

Agenda for Licensing & Enforcement Sub Committee

Wednesday, 27 July 2016; 9.30am

(Councillors Steve Hall (Chairman), Jim Knight (Vice Chairman))

Venue: Committee Room, Knowle, Sidmouth, EX10 8HL

[View directions](#)

Contact: [Chris Lane](#), 01395 571544 (or group number 01395 517546): Issued 18 July 2016



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- 1 Minutes for 4 May 2016 (pages 2-5)
- 2 Apologies
- 3 [Declarations of interest](#)
- 4 [Matters of urgency](#) – none identified
- 5 To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

Part A Matters for Decision

- 6 **Schedule of application for Sub Committee approval where an agreed position has been reached and all parties Have agreed a hearing is unnecessary (pages 6-7)**

Due to the requirements of the Licensing Act 2003 only parties to the hearing are permitted to address the sub-committee (through their representative as appropriate)

[Decision making and equalities](#)

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL
Minutes of a Meeting of the Licensing &
Enforcement Sub-Committee held at Town Hall, Exmouth on
Wednesday, 4 May 2016

Attendance list at the end of the document

Please note that there was no recording of this meeting as there is no recording equipment at Exmouth Town Hall.

The meeting started at 9.30 am and ended at 10.30 am

- *37 Minutes
The minutes of the meeting of the Licensing and Enforcement Sub-Committee held on 26 January 2016, were confirmed and signed as a true record.
- *38 Declarations of interest
Councillor John O'Leary
Minute 39
Disclosable Pecuniary Interest – Designated Premises Supervisor
- *39 Application for the variation of a premises licence to extend the hours for the sale of alcohol on and off the premises at The Old Warehouse, 53 The Strand, Exmouth, EX8 1BR
The Sub Committee gave consideration to an application for the variation of a Premises Licence to extend the hours for the sale of alcohol on and off the premises at The Old Warehouse, 53 The Strand, Exmouth, EX8 1BR.

The Sub Committee carefully considered the application for the licensable activities and the proposed hours of operation with a view to deciding whether the application promoted the licensing objectives, as required by the Licensing Act 2003. Government Guidance, the Council's own licensing policy and the Human Rights Act 1998 were also taken into account in making the decision.

The Sub Committee carefully considered the relevant representations that all parties had made and the written representations and other documentation put before the Sub Committee. They considered the particular locality of the premises in the town of Exmouth and its physical relationship with other residential and commercial properties in the vicinity.

The Sub Committee considered it relevant that no representations had been received from the police in relation to the Licensing Act objectives that had been the subject of representations, following mediation, which was, public nuisance. From this the Sub Committee concluded that the police did not consider that there were currently any significant problems associated with the current operation of the premises, or that there were likely to be if the application was granted.

The applicant's case (Mr Piekieniack) was that the application would allow the premises to sell alcohol in line with other premises in the vicinity who could sell alcohol from 9.00am. The premises already offered patrons the ability to consume tea and coffee from 9.00am. The sale of alcohol would allow him to build his custom, particularly with the tourist season approaching.

When the applicant questioned stated that the “undesirables” referred to by the Interested Party, and their dogs, were in fact his patrons. There were only two customers that brought dogs into the premises, and these were small dogs that were controlled within and outside of the property.

The interested parties’ case was from Cllr Bill Nash who was representing his ward, and Exmouth Town Council relaying concerns of the Town Planning Committee

On paper complaints from local businesses (mainly coffee bar/restaurants) in the area of The Old Warehouse were that their trading was being undermined by early morning alcohol consumption by undesirable characters. People at 10.00am who were under the influence of alcohol outside the premises, smoking and making noise accompanied by a succession of stray and wild dogs. 9.00am was unacceptable. The Police had visited on several occasions at the request of business owners and members of the public.

Patrons using the outside are may create a public nuisance to patrons and residents in the cafe quarter of The Strand.

At the hearing Councillor Nash added that the other premises in the vicinity that could sell alcohol from 9.00am were restaurants and not “public houses”. He relayed hearsay evidence that “undesirables” were standing within the area of the pavement license to the premises drinking from cans.

The applicant stated that he did not sell alcohol in cans. Most of the patrons who drank alcohol from 10.00am stayed within the premises.

The majority of sales at 10.00am were teas and coffees.

In discussion with the committee the applicant offered clear signage about the control of dogs on the premises.

The Committee also asked the applicant about appropriate signage to ensure that only alcohol purchased from the premises would be consumed at the premises.

The Sub Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application. In relation to the evidence heard regarding the history of the premises, it was considered that the establishment would be well managed and controlled.

The Sub Committee did not accept that there was evidence of a significant public nuisance.

At the present time there was no real evidence that the operation the applicant proposed to run would cause the unacceptable impact local residents suggest.

All parties were reminded of the closure and review powers which the Government brought into force when the new licences were operational from 24 November 2005. Premises which did not operate in an acceptable way in terms of the licensing objectives may in extreme cases be closed down by police action or have their scope of operation reduced by the licensing authority.

Whilst acknowledging the concerns expressed by the interested parties, the Sub Committee believed the concerns expressed in representations had been addressed by the hours of operation for the licensable activities and the conditions imposed which had been tailored to the size, characteristics and activities on the premises, and which the Sub Committee believed were necessary and proportionate.

- RESOLVED 1. that a grant of a Premises Licence be made as follows:
- a) The extent of the areas within which the various activities will be permitted is as indicated by the legends on the applicant's plan.
 - b) Permitted hours for the various licensable activities will be as set out in the amended Appendix A.
The alcohol sales to commence at 9.00am
The applicant to discuss with the Licensing authority appropriate signage to ensure:
The control of patrons' dogs within the cartilage of the premises (the red line).
That only purchased alcohol from the premises was consumed on the premises. Persons could not purchase cans from off-licences and consume them in the area of the pavement licence. Applicant to manage this effectively.
 - c) The conditions in the operating schedule to continue.
 - d) The mandatory conditions will continue to apply.
2. the designated Premises Supervisor will be: Alan John Piekalniack, 3 Dickens Drive, Exeter, EX2 6NS.

- *40 Schedule of application for Sub Committee approval where an agreed position has been reached and all parties have agreed a hearing is unnecessary
The Sub Committee gave consideration to an application for the grant of a premises licence where an agreed position had been reached and all parties had agreed that a hearing was unnecessary. The Chairman and Vice Chairman considered equality impacts when making their decision.

The Licensing Officer explained the background of the application and the negotiations that had been carried out.

RESOLVED

that the application be granted as below, subject to the agreed position set out in the schedule and any relevant statutory conditions and the applicants having complied with the relevant statutory requirements.

Schedule:

Type of application:

Application for the grant of a premises licence

Name of premises and address:

The Bayleaf Café, 19 The Strand, Exmouth, EX8 1AF.

Agreed position reached by the parties:

Following mediation the applicant and the Devon and Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.

The application be approved as submitted subject to the following amendments and conditions:

1. No open containers of alcohol will be taken from the premises other than for consumption in the external seating area marked red on the plan.

Attendance list

Councillors present:

Steve Hall (Chairman)
Colin Brown
John O'Leary

Also present:

Councillor Bill Nash

Officers present:

Giles Salter, Solicitor
Neil McDonald, Licensing Officer
Chris Lane, Democratic Services

Chairman Date

Report to: **Licensing and Enforcement Sub Committee**



Date of Meeting: 27 July 2016

Public Document: Yes

Exemption: None

Agenda item: **Item 6**

Subject: Schedule of applications for Sub Committee approval where an agreed position has been reached and all parties have agreed a hearing is unnecessary.

Purpose of report: The report details these applications.

Recommendation: That the application be granted as applied for subject to the agreed position set out in the schedule below, any relevant statutory conditions and the applicants having complied with relevant statutory requirements.

Reason for recommendation: To comply with statutory processes.

Officer: Neil McDonald nmcdonald@eastdevon.gov.uk 01395 517410

Financial implications: The only financial implication is if the applicant appeals against the decision made, with the possibility of court costs.

Legal implications: The council's decision may be appealed to the Magistrates Court.

Equalities impact: Low Impact

Risk: Low Risk

Links to background information: Background Papers
The relevant licensing applications
Representations received from Responsible Authorities
Guidance issued under Section 182 of the Licensing Act 2003
The District Council's Statement of Licensing Policy

Link to Council Plan: Not applicable

Report in full

1. Legislation Background
- 1.1 Under the Licensing Act 2003 it is unclear whether applications where an agreed position has been reached and the parties do not consider a hearing to be necessary, require to be formally determined by a licensing sub committee, as opposed to relying on determination powers delegated to officers. To put the matter beyond doubt, these applications are reported to members for their approval of the agreed position. This process also enables members to be advised of the success of the informal mediation in advance of hearings, which is facilitated by Licensing Officers or sometimes by other Responsible Authorities.

2. Schedule of Applications

Type of Application	Name of premises and address	Agreed position reached by the parties
Application for the grant of a premises licence.	Unit 3 Colliton Barton, Broadhembury, Devon, EX14 3LJ	<p>Following mediation the applicant and the Devon & Cornwall Constabulary have agreed that they consider a hearing to be unnecessary if the following agreed position is approved.</p> <p>The application be approved as submitted subject to the following additional conditions:</p> <ol style="list-style-type: none"> 1. The business is an online business only and no members of the public must be able to call at the premises to purchase alcohol. 2. All alcohol must be secured in a locked and alarmed premise. 3. Customers ordering online must be required to enter their date of birth before purchase to prove that they are over 18 years of age. 4. All parcels sent out containing alcohol must be sent out by means of a 'signed delivery' and the person signing to accept delivery must be able to prove their age. 5. All parcels must be labelled to advise that it contains alcohol, and on delivery must not be left with anyone under the age of 18 years. A challenge 25 policy will be in place. If the driver considers the recipient of alcohol appears under 25 then ID will be requested. Suitable ID will be a passport, photo driving licence or a proof of age card bearing the PASS logo.
	Recommend approval of application subject to the amended operating schedule and the relevant mandatory conditions of the Licensing Act 2003	

Neil McDonald Ext.2079

Licensing Sub Committee

Licensing Officer

27 July 2016