

EAST DEVON DISTRICT COUNCIL

Minutes of the meeting of Licensing and Enforcement Sub Committee held at Council Chamber, Blackdown House, Honiton on 21 June 2023

Attendance list at end of document

The meeting started at 9.35 am and ended at 12.20 pm

1 Minutes of the previous meeting

The minutes of the previous meeting held on 22 May 2023 were agreed and signed as a true record.

2 Declarations of interest

Minute 6. Determination of an application for the grant of a premises licence to allow live music (indoors and outdoors), recorded music (indoors and outdoors), the sale of alcohol for consumption ON and OFF the premises at Budleigh Salterton Cricket Club, The Holt, East Budleigh Road, Budleigh Salterton, EX9 7BA.
Councillor Tim Dumper, Affects Non-registerable Interest, The Member knows two of the interested parties, Doris Couper and Margaret Yerrell. The Member confirmed that this would not affect his ability to consider the application impartially.

3 Matters of urgency

There were no matters of urgency.

4 Confidential/exempt items

There were no confidential / exempt items.

5 Determination of an application for the variation of an existing premises licence PLWA0275 at Kilmington Cross Service Station, A35 Gammons Hill, Kilmington, Axminster EX13 7RB

The meeting was a hearing under the Licensing Act 2003.

The Chair introduced the members of the Sub Committee and the officers present.

The Sub Committee's legal advisor, Giles Salter, outlined the procedure for the meeting.

The Sub Committee considered the application for the variation of an existing premises licence PLWA0275 at Kilmington Cross Service Station, A35 Gammons Hill, Kilmington, Axminster EX13 7RB.

The applicant, present and entitled to make representations, was Paul Jones, Regional Manager, of Motor Fuel Limited, and Robert Botkai, Winckworth Sherwood, legal representative for Motor Fuel Limited.

Also present, and entitled to make representations, was Cllr Peter Ball, Chair of Kilmington Parish Council.

The Licensing Officer, Lesley Barber, advised that there were no updates to the report as published. The application covered three main areas: extension to the existing hours; provision of late night refreshment; amend the current conditions of the licence which had been in place since 2005.

Seven representations had been received which were shown at Appendix D, including the agreed position with the Police. The Police sought to tighten various conditions including the robust policy of challenging underage sales of alcohol.

The Licensing Officer also advised that the applicant had offered an undertaking to Kilmington Parish Council to reduce trading hours for the first six months, from between 05:00 to 24:00, rather than the full 24 hours, should the variation to the licence be granted.

The Sub Committee noted that only the permitted hours, as shown on the licence, would be enforceable and any other agreement would be between the applicant and Kilmington Parish Council.

In response to a question from a member, the Licensing Officer advised that it was best practice to keep an incident book.

Mr Botkai noted that the applicant's offer of the voluntary measure could be placed on record in order to provide comfort to the Parish Council.

In response to a question from the interested party, the Licensing Officer advised that every licensed premises is required to have a Designated Premises Supervisor (DPS) who can delegate in their absence. The applicant confirmed that the DPS is always the Manager of the Motor Fuel Ltd service station, who would also ensure that all staff are suitably trained.

The applicant's legal representative, Mr Botkai, made the case for the application and highlighted the following points:

- The current conditions date back to 2005 and needed updating.
- The Police were in support of the application, based on agreed additional conditions.
- There was no intention for the Greggs outlet on the site to operate at night.
- The current licence permitted the sale of alcohol until 22:00.
- Motorfuel Group Limited is a very experienced operator with multiple 24 hour premises.
- Local residents' concerns and objections were understood, however, it was not the operator's experience that customers would come from far and wide, and at all hours, to buy alcohol. The operator is not anticipating a large increase in trade should the licence be granted.
- Should issues such as anti-social behaviour occur, the operator would suspend sales and conduct a review.
- After 23:00 a night pay window is in operation.
- All cashiers are trained with regard to Challenge 25 and in recording refusals of sales of alcohol and tobacco.
- The application is within all relevant regulations and legislation.

In response to questions from members, the applicant made the following points:

- The application to extend the opening hours was for operational reasons as it was more difficult to manage the whole premises with cut off times for sales.
- A single member of staff would be present during the night, as is usual for petrol stations. Support for staff is available 24 hours a day from the Manager and local Contract Manager, with an escalation chain always in place should any issues arise.

The interested party, Cllr Peter Ball, Chair of Kilmington Parish Council, made his case and highlighted the following points:

- The service station, with a small café attached, had previously been quiet and had recently been purchased by Motor Fuel Limited, an operator with a large number of outlets which generated 30% of its profits from non-fuel sales.
- Although the operator aimed for consistency across its sites, individual applications should be considered on their own merits. The Parish Council requested that the Sub Committee consider the fact that the parish lies within an Area of Outstanding Natural Beauty and is a small, quiet village.
- The Parish Council had been advised by a national highways officer that the Greggs outlet made the service station a “go-to” venue. Should the variation to the licence be granted, the Parish Council was concerned that a 24 hour off licence would increase the number of people driving to the venue for reasons other than to purchase fuel.
- It was noted that the Police are not close by and that the operator has a duty to demonstrate that measures are in place to ensure that there is no harm to the amenity of local residents, who have a right to the peaceful enjoyment of their homes.
- One member of staff, alone at night, would not be sufficient to deal with any issues on the forecourt.
- The Parish Council requested that the closing time be restricted to 10pm.

In response to questions from members, Cllr Ball clarified that there were no serious issues at the present time, but that problems of a significant nature were more likely to arise after 10pm.

The legal advisor, Giles Salter, advised that the Licensing Act is a permissive Act but that there are provisions for review if issues do arise in the future. The Sub Committee could not make decisions based on supposition.

Cllr Ball advised that the fact that Greggs is now considered a “go-to” outlet resulted in an increase in traffic. Although Greggs currently closes at 6pm, it may be decided to open for longer, adding to the traffic coming to Kilmington as a destination. The Parish Council thanked the applicant for their offer of a trial period of reduced hours, but would prefer no increase in operating hours.

In his closing statement for the applicant, Mr Botkai noted that customers stop at petrol stations for a variety of reasons, and in this case, the site also offered a Londis shop which sells a wide variety of goods. In the current economic climate, service stations only survive if they have a good offer in addition to fuel. The night staff are able to lock the premises for their own safety and it was a misconception that having more than one member of staff would lead to any reduction of incidents as staff were trained to seek help, rather than confront the public. There was no evidence of any public nuisance or crime and disorder and the operator was of the view that the proposed extension to the opening hours would not make any difference. The Parish Council was encouraged to contact Motor Fuel Limited should there be any issues. The applicant re-iterated the offer of reduced opening hours during the first six months should the variation to the licence be granted.

The Chair thanked everyone for attending and advised that the decision would be notified in writing within five working days.

This item finished at 10:37am and the meeting was then adjourned until 11:00am.

The applicant, Mr Jones and Mr Botkai, the interested party, Cllr Peter Ball, and the Licensing Officer left the meeting.

6 **Determination of an application for the grant of a premises licence to allow live music (indoors and outdoors), recorded music (indoors and outdoors), the sale of alcohol for consumption ON and OFF the premises at Budleigh Salterton Cricket Club, The Holt, East Budleigh Road, Budleigh Salterton, EX9 7BA**

On the resumption of the meeting, the Chair introduced the members of the Sub Committee to those present.

The Sub Committee considered an application for a premises licence to allow live music (indoors and outdoors), recorded music (indoors and outdoors), the sale of alcohol for consumption ON and OFF the premises at Budleigh Salterton Cricket Club, The Holt, East Budleigh Road, Budleigh Salterton, EX9 7BA.

The applicant, present and entitled to make representations, was Budleigh Salterton Cricket Club, represented by Emma Cooling, Carolyn Roper and Joel Murphy.

Also present, and entitled to make representations were Robbie Sillars, Kate Sillars, Pat Coulter, Margaret Yerrell, Doris Couper, Mike Sheehan (also representing Simon King and Rosie King) and Yvonne Mills (representing Andrew Mills).

The Sub Committee's legal advisor, Giles Salter, outlined the procedure for hearing the application.

The Licensing Officer, Phillippa Norsworthy, summarised the application and noted that the applicant had come to an agreed position with the Police.

Responses to the Notice of Hearing which had been received after the publication of the report had been sent to members of the Sub Committee. The Environmental Health Officer had met the applicant at the site and the applicants had then submitted changes to the proposed operating schedule which had also been sent to members. The Licensing Officer read out information from the Environmental Health Officer relating to the premises noise management plan. The Sub Committee was advised that the applicant proposed to amend the hours sought so that no live music would be played outdoors after 23:00pm.

There were no questions from members or from the applicant for the Licensing Officer.

In response to questions from the interested parties, the Licensing Officer clarified the following points:

- With regard to the sale of alcohol, the Police had requested 30 minutes drinking up time which amended the proposed opening hours to 22:30 Sunday to Thursday and 23:30 Friday and Saturday.
- Regarding the live music, it had been agreed that there would be no live music outside after 23:00pm. After 23:00pm live music would be inside only.

An interested party advised that the venue has bi-fold doors which could remain open while live music was being played indoors. The legal advisor noted that the applicant could offer mitigation measures, or the Sub Committee could choose to impose a condition to mitigate such a situation.

The applicant, represented by Carolyn Roper and Emma Cooling, made the case for the application and highlighted the following points:

- The Cricket Club had been forced to relocate in 2002 and moved to the current new site. A lot of thought had gone into the design of the building to ensure that it was sustainable and welcoming for the whole community. The club house had been designed to contain noise and would face away from the town. It was also fully accessible. The Cricket Club was well run and respected, and wished to work with the whole town and community.
- It was very important to the Club to maintain a good relationship with neighbouring residents. The design of the club house incorporated glazing which offers a high level of protection from noise. Should live music be played after 23:00pm, windows and doors would be shut. The Cricket Club offered reassurance that it is not intending to be an outside music venue, however, it did need to be able to hold events in order to generate funds. There was a need to keep the membership fee low so as to make cricket available to the whole community at a grass roots level.
- Local residents would be provided with a contact phone number in the event of any issues with noise arising from events.
- The design of the club house had been amended to provide for a maximum of 80 people seated for an event.

In response to a question from the Sub Committee, the applicant advised that live music outside up to 23:00pm was sought to allow flexibility when organising events.

The interested parties put questions to the applicant, who provided the following responses:

- Regarding concerns about car parking and the effect of parking and traffic on Granary Lane, the applicant advised that the car parking provision was not yet at full capacity.
- With regard to the previous licence held by the Cricket Club, it was confirmed that late openings had been restricted to 6 events per year, with a 2 week rest period between events.
- The new club house will not be air conditioned and the intention would be to close doors and windows after 23:00pm when live music is played.
- It is very unlikely that there will be events every Saturday night and the Cricket Club is also receiving expressions of interest for eg. yoga sessions, art events and wakes.
- Regarding installing a noise limiter, the applicant noted that the cabling would be in place for a noise limiter, but that they had been advised that music equipment brought in by an external performer would override it.

The Chair noted that the playing of live music appears to be the main point of contention. The Legal Advisor suggested that all parties involved hold a trial session to ascertain noise levels at various distances, with the Environmental Health Officer also present if possible. The Legal Advisor emphasised that the Licensing Act is permissive, but that there are also draconian measures in place to hold a review, to impose conditions or to close a licensed premises.

The applicant confirmed that they would be happy to hold a test and have worked with all relevant authorities at every stage of the application.

The interested parties made their case and highlighted the following points:

- There is concern regarding how noise levels will be restricted and the interested parties would wish to see a noise limiter in place.
- There is also concern regarding the noise when people are leaving the Cricket Club and the situation is bad enough currently before the club house is fully operational.
- Whilst the interested parties would welcome a noise limiter, this is only one part of the problem and the various smaller issues of concern have a cumulative effect to the detriment of local residents.
- There appear to be 2 agendas for the Cricket Club: the club is an excellent facility for children and people with disabilities; the club is also being marketed as an events facility. The interested parties would wish to have an assurance that the club house will only be

operated by members, rather than bringing in an outside operator in order to generate income.

- The interested parties would also wish to see a noise management plan in place.
- This is not a normal licensing application as the building is exceptional, stands alone in green fields and is located in a quiet residential area of Budleigh. The club house is in close proximity to homes and a nature reserve. Licensing policy recognises the need to assess potential nuisance. Most visitors arrive by car which results in light and noise nuisance. The late introduction of noise mitigation measures is subjective, selective and unworkable. It would also be impossible to select unbiased parties for a trial session.
- The application appears to present the vision of the Cricket Club as a destination facility independent of cricket.

In their closing statement, the applicant highlighted that they want to work together with the local community. The Cricket Club is for cricket and will not become a festival venue. The club is run by volunteers and the aim is to keep costs low so as to not increase the membership fee. As the expert in noise matters, the Environmental Health Officer is content with the application.

The Chair thanked everyone for attending and advised that the decision would be notified in writing within five working days.

Attendance List

Councillors present:

O Davey
T Dumper
J Whibley (Chair)

Councillors also present (for some or all the meeting)

I Barlow
N Hookway

Officers in attendance:

Lesley Barber, Licensing Officer (left the meeting at 10:37am)
Sarah Jenkins, Democratic Services Officer
Phillippa Norsworthy, Licensing Officer (joined the meeting at 11:00am)
Giles Salter, Solicitor

Councillor apologies:

Chair

Date: