFFECTED	Ivybridge Central

Summary of report:

To determine an application for the Review of a Premises Licence at the **Imperial Inn, 28 Western Road, Ivybridge, Devon PL21 9AN** in accordance with Section 52 of the Licensing Act 2003, following an application received under Section 51 of the said Act.

Financial implications:

There are no direct financial implications to the Council from this Report.

RECOMMENDATIONS:

That the Sub-Committee consider the application to review the Premises Licence and make a determination in respect of this application by taking such steps mentioned (i – v) below (if any) as it considers appropriate for the promotion of the licensing objectives, namely to:

- i modify the conditions of the licence;**
 - ii exclude a licensable activity from the scope of the licence;**
 - iii remove the designated premises supervisor;**
 - iv suspend the licence for a period not exceeding three months;**
 - v revoke the licence;**
- 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.**

Where the authority takes steps in (i) or (ii) above, it may provide that the modification or exclusion is to have effect permanently or for only such period (not exceeding three months) as it may specify.

The same (i & ii above) also allows where any noise conditions on a licence that cease to have effect under the Live Music Act 2012 to be reapplied by the Licensing Authority and added to (if appropriate).

Where a premises is licensed for the sale of alcohol for consumption on the premises and;

- music is unamplified and takes place between 8am and 11pm, and
- when it is amplified and takes place in the presence of an audience of 200 persons or less and is provided between 8am and 11pm,

following a review of a licence, a condition relating to live music may be made effective again by altering the licence to include a statement that Section 177A(3) of the Licensing Act 2003 does not apply. In addition, at a review hearing a licensing authority may add condition(s) relating to live music (Section 177A(4) of the said Act) as if the live music were regulated entertainment authorised by the licence. 'Music' includes vocal or instrumental music or any combination of the two.

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1. BACKGROUND

- 1.1 The Imperial Inn is situated at the edge of the town of Ivybridge, in the middle of a terrace of other properties, see **Appendix E** for location plan. All other properties in the vicinity appear to be for private residential use. There are similar terraced residential properties on the opposite side of the road. The busy dividing road links the western end of Ivybridge with the main A38 Plymouth to Exeter dual carriageway.
- 1.2 In 2005 the Imperial Inn was granted a premises licence following the conversion and variation of the old style Justices licence. The current premises licence allows: indoor sporting events; performance of live music; playing of recorded music and the supply of alcohol for consumption on and off the premises. There are a number of conditions attached to the licence to promote the licensing objectives, namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. A copy of the licence is attached at **Appendix B**.

- 1.3 Records held by the council licensing department indicate that between 2010 and 2012 the pub was owned by Enterprise Inns Limited and had a succession of designated premises supervisors (DPSs) during this period. The business ceased trading around 2012 and was closed for a period of time before the current owner, Mrs Hird, purchased the freehold. Subsequently, in June 2013 Mrs Hird applied to South Hams District Council to transfer the premises licence into her name and at the same time became the DPS.
- 1.4 Perhaps unknown to Mrs Hird at the time of purchasing the property was that whilst the pub was in the ownership of Enterprise Inns Ltd the council received a number of noise complaints about amplified music emanating from the business causing a disturbance to neighbours. Further, in 2011, a meeting was held at the Imperial Inn to try and resolve the noise issues. This was attended by the then tenant, the DPS, local residents, Environmental Health, Licensing Manager, Regional Manager for Enterprise Inns and the Regional Property Manager for Enterprise Inns, who was believed to be a qualified Chartered Surveyor. It was recognised by all parties at the meeting that the structure of the Imperial Inn, being a terraced cottage style property, did not lend itself to amplified music and that any amplified music, if not managed sensitively, would cause a nuisance and undermine the 'prevention of public nuisance' licensing objective.
- 1.5 Since Mrs Hird has taken ownership of the pub, further complaints have been received by the council of noise from amplified music causing a nuisance to neighbours. A letter was sent to Mrs Hird from Environmental Health on 7 February 2014 advising her of concerns about the level of noise from live music events held at the pub, see **Appendix A(i)**. The licensing manager visited the pub on 8 April 2014 and spoke to Mrs Hird. He was able to provide a summary to Mrs Hird of the meeting held at the pub in 2011, including the conclusion that the building wasn't suitable for amplified music unless carefully managed. Following complaints over the Easter weekend, another letter was sent to Mrs Hird on 25 April 2014, reminding her of her responsibilities as Premises Licence Holder and measures that could be taken under the Environmental Protection Act 1990 should the nuisance continue, see **Appendix A(ii)**.
- 1.6 Complaints continued and monitoring by the Environmental Health Department commenced. On 2 June 2014 an application for a review of the Imperial Inn premises licence, under Section 51 of the Licensing Act 2003, was received by the Licensing Authority from James Kershaw, Environmental Health Officer, South Hams District Council. A copy of the application was served on the holder of the premises licence, Mrs Hird, and all responsible authorities. The Licensing Authority advertised the application in accordance with Section 51(3)(b) of the Licensing Act 2003 and Regulation 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, thereby inviting representations to be made by other Responsible Authorities and any other persons. Any representations were required to be received by the Licensing Authority no later than 30 June 2014.

- 1.7 A copy of the application for review is attached at **Appendix C**. Please note there are two specific dates mentioned in the review application under the 'grounds for review' section, that mention the evenings of 10 May 2014 and 25 May 2014 where amplified music was alleged to have been a nuisance to neighbours. The first date has not been supported by relevant representations during the 28 days consultation period but an additional date of 11 May 2014 has been specified.
- 1.8 Four representations have been received, three in support of the review application and one not in support of the review application. Relevant representations received are attached in **Appendix D**.

(Please note that due to the amount of paperwork contained within these appendices, full copies have only been circulated to the Sub-committee Members. Anybody 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 Conditions addressing the prevention of public nuisance licensing objective have always formed part of the licence for the Imperial Inn. Without going into too much legislative detail, the Live Music Act 2012 which came into effect on 1 October 2012 disapplied all conditions on the licence relating to live music at these premises between the hours of 8am and 11pm. The only way legislation allows the Licensing Authority to reapply or add conditions, if considered appropriate, is following a formal review of the licence. Previous to the 2012 Act taking effect, where the council received complaints about live music between these times the licensing department had been able to work with premises licence holders to make minor amendments to the licence to address the problem. This is no longer possible where problems continue from live music.
- 2.2 The Environmental Health Officer who has applied for the review has requested in his application that all conditions relating to live music be reapplied to the premises licence and in addition a further condition is added. This extra condition would require the premises licence holder to appoint a noise consultant to prepare a scheme of sound insulation and noise control measures to address the noise breakout problem at the premises and that this scheme would be approved by the council prior to the premises being used for amplified live and recorded music.
- 2.3 The Sub Committee will now need to consider whether to alter the licence and make a statement that Section 177A(3) of the Licensing Act 2003 as amended by the Live Music Act 2012 does not apply (thereby reapplying the conditions relative to live music) if thought appropriate, and consider whether any other condition(s) are appropriate (see para 2.2 above) to include in the licence under Section 177A(4) as amended.

3. STATUTORY BODIES' RESPONSE

- 3.1 Devon & Cornwall Constabulary
No representations have been received.
- 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)
Made the application to review the licence. Representations received.
- 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.
- 3.8 Primary Care Trust/Local Health Boards, Devon Drug and Alcohol Action Team
No representations have been received.

4. RELEVANT GUIDANCE ISSUED BY THE HOME OFFICE (Section 182 Licensing Act 2003, guidance updated 4th June 2014)

The review process

- 4.1 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives. (Paragraph 11.2).
- 4.2 (Paragraph 11.5 cont..) For example, the police should take appropriate steps where the basis of the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review. (Paragraph 11.5)

- 4.3 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.
Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing. (Paragraph 11.9).
- 4.4 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation. (Paragraph 11.10).
- 4.5 Even where the 2003 Act (as amended by the Live Music Act 2012) has deregulated aspects of the performance of live music, it remains possible to apply for a review of a premises licence or club premises certificate if there are appropriate grounds to do so. On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to live music. Similarly, under section 177A(4), a licensing authority may add a condition relating to live music as if live music were regulated entertainment, and as if that premises licence or club premises certificate licensed the live music. (Paragraph 15.23).
- 4.6 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and / or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are efficiently promoted and that warnings should be issued in writing to the licence holder. (Paragraph 11.17).
- 4.7 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. (Paragraph 11.18).

- 4.8 In deciding which of these powers to invoke (Page 1 of Agenda – Recommendations i to v) it is expected that licensing authorities should so far as possible seek to establish the cause or causes that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response. (Paragraph 11.20).

5. LEGAL IMPLICATIONS

- 5.1 Section 52 of the Licensing Act requires that in dealing with a review application, the authority must, having regard to the application and any relevant representations, take such of the steps mentioned below (if any) as it considers appropriate for the promotion of the licensing objectives;

- i modify the conditions of the licence;
 - ii exclude a licensable activity from the scope of the licence;
 - iii remove the designated premises supervisor;
 - iv suspend the licence for a period not exceeding three months;
 - v revoke the licence;
- 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.

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

Where the authority takes steps in (i) or (ii) above, it may provide that the modification or exclusion is to have effect permanently for only such period (not exceeding three months) as it may specify.

The same (i & ii above) also allows where any noise conditions on a licence that cease to have effect under the Live Music Act 2012 to be reapplied by the Licensing Authority and added to (if appropriate).

Where a premises is licensed for the sale of alcohol for consumption on the premises and;

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following a review of a licence, a condition relating to live music may be made effective again by altering the licence to include a statement that Section 177A(3) of the Licensing Act 2003 does not apply. In addition, at a review hearing a licensing authority may add condition(s) relating to live music (Section 177A(4) of the said Act) as if the live music were regulated entertainment authorised by the licence. 'Music' includes vocal or instrumental music or any combination of the two.

5.2 The Sub-Committee must give reasons for its decision.

Appeals

- 5.3 Where an application for a review of a premises licence is decided under Section 52, Licensing Act 2003, an appeal may be made against the decision by –
- (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in regard to the application.

An appeal must be made within 21 days of notification of the decision to the Magistrates' Court.

The Court may –

- (a) dismiss the appeal,
 - (b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
 - (c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,
- and may make such order as to costs as it thinks fit.

6. FINANCIAL IMPLICATIONS

6.1 There are no direct financial implications to the Council from this Report.

7. RISK MANAGEMENT

Corporate priorities engaged:	There is a link to the Council's priorities of improving Community Life and developing the local Economy.
Statutory powers:	Licensing Act 2003, as amended.
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair hearing
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	Responses to Notices of Hearing

	<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</p> <p>Police Reform & Social Responsibility Act 2011</p> <p>Live Music Act 2012</p> <p>The District Council's Statement of Licensing Policy</p>
<p>Appendices attached:</p>	<p>Appendix A –</p> <p>(i) Letter sent to Mrs Hird from Environmental Health on 7th February 2014</p> <p>(ii) Letter sent to Mrs Hird from Environmental Health on 25th April 2014</p> <p>Appendix B – Imperial Inn – copy of premises licence.</p> <p>Appendix C – Application for a review of the premises licence</p> <p>Appendix D – Representations (2 x Environmental Health; 2 x Other persons [local residents – one in support and one other not in support])</p> <p>Appendix E – Location map</p>

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 in line with the Licensing Objectives, namely:- 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 ↓ ↑ ↔