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Application for the grant of a premises licence under the Licensing Act 2003

Report summary:

The report summarises an application for the grant of a new 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 allow the sale of alcohol for consumption OFF the premises at Exmouth Parade Mini Market, 5 Parade, Exmouth EX8 1RS.

Reason for recommendation:

To comply with statutory processes.

Officer: Licensing Officer Lesley Barber, lesley.barber@eastdevon.gov.uk

Portfolio(s) (check which apply):

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

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

APPENDIX A – Licensing application

APPENDIX B – Plan of premises

APPENDIX C – Location plan & photo

APPENDIX D – Representations received

APPENDIX E – Responses to Notice of Hearing

APPENDIX F – Operating Schedule

APPENDIX G – Conditions agreed between applicant and Police.

APPENDIX H - Representation received including a list of names in support

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1 Description of Application

- 1.1 An application has been received from Mr Saravanan Thayanathan for a new premises licence to permit the sale of alcohol for consumption OFF the premises only.
- 1.2 The application is provided at **APPENDIX A**.
- 1.3 The proposed timings and licensable activities applied for are as follows:

Sale of alcohol:	Monday to Sunday - 24 hours
Opening hours:	Monday to Sunday - 24 hours
- 1.4 The application seeks to licence the premises formerly known as the 'just a pound' store. The proposed use is described within the application as 'a 24hr general store and off licence'. The unit is currently empty and not yet trading.
- 1.5 A plan of the proposed licensed premises is provided at **APPENDIX B**.
- 1.6 A plan of the area is provided at **APPENDIX C** along with photos of the premises as it is currently. The premises can be identified by the red banner above the door, along with the Licensing Act public notice (blue) attached to the front of the windows.
- 1.7 The premises is located within a row of business premises, between the premises formerly trading as Popworld nightclub and the Fuji film shop. It sits close to The Strand pub and across the roundabout from The Powder Monkey pub (a Wetherspoons premises).
- 1.8 The adjacent nightclub is not currently open or trading as a licensed premises. It most recently traded as Popworld, prior to that it was known as 'Fever & Boutique'. Whilst not

currently open for business the venue retains a premises licence which would allow licensable activities to recommence at short notice.

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Police
Representation received – agreed position reached with the applicant.
- 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 and Responses to Notices of Hearing

- 3.1 Representations have been received from Devon & Cornwall Police, Exmouth Town Council and one other party. Details of all representations are attached at **APPENDIX D**.
- 3.2 A representation received included a list of names & addresses of individuals who appear to be in support of the representation submitted to this Authority. The representation, including the list of all names, is included at **APPENDIX H**.
- 3.3 Details of the responses to the statutory Notice of Hearing are attached at **APPENDIX E**.
- 3.4 Exmouth Town Council have responded to the Notice of Hearing with additional comment in support of the application, included at **APPENDIX E**.

4 Proposed Operating Schedule

- 4.1 The conditions offered by the applicant in the operating schedule are attached at **APPENDIX F**.
- 4.2 The Police Licensing Officer has raised a representation under the Prevention of Crime & Disorder and Protection of Children from Harm licensing objectives. The Police are seeking an amendment to various conditions offered by the applicant in their operating schedule, along with the addition of further conditions, to meet the licensing objectives. The Police representation, along with the agreement from the applicant's agent can be viewed within **APPENDIX D**.

4.3 **APPENDIX G** lists the amended conditions agreed between the applicant and the Police. A number of conditions are to be removed (shown in red) and replaced with other conditions. Two additional conditions are also agreed.

5 Relevant Licensing Policy Considerations & Relevant Section 182 Guidance issued under Licensing Act 2003.

Licensing Objectives

5.1 Section 3.1.1 of the EDDC Statement of Licensing 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.

Conditions

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

5.5 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

5.6 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.

5.7 Section 10.2 of the Policy states: There is no presumption within the Act for longer opening hours over objections from local residents and businesses located in the vicinity of licensed premises but the licensing authority will consider licensing hours in the interests of avoiding a concentration of disturbance while ensuring that nuisance is minimised to local residents. Shops and public houses will generally be permitted to sell alcohol during the hours they intend to open.

- 5.8 Section 10.3 of the Policy states: In considering relevant representations, the licensing authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.
- 5.9 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.

Door Supervisors

- 5.10 Section 14.2 of the Policy states: The licensing authority having regard to advice from relevant responsible authorities may consider that certain premises require strict supervision for exceptional reasons relating to the licensing objectives to prevent crime and disorder and public nuisance. In such cases, if relevant representations are made the licensing authority may impose a condition that licensed door supervisors must be employed at the premises either at all times or at such times as certain licensable activities are being carried out.

Nuisance

- 5.11 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

- 5.12 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.

- 5.13 **Guidance** issued under Section 182 (section 10) Licensing Act 2003 in relation to **conditions** 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.

It is perfectly possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

The 2003 Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

Conditions should be determined on a case-by-case basis and standardized conditions which ignore these individual aspects should be avoided.

Licensing authorities should only impose conditions which are appropriate and proportionate for the promotion for the licensing objectives.

5.14 Guidance issued under Section 182 (Section 9.4) Licensing Act 2003 in relation to ‘**relevant, vexatious and frivolous representations**’ states:

A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.

5.15 **Guidance** issued under Section 182 (Sections 10.13 – 10.15) Licensing Act 2003 in relation to ‘**hours of trading**’ states:

Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with 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.

Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

6. Observations

6.1 The application being considered is for the grant of a Premises Licence to allow the sale of alcohol 24 hours day, seven days a week.

6.2 The proposed licensed premises sits close to other premises within the town centre which are licensed for the sale of alcohol for consumption ON the premises. These premises are referred to in point 1.7 of this report.

6.3 There are two premises licenced for consumption OFF the premises in nearby Rolle St. One is a Premier J.C Stores and one a Tesco Express. Both are licensed for the sale of alcohol for consumption OFF the premises.

6.4 The nearby off licence premises are licensed as follows:

Tesco Express: 06:00-23:00 daily
Premier J.C Stores: 08:00-23:00 daily

The details above are provided for information only, the sub-committee will be aware that the number of licensed premises in an area or the current licensed hours of these premises should not restrict the granting of another licence and that each application should be considered on its own merits.

6.5 The representation set out in full at **APPENDIX H** is submitted by an individual, Mr Kuhananthan. He is both the Premises Licence Holder (being a director of the company holding the licence) and the Designated Premises Supervisor at nearby premises Premier J.C Stores in Rolle Street, referred to at 6.4 of this report.

6.6 Although no response to the Notice of Hearing has been received from Mr Kuhananthan, his original written representations will have to be considered by the committee (**APPENDIX D**).

6.7 The representation received from Exmouth Town Council suggests that granting a 24 hour licence could be setting a precedent. The sub-committee will be aware that the application for

the Exmouth Parade Min Market must be judged on its own merits, taking into account the steps proposed by the applicant to meet the licensing objectives, along with the additional safeguards agreed with the Police.

- 6.8 Mr Saravanan Thayanathan is nominated as the Designated Premises Supervisor. Mr Thayanathan holds a Personal Licence, issued by City of Bristol Council.
- 6.9 The Sub-Committee are asked to note a small administrative error within the application form itself. The last name of the applicant (THAYANANTHAN) has been spelt incorrectly within the application form. The spelling of the name within this report is correct and has been verified by way of the applicant's passport.
- 6.10 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:
 - (a) **Section 19 - Mandatory conditions relating to the supply of alcohol**

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 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.
3. (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.

(b) Section 21 – Mandatory Condition relating to the provision of Door Supervisors

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.

Financial implications:

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

Legal implications:

Legal implications are included within the report.