

Date of Meeting 7 July 2021

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**Application for the grant of a premises licence under the Licensing Act 2003**  
**Hangtime Café, Queen's Drive, Exmouth, EX8 2GD**

**Report summary:**

The report summarises an application for the grant of a premises licence to be considered by the sub-committee.

**Is the proposed decision in accordance with:**

Budget Yes  No

Policy Framework Yes  No

**Recommendation:**

That members consider an application for the grant of a premises licence to authorise: the sale of alcohol for consumption ON the premises and the playing of recorded music (Indoors and Outdoors) at Hangtime Café, Unit 6-7 Sideshore, Queen's Drive, Exmouth EX8 2GD

**Reason for recommendation:**

To comply with statutory processes.

Officer: Licensing Officer: Emily Westlake, ewestlake@eastdevon.gov.uk, 01404 515616

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Portfolio(s) (check which apply):

- Climate Action and Emergencies
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Culture, Tourism, Leisure and Sport
- Democracy and Transparency
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

**Links to background information**

EDDC Statement of Licensing Policy 2021-2026

Licensing Act 2003 Guidance issued under Section 182

Agenda and minutes of Cabinet meeting of Wednesday 12<sup>th</sup> May 2021

APPENDIX A – Licensing application

APPENDIX B – Plan of premises

APPENDIX C – Conditions offered by applicant in Operating Schedule

APPENDIX D – Location maps & photographs

APPENDIX E – Representations received

APPENDIX F – Police representation and agreed position

APPENDIX G – Responses to Notice of Hearing

APPENDIX H – Mediation letter sent to all interested parties

**Link to [Council Plan](#):**

Priorities (check which apply)

Outstanding Place and Environment

Outstanding Homes and Communities

Outstanding Economic Growth, Productivity, and Prosperity

Outstanding Council and Council Services

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## Report in full

### 1 Description of Application

1.1 An application for the grant of a new premises licence has been received from Hangtime Limited for Hangtime Café, Unit 6 and 7 Sideshore, Queen’s Drive, Exmouth, EX8 2GD

1.2 The application form is provided at **APPENDIX A**.

1.3 The proposed timings and licensable activities (as originally applied for) are as follows:

Sale of alcohol (for consumption ON and OFF the premises):

Monday to Sunday: 10:00 – 22:00

Recorded music (Indoors and Outdoors):

Monday to Sunday: 09:00 – 22:00

Premises opening hours:

Monday to Sunday: 07:00 – 23:00

1.4 **Please note** however: there has been an amendment to the application, following a representation by Devon & Cornwall Police, which means the sale of alcohol is now requested “**for consumption ON the premises only**”. Further information regarding this is included at paragraphs 3.2 and 3.3 of this report.

1.5 The application seeks to licence a single storey, self-contained, wood-cladded structure located on Exmouth seafront (within the Queen’s Drive development) together with an adjacent outside area. The outside space is not bordered and sits directly in front of the premises, it is intended this area provide external seating of up to 10 heavy duty tables with chairs adjacent to the doors/windows.

1.6 A plan of the premises showing the extent of the proposed licensed area is attached at **APPENDIX B**. The proposed licensed area is outlined in red on the plan and this includes

the café structure itself and an adjoining outside area. The dimensions/extent of the outside area are specified by the scale on the plan.

- 1.7 Location maps are provided at **APPENDIX D** together with images of the building, taken by a Licensing Officer during a site visit, demonstrating the location of the premises both within the Queen's Drive development and the wider Exmouth area.
- 1.8 The conditions offered by the applicant can be found in the operating schedule of the application form and are also set out at **APPENDIX C** for ease of reference. Additional conditions have been added following a police representation and further details can be found at **APPENDIX F**.

## **2 Statutory Bodies' Response**

- 2.1 Devon & Cornwall Police  
Representation submitted– see **APPENDIX F**
- 2.2 Devon & Somerset Fire & Rescue Service  
No representations have been received.
- 2.3 Area Child Protection Committee and Local Safeguarding Children Board  
No representations have been received.
- 2.4 Devon Trading Standards  
No representations have been received.
- 2.5 East Devon District Council, Environmental Health Service  
No representations have been received.
- 2.6 East Devon District Council, Planning & Countryside Service  
No representations have been received.
- 2.7 Primary Care Trust  
No representations have been received.
- 2.8 Home Office  
No representations have been received.

## **3 Representations**

- 3.1 **29** representations have been received in total.
- 3.2 A representation has been received from Devon & Cornwall Police under both the prevention of crime and disorder and the protection of children from harm licensing objectives. To mitigate their concerns, the Police have requested that additional conditions are added to the licence, if granted. These additional conditions are set out at **APPENDIX F**.
- 3.3 The applicant has agreed to these additional conditions being added to the licence and has therefore reached an agreed position with the Police. If the licence is granted, the effect of these additional conditions will be as follows:
  - The sale of alcohol will be authorised “**for consumption ON the premises only**” rather than “for consumption both ON and OFF the premises” as originally applied for. “The

premises” being the licensed area denoted by a continuous red line on the plan submitted with the application at **APPENDIX B**. This includes both the inside of the café and the designated outside seating area.

- The additional conditions agreed with the Police will also be included in annexe 2 of the licence.

3.4 In addition to the representation from Devon & Cornwall Police, **28** further representations have been received from local residents.

3.5 This includes **27** objections against the application and **1** representation in support of the application.

3.6 The representations against the application relate, overall, to all 4 licensing objectives and details of all representations received are attached at **APPENDIX E**.

### **Specific points of note raised in representations:**

#### **3.7 Internal configuration of the café structure**

Various queries have been received, from objectors, in relation to the applicant’s intentions for the internal area of the café structure itself, and whether the applicant intends to configure the space to allow for the consumption of alcohol inside the café structure itself. If the licence is granted in line with the plan that has been submitted at **APPENDIX B**, the applicant will be authorised to sell alcohol for consumption inside the café (as this structure is included within the licensed area on the attached plan).

This query has been put to the applicant who has given the following response:

*The initial intention was to provide a small seating area inside the café itself. However, the café has become quite busy and the space inside is now required for a preparation area etc. The current intention therefore is for no customers to access the inside of the building.*

3.8 If the licence is granted in its current form, there is however nothing within the licence that prohibits the consumption of alcohol within the café structure. If however, the café structure itself (or indeed the outside area) was for example, altered or extended in the future, this would require an application for a full, or minor (depending on the nature of the alterations) variation to the premises licence.

#### **3.9 Public Spaces Protection Order 2020-2023 (PSPO)**

It is of note that several of the representations make reference to a proposal, by East Devon District Council, to vary the existing Exmouth ASB Public Spaces Protection Order 2020-2023 (PSPO).

PSPOs are tools under the Anti-Social Behaviour Crime and Policing Act 2014 which are intended to deal with particular nuisances or problems (affecting a specified area) that are detrimental to the local community’s way of life. PSPOs are used to control a range of activities where there is evidence of detriment and can be used as a tool to control anti-social behaviour (ASB) and the consumption of intoxicating substances. The ASB PSPO gives the police the power to issue Fixed Penalty Notices to deal with the issues at hand as well as seize containers of alcohol/intoxicating substances.

3.10 The existing PSPO already covers various parts of Exmouth including (but not limited to) The Strand and The Magnolia Centre and it is now proposed to extend the area covered by this order to include Exmouth Beach (to the mean low tide mark) and some surrounding areas. Full details of the area it is proposed will be covered by the PSPO can be found in the report to Cabinet.

- 3.11 At a Cabinet meeting on the 12<sup>th</sup> May 2021, it was resolved to carry out a public consultation on the proposals and for a further report, with recommendations, to be presented to Cabinet once the consultation has concluded. The public consultation has now been carried out and ended on the 20<sup>th</sup> June 2021. The results of that consultation, together with a further report, will now be considered by Cabinet in due course.
- 3.12 Full information relating to the proposals can be found on the East Devon District Council website. This includes the [report to Cabinet](#) (considered at the Cabinet meeting of the 12<sup>th</sup> May 2021) and the [minutes of that Cabinet meeting](#). This proposal is still going through the relevant process and a decision has not yet been made as to whether or not the variation to the PSPO will be brought into effect.
- 3.13 It should be noted that, if the amendment to the PSPO is approved, this will not prohibit the sale of alcohol from Hangtime Café or the consumption of alcohol in their proposed outdoor area. It will also not affect the sale of alcohol from any other licensed premises within the area covered. The PSPO does not create a ban on alcohol at the locations it covers; but is a tool for the Police and authorised Council staff to be able to remove alcohol when it contributes to the escalation of anti-social behaviour (ASB).
- 3.14 **Cumulative Impact**  
Several representations refer to the “cumulative impact” of the premises and the fact that there are other licensed premises within the nearby vicinity of this premises, including Mickey’s Beach Bar & Restaurant and Café Patisserie Glacerie.
- 3.15 Section 14.20 of the section 182 guidance issued under the Licensing Act 2003 defines cumulative impact as being: “the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area”.
- 3.16 Section 14.21 states that: “in some areas where the number of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems or nuisance and disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport”.
- 3.17 Section 14.24 of the guidance states that: “a cumulative impact assessment (CIA) may be published by a Licensing Authority to help it limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives”.
- 3.18 There must be an evidential basis for the decision to publish a Cumulative Impact Assessment and this evidence needs to relate specifically to the geographical area of concern.
- 3.19 East Devon District Council has not published a cumulative impact assessment (CIA) for any areas within the East Devon district.
- 3.20 Further information regarding cumulative impact is included in section 5 below under the heading: the relevant licensing policy considerations.

## 4 Proposed Operating Schedule and Mediation

- 4.1 The conditions offered by the applicant in the operating schedule are attached at **APPENDIX C**. In addition, the applicant has agreed to the addition of further conditions to the licence at the request of Devon & Cornwall Police. These additional conditions are attached at **APPENDIX F**.
- 4.2 Due to the number of representations received the Licensing Authority has not initiated a mediation meeting between the applicant and those submitting a representation as it seemed extremely unlikely an agreed position could be reached between ALL parties in the limited time available prior to a sub-committee hearing.
- 4.3 Informal mediation has however taken place by way of a letter to all objectors which was sent with the notice of hearing documentation. On 15 June 2021 the Licensing Officer wrote to all those who had submitted a representation advising them of the Police agreement with the applicant. This letter is attached for information at **APPENDIX H**.

### Responses to Notices of Hearing

- 4.4 Details of the responses to the statutory Notice of Hearing are attached at **APPENDIX G**. A number of responses were several pages long and these larger submissions have been attached at the end of **APPENDIX G** and are referred to by number accordingly (i.e. **APPENDIX G1**).
- 4.5 Of the **29** representations received:
- 4.6 **5** of the objectors have withdrawn their representation and confirmed they no longer consider a hearing to be necessary. The withdrawn representations are marked as such (highlighted in red) in the representations list at **APPENDIX E** and noted in their response to notice of hearing at **APPENDIX G**.
- 4.7 **1** of the **29** objectors has reached an agreed position (Devon and Cornwall Police).
- 4.8 **23 representations therefore remain outstanding**. Of these **23** representations:
- 4.9 **10** objectors have confirmed that they will attend the sub-committee hearing. **3** of these **10** objectors have nominated a representative (a fellow objector) to speak on their behalf. Further details can be found in the response to notice of hearing at **APPENDIX G**.
- 4.10 **9** objectors have responded to the notice of hearing indicating that they do not wish to attend the hearing to address the committee. Their original written representations will need to be considered by the committee together with any additional comments that have been made in response to the notice of hearing. Details of the original representations can be found at **APPENDIX E** and any additional comments made in response to notice of hearing can be found at **APPENDIX G**.
- 4.11 **3** objectors have not responded to the Notice of Hearing at the time of finalising this report. Their representations remain outstanding and their original written representations will need to be considered by the committee. These can be found at **APPENDIX E**.
- 4.12 **1** of the representations is a positive representation and no further response to notice of hearing has been received. Their original written representation will need to be considered by the committee and can be found at **APPENDIX E**.

4.13 The **applicant** has indicated that they will attend the sub-committee hearing. The applicant has provided a detailed response to notice of hearing setting out their key points in response to representations received. This response can be found on the first page of **APPENDIX G**.

## **5 Relevant Licensing Policy Considerations**

### **Licensing Objectives**

5.1 Section 3.1.1 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 are:-

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

5.2 Section 3.1.2 of the policy states: These objectives are the only matters to be taken into account in determining the application and any conditions attached must be appropriate in achieving the licensing objectives.

5.3 Section 3.1.3 of the Policy states: A licence will only be granted where the Licensing Authority is satisfied that these objectives have been met.

5.4 Section 3.2.4 of the Policy states: The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. It is the licensing authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.

### **Conditions**

5.5 Section 6 of the policy sets out what the Sub Committee should consider before imposing conditions on a licence.

5.6 Section 6.3 of the policy states: Generally it is recognised that the licensing function is not to be seen as a mechanism for the general control of anti-social behaviour by individuals/groups once they are beyond the direct control of the licence holder of any premises concerned. But the Licensing Authority's discretion may be engaged if relevant representations are made and there is an evidential link between the disturbance and the licensed venue.

### **Licensing Hours**

5.7 Section 10.1 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 any other person on the basis of the licensing objectives. However, when issuing a licence with hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas.

5.8 Section 10.4 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.

## **Nuisance**

- 5.9 Section 16.1 of the Policy states: To promote the licensing objectives, applicants for licences for licensable activities will be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of interested parties.

## **Capacity**

- 5.10 Section 17.1 of the Policy states: Where it is considered necessary to control the maximum numbers of persons attending premises for the purpose of preventing crime and disorder or for public safety the licensing authority will expect this to be addressed in the operating schedule. The licensing authority, if relevant representations are made and only then if such conditions are deemed necessary, proportionate and reasonable, may impose a condition stipulating a maximum number of persons permitted to attend premises where it considers it necessary to prevent crime and disorder or for public safety purposes.

## **Cumulative Impact**

- 5.11 Section 9.1 of the Policy states: the cumulative impact of licensed premises on the promotion of the licensing objectives is a matter which the licensing authority can take into account. This should not however, be equated with “need” which relates more to the commercial demand for a particular type of premises. The issue of “need” is a matter for planning consideration or for the market to decide and does not form part of this licensing policy statement.
- 5.12 Section 9.2 of the Policy states: the licensing authority may receive representations from either a responsible authority or an interested party, that the cumulative impact of new licences is leading to an area becoming saturated with premises of a particular type, making it a focal point and thereby creating exceptional problems of disorder and nuisance over and above the impact from the individual premises themselves. In such cases the issue of cumulative impact can be taken into account when considering the individual merits of any application. The onus is on any person or organisation making such representations to prove any assertion that the addition of the premises concerned would cause the cumulative impact claimed.
- 5.13 Although it is not intended to replicate the whole section within in this report, Section 9 of the Policy in its entirety contains relevant information in relation to Cumulative Impact and is of relevance when considering this application and the representations received.
- 5.14 The Guidance issued under Section 182 Licensing Act 2003 also includes a large amount of information relating to Cumulative Impact. Although it is again not intended to replicate that guidance in this report, sections 14.19 – 14.48 of the guidance are of relevance when considering this application and the representations received.
- 5.15 East Devon District Council has not published a Cumulative Impact Assessment with regard to any areas of the district.
- 5.16 The **Guidance** issued under Section 182 Licensing Act 2003 states:  
The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are appropriate to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.



It is perfectly possible that in certain cases, because the test is one of appropriateness, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

Licensing authorities should only impose conditions which are appropriate and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be appropriate to impose the same or similar duties.

### **Section 182 Guidance in relation to activities exempt from regulated entertainment**

5.17 Section 16 of the Guidance sets out what activities are regarded as the provision of regulated entertainment and when they are licensable and those activities which are not and are therefore exempt from the regulated entertainment regime.

5.18 Section 16.6 of the Guidance sets out that as a result of deregulatory changes that have amended the 2003 Act no licence is required for a number of activities. A full list of deregulated activities as set out within the Section 182 Guidance.

5.19 The following activities are therefore deregulated (and relevant to this particular application):

Live music: no licence permission is required for:

- a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
- a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

Recorded Music: no licence permission is required for:

- any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

5.20 Section 16.7 of the Guidance states: The deregulatory changes mean that, for example, an indoor sporting event that takes place between 07.00 and 23.30 on a particular day is licensable in respect of activities taking place between 07.00-08.00 and 23.00-23.30. Similarly, where the audience for a performance of dance fluctuates, those activities are licensable if, and for so long as, the number of people in the audience exceeds 500.

5.21 Section 16.8 of the Guidance states: Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable under the 2003 Act – must comply with any applicable duties that may be imposed by other legislation relevant to the event (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and planning).

5.22 In relation to any conditions that may be imposed on a new premises licence in respect of regulated entertainment Section 16.36 of the Guidance states: Any existing licence conditions (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music or recorded music remain in place but are

suspended between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

5.23 Section 16.38 of the Guidance states: More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.

5.24 Section 16.39 of the Guidance states: Chapter 9 of this Guidance sets out how a licensing authority must determine applications for a new licence or to vary an existing premises licence. Licence conditions imposed, in accordance with paragraphs 9.41 to 9.43 for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and/or the activities are taking place between 23:00 and 08:00.

5.25 Section 16.40 of the Guidance states: These conditions will, in effect, be suspended between 08:00 and 23:00 if a performance of live music or the playing of recorded music takes place before an audience of 500 people or fewer, but will remain on the face of the licence for when these activities may take place under other circumstances.

5.26 Section 16.41 of the Guidance states: Where a performance of live music or the playing of recorded music on relevant licensed premises is not licensable, it remains possible for anyone to apply for a review of a licence or certificate, if there are appropriate grounds to do so.

### **Section 182 Guidance in relation to Licensing Hours**

5.27 Section 14.51 of the Guidance states: With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

5.28 Section 14.52 of the Guidance states: Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.

## 6. Observations

- 6.1 Following the implementation of the first set of regulations under the Police Reform and Social Responsibility Act on 25 April 2012 a new provision relating to the 'test' that Licensing Committees should consider when deciding on licensing applications was introduced. The evidential level for Licensing Committees has been lowered so that the test now is that their decisions need only be 'appropriate' and no longer 'necessary'.
- 6.2 The applicant has reached an agreed position with the Police and has agreed to the amendments to the application set out in **APPENDIX F**.

With regard to the sale of alcohol, this agreed position means that, should the licence be granted, the sale of alcohol will be authorised "for consumption ON the premises only" rather than "for consumption both ON and OFF the premises" as originally applied for. "The premises" being the licensed area as shown on the plan submitted with the application at **APPENDIX B**, which includes both the inside of the café and the designated outside seating area, the proposed licensed area being clearly defined by way of a continuous red line.

- 6.3 Should the premises licence be granted, it will **not** allow for the sale of alcohol for consumption OFF the premises. Alcohol cannot therefore be taken off site away from the seated area and consumed on the beach or seafront areas.
- 6.4 Although the applicant has applied for the provision of recorded music (both indoors and outdoors), as a result of deregulatory changes that have amended the 2003 Act, premises licensed for the sale of alcohol for consumption ON the premises, no longer require a licence for either the playing of recorded music or, a performance of amplified live music between the hours of 08.00 and 23.00 on any day, if it takes place before an audience of no more than 500 people.
- 6.5 A number of representations refer to the nearby Miceys Beach Bar & Restaurant and Café Patisserie Glace premises. The representations make reference to this premises being within the nearby vicinity of Hangtime Café and any potential impact this may have. They do not make detailed reference or comparison to specific features of that licence and it has therefore not been considered necessary to include details of that licence within this report. It is recognised that each individual application must be determined on its own merits.
- 6.6 Details of all representations received are attached at **APPENDIX E**. All responses to notice of hearing and additional comments are attached at **APPENDIX G**. The committee must consider all representations received, other than those which have been withdrawn, and these can be found at **APPENDIX E**. The committee must also consider all responses to notice of hearing received.
- 6.7 Details of the objectors attending the hearing can be found in **APPENDIX G** and in the responses to notice of hearing section of this report at number 4.8 onwards.
- 6.8 Megan Barnett is nominated as the Designated Premises Supervisor. Megan Barnett holds a Personal Licence, issued by East Devon District Council.
- 6.9 The Sub Committee will now need to consider whether to grant this application as it stands or in the light of the representations to refuse the application or grant it in a different form.

## Legal Advice

1. As relevant representations have been made in respect of the application, 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 any person, bodies representing them or responsible authorities). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.
2. 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.
3. Section 18 of the Act requires the licensing authority to grant a premises licence unless it considers additional steps are needed for the promotion of the licensing objectives having regard to any relevant representations.

The steps are:

- (a) to grant the licence subject to:
  - (i) the conditions in the operating schedule modified to such extent as members consider necessary for the promotion of the licensing objectives, and
  - (ii) any condition which must under sections 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence 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 conditions of the licence are modified if any are altered or omitted or any new condition is added. Different conditions may be applied to different parts of the premises, and to different licensable activities. The sub-committee must give its reasons for its decision to take any of these steps. Similarly, if any part of an application is rejected, the sub-committee must give its reasons.

4. The Act requires mandatory conditions to be imposed where supplying alcohol or exhibiting films are approved as licensed activities. It also requires a mandatory condition to be imposed where door supervisors or other individuals carrying out security activities are conditions on the licence.

Mandatory conditions relating to the supply of alcohol for consumption ON the premises:

- 1.(a) There shall be no sale or supply of alcohol when there is no designated premises supervisor in respect of this premises licence or at a time when the said premises supervisor does not hold a personal licence or when his/her licence is suspended.
- (b) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 2.(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
  - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
    - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in

- (ii) which the responsible person is authorised to sell or supply alcohol), or drink as much alcohol as possible (whether within a time limit or otherwise);
  - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
  - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
  - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
  - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
3. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
4. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) 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 either—
- (a) a holographic mark, or
  - (b) an ultraviolet feature.
5. The responsible person must 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;
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
  - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”
6. (1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- (2) For the purposes of the condition set out in paragraph 7(1) —
- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - (b) “permitted price” is the price found by applying the formula —

$$P = D + (D \times V)$$

where—

- (i) P is the permitted price,

- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
  - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—
    - (i) the holder of the premises licence,
    - (ii) the designated premises supervisor (if any) in respect of such a licence, or
    - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
  - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
  - (3) Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
  - (4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
  - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.
  - 7. (a) Admission of children (under the age of 18) to any exhibition of films must be restricted in accordance with the film classification applied by the body designated as the authority under Section 4 of the Video Recordings Act 1984.
  - (b) Where the film classification is not specified or where the Licensing Authority notifies the licence holder that Section 20(3) (b) applies to the film in question, admission of children must be restricted in accordance with any recommendations made by the Licensing Authority.
  - 8. Any person used to carry out a security activity as required under any condition of this licence/certificate must be licensed or authorised to do so by the Security Industry Authority.
- 5.** The sub-committee will need to consider the hours of operation proposed in relation to the licensable activities in the light of the promotion of the licensing objectives, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential and other commercial properties including other licensed premises, the history of the management of the premises and how it is proposed to be run in the future, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities. These issues, and any other relevant ones, may be explored at the hearing.
- 6. Human Rights Act 1998**
- 6.1** The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of

association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions are explained below. Essentially, they require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.

- 6.2 Under Article 6, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The procedures established by this Council for hearings under the Licensing Act 2003 are compliant with Article 6.
- 6.3 Under Article 8, "everyone has the right to respect for his private and family life, his home and his correspondence". This right may not be interfered with except in accordance with the law and as may be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Licensing Act cases this means that the sub-committee must have regard to the effect of its decisions on local residents, and balance their interests against those of the public at large (e.g. the customers of the premises under consideration) and the people operating the business from the premises.
- 6.4 Under Article 11, "everyone has the right to freedom of peaceful assembly and to freedom of association with others" except where it is lawful to restrict that freedom in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". In Licensing Act cases this means, for example, that the sub-committee is entitled to impose conditions to ensure that patrons of licensed premises do not unreasonably disturb others living or working nearby. Again, the sub-committee should balance the competing interests.
- 6.5 Article 1 of the First Protocol (that is, the first amendment to the Convention) says that every natural or legal person (meaning a human being or a company) is entitled to peaceful enjoyment of his possessions, except where the law provides for restrictions on that right in the public interest. This means, for example, that it is compliant with the Convention to impose restrictions, such as those provided in the Licensing Act 2003, upon business premises where it is in the public interest to do so. On the other hand the same applies to the owners and occupiers of neighbouring premises.

## **7. Appeals**

If the sub-committee imposes conditions on the licence with which the applicant disagrees, or modifies the licensable activities permitted or refuses to specify a person as a designated premises supervisor, he or she may appeal within 21 days of notification of the decision to the Magistrates' Court. The applicant may also appeal if an application for a premises licence is rejected. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the licensing authority ought to have imposed different or additional conditions or excluded a licensable activity or refused to specify a person as a designated premises supervisor. 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.

## **8. Review Provisions**

If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable any person, 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.

## **9. Police Closure**

A senior police officer may close any premises for 24 hours (this can be extended) where s/he reasonably believes there is or is likely imminently to be disorder on, or in or in the vicinity of the premises and their closure is necessary in the interests of public safety. Closure can also be affected if public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance

## **10. Surveillance Camera Code of Guidance-June 2013**

Where a relevant authority has licensing functions and considers the use of surveillance camera systems as part of the conditions attached to a licence or certificate, it must in particular have regard to guiding principle one in this code. Any proposed imposition of a blanket requirement to attach surveillance camera conditions as part of the conditions attached to a licence or certificate is likely to give rise to concerns about the proportionality of such an approach and will require an appropriately strong justification and must be kept under regular review. Applications in relation to licensed premises must take into account the circumstances surrounding that application and whether a requirement to have a surveillance camera system is appropriate in that particular case. For example, it is unlikely that a trouble-free community pub would present a pressing need such that a surveillance camera condition would be justified. In such circumstances where a licence or certificate is granted subject to surveillance camera system conditions, the consideration of all other guiding principles in this code is a matter for the licensee as the system operator.

Guiding principle one states:

Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.

Legitimate aim and necessity are considered in relation to the four licensing objectives which are set out elsewhere within this report if the Committee is considering conditioning any premises licence with the installation of a CCTV surveillance system.

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### **Financial implications:**

The only financial implication is if an appeal is made against the decision, with the possibility of court cost.

### **Legal implications:**

Legal implications are included within the report.