



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

Date of Meeting: 10 April 2019

Public Document: Yes

Exemption: None

Agenda item: **Item 6**

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

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

Recommendation: Recommendation

That members consider an application for the grant of a new premises licence to allow the sale of alcohol ON and OFF the premises & late night refreshment ON the premises at Mansell Raceway, Dunkeswell, Honiton EX14 4AH

Reason for recommendation: To comply with statutory processes.

Officer: Lesley Barber – lesley.barber@eastdevon.gov.uk

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.

Equalities impact: Low Impact

Risk: Low Risk

Links to background information: **Appendices**

- Appendix A – Licensing Application
- Appendix B – Plans of the premises
- Appendix C – Location plan
- Appendix D – Representations received
- Appendix E – Responses to the Notice of Hearing
- Appendix F – Operating Schedule

Link to Council Plan: Not applicable

1 Description of Application

1.1 An application has been received from Mansell Raceway Ltd, Dunkeswell, Honiton for a new premises licence.

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

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

Late night refreshment:	Thursday – Sunday	23:00 – 00:00
Sale of alcohol:	Monday – Wednesday	10:00 - 21:30
	Thursday – Sunday	10:00 –23:30
Opening hours:	Monday – Wednesday	10:00 - 22:00
	Thursday – Sunday	10:00 - 00:00

1.4 The application seeks to licence the 1st floor only of the Mansell Raceway building. The proposed licenses area incorporates a fixed bar structure along with areas of seating. The building is adjacent to the Mansell Raceway Outdoor Karting circuit, situated on the edge of Dunkeswell airfield.

1.5 A plan of the premises along with a plan to show the layout of the site, including the outdoor area for the consumption of alcohol is provided at **APPENDIX B**

1.6 A plan of the area incorporating the Mansell Raceway building, the airfield and the villages of Sheldon and Dunkeswell is provided at **APPENDIX C**

2 Statutory Bodies' Response

2.1 Devon & Cornwall Police

No representations have been received.

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 ten local residents, Dunkeswell Parish Council and Sheldon Parish Council. Details of their representations are attached at **APPENDIX D**.

3.2 Details of the responses to the statutory Notice of Hearing are attached at **APPENDIX E.**

4 Proposed Operating Schedule and Mediation

4.1 The conditions offered by the applicant in the operating schedule are attached at **APPENDIX F.**

4.2 A mediation meeting chaired by the Licensing Authority was held at Blackdown House, Honiton on Thursday 28 March. The meeting was attended by Mr Njil Lovell representing Mansell Raceway and four interested parties, some of whom were representing other interested parties who could not attend. Concerns were raised regarding the hours applied for and particularly the proposed closing times of the premises. The applicant indicated he would be willing to consider some changes to the closing times, all parties felt this was positive. However no agreed position could be reached regarding this.

4.3 The applicant suggested he would be able to provide a dedicated contact number for local residents to enable anyone to contact a member of staff at the premises should they have any concerns whilst the premises was being used for licensable activities. However, since not all interested parties were present at the mediation and some were representing the interests of others no formal written agreement was reached.

4.4 Those attending the mediation meeting had expressed concerns that the licensing hours requested may extend the trading hours of the business beyond what is allowed under planning regulations. The applicant's representative advised that the planning restrictions relate to the use of the karting track rather than the opening hours of the premises. The Licensing Authority confirmed that this licensing application would be assessed on its own merits, taking into consideration the four licensing objectives only. Any planning restrictions would not be a matter the licensing sub-committee to consider.

4.4 The applicant will be represented at the hearing by Njil Lovell (Manager) and Amy Cater (Tozers Solicitors).

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.

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 10.4 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

- 5.8 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

- 5.9 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.
- 5.10 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 appropriate, 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.

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 application being considered is for the grant of a Premises Licence to allow:
- Late night refreshment - indoors
 - Sale of alcohol for consumption ON and OFF the premises
- 6.3 The applicant has taken advice from the Police prior to submitting the premises licence application. A number of conditions recommended by the Police have been included within the operating schedule (**APPENDIX F**). A number of measures will be put in place to prevent the sale of alcohol to persons who are to race on the karting track. This will include the use of a wristband system to identify anyone who is booked to race.
- 6.4 The application seeks to licence the inside of the premises for the sale of alcohol and the provision of late night refreshment. There will be no sale of alcohol made in the external areas. However, the application does seek to allow the consumption of alcohol outside. The area set aside for this is shown in green on the plan provided at **APPENDIX B**.
- 6.5 Although no response has been received from a number of the outstanding objectors their original written representations will have to be considered by the committee (**APPENDIX D**).
- 6.6 A number of objectors have responded to the notice of hearing indicating that they wish to attend the hearing to address the committee. Those who have responded and cannot attend have nominated others to represent them. Details of the response to notice of hearing and additional comments in support of the representations are attached at **APPENDIX E**.
- 6.7 In the Response to Notice of Hearing the applicant has proposed the following amendment:
- a hotline number of residents to contact the premises should they experience any disturbance whilst licensable activities are taking place
 - a reduction to the proposed hours on a Sunday, the sale of alcohol to cease at 21:30 rather than the 23:30 originally applied for
- 6.8 Mr Njil Lovell is nominated as the Designated Premises Supervisor. Mr Lovell holds a Personal Licence, issued by Torbay Council in 2005.
- 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.

(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.

Source: Section 19 Licensing Act 2003

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 which the responsible person is authorised to sell or supply alcohol), or
 - (ii) 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 a disability).
3. The responsible person shall ensure that free potable water is provided on request to customers where it is reasonably available.
4.
 - (1) The premises licence holder shall ensure that an age verification policy applies to 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; and

- (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.

Source: Section 19A Licensing Act 2003

(b) Section 20 - Mandatory condition relating to exhibition of films – not required
Children may only be admitted to films in accordance with the classification recommendations of the British Board of Film Classification, or as recommended by the licensing authority.

(c) Section 21 - Door Supervision – not Required
Where door supervisors are specified by condition, those individuals must be licensed by the SIA.

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.