

Report to: Licensing and Enforcement Sub Committee



Date of Meeting 22 May 2023

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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

Report summary:

The report summarises an application for the grant of a time limited 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 time limited premises licence to allow.

The exhibition of films, indoors and outdoors.

The provision of live music, outdoors.

The provision of recorded music, indoors and outdoors.

The supply of alcohol ON the premises only.

At Lypstone Manor Hotel, Courtlands Lane, Exmouth, EX8 3NZ.

Reason for recommendation:

To comply with statutory processes.

Officer: Licensing Officer Phillippa Norsworthy, PNorsworthy@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: Choose a risk level; Low Risk.

Links to background information

[Statement of licensing policy 2021-2026 - East Devon](#)

[Revised Guidance issued under section 182 of the Licensing Act 2003 \(publishing.service.gov.uk\)](#)

APPENDIX A – Licensing application.

APPENDIX B – Plans of premises.

APPENDIX C – Location plan.

APPENDIX D – Representations received.

APPENDIX E – Responses to Notice of Hearing.

APPENDIX F – Conditions offered by the applicant on the Operating Schedule.

APPENDIX G – Agreed conditions offered with the Police.

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 Michael Caines of Lympstone Manor Ltd for the grant of a time limited premises licence. This is a one off event proposed to take place on 12 July 2023. The application is to authorise regulated entertainment indoors and outdoors and the sale of alcohol for consumption ON the premises only.
- 1.2 Lympstone Manor is a 5 star country house hotel situated on the outskirts of Exmouth. The hotel already has a premises licence in place, but current permissions do not permit regulated entertainment outdoors.
- 1.3 The proposed event is a one day event and is being marketed as a ‘celebration of speed’. To include the showcasing of cars, motorbikes and powerboats and evening entertainment.
- 1.4 The application is provided at **APPENDIX A**.
- 1.5 The proposed timings and licensable activities applied for are as follows:
 - The exhibition of films (indoors & outdoors) 12.00 – 23.00.
 - The provision of live music (outdoors) 12.00 – 00.00.
 - The provision of recorded music (indoors & outdoors) 12.00 – 00.00.
 - The supply of alcohol ON the premises – 12.00 – 00.00.

Hours premises are open to the public – 12.00 – 00.00.

- 1.6 Plans of the premises and the location of the proposed site are provided at **APPENDIX B** and **APPENDIX C**.

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Police

Representation received. Agreed Position.

- 2.2 Devon & Somerset Fire & Rescue Service

No representations received.

- 2.3 Area Child Protection Committee and Local Safeguarding Children Board

No representations received.

- 2.4 Devon Trading Standards

No representations received.

- 2.5 East Devon District Council, Environmental Health Service

Representation received.

- 2.6 East Devon District Council, Planning & Countryside Service

No representations received.

- 2.7 Primary Care Trust

No representations received.

- 2.8 Home Office

No representations received.

3 Representations and Responses to Notices of Hearing

- 3.1 A representation was received from East Devon District Council's Environmental Health Service. Details of their representation are attached at **APPENDIX D**.

- 3.2 At the time of writing this report, the applicant has liaised with the Environmental Health Officer and the applicant has submitted a Noise Management Plan and are currently producing an Event Management Plan. The Event Management plan is due to be considered by the East Devon District Council's Safety Advisory Group. To date, the Licensing Authority have not yet received formal confirmation the applicant has reached an agreed position with Environmental Health.

- 3.3 In total TWO representations have been received from local residents. Details of their representation are attached at **APPENDIX D**.

- 3.4 The representations received refer to concerns regarding possible noise nuisance and therefore have been accepted as relevant representations under the licensing objective of the prevention of public nuisance.
- 3.5 A representation was received from Exmouth Town Council's Planning Committee. Details of their representation are attached at **APPENDIX D**.
- 3.6 The representation refers to concerns regarding possible noise nuisance from the playing of live music outdoors and therefore has been accepted as a relevant representation under the licensing objective of the prevention of public nuisance. Exmouth Town Council also raised concerns regarding possible crime and disorder and public safety, but these concerns were not substantiated within the representation.
- 3.7 Details of the responses to the Statutory Notice of Hearing are attached at **APPENDIX E**. At the time of writing this report only a response to the Notice of Hearing has been received from the applicant.
- 3.8 The applicant has confirmed they will be attending the hearing.

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 The Licensing Authority have not received any confirmation that the applicant has offered any mediation between themselves and the local residents or Exmouth Town Council who made representations.

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 Guidance issued under section 182 of the Licensing Act 2003.

6.1 Public Nuisance

The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may appropriate.

Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

6.2 Where representations are made

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

6.3 Relevant, vexatious and frivolous representations

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 business person 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. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

It is for the licensing authority to determine whether a representation (other than a representation from a responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This

may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

Licensing authorities should consider providing advice on their websites about how any person can make representations to them.

- 6.4 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

7. Observations

- 7.1 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'.
- 7.2 The application being considered is for the grant of a time limited Premises Licence to allow:
- Regulated Entertainment (indoors & outdoors).
 - Sale of alcohol for consumption ON the premises.
- 7.3 The applicant has come to an agreed position with the Devon & Cornwall Police Service and has liaised with the Environmental Health Service. Details of the agreed position with the Police is attached at **APPENDIX G**. Details of proposed conditions to be added to the operating schedule from Environmental Health are attached at **APPENDIX D**.
- 7.4 At the time of writing this report, no responses have been received from the TWO local residents and Exmouth Town Council, their original written representations will have to be considered by the Committee. (**APPENDIX D**).

- 7.5 At the time of writing this report, no responses to the Notice of Hearing have been received from the objectors.
- 7.6 In the Response to the Notice of Hearing the applicant has advised the following:
- Agreed to amend the application according to the proposals submitted from Devon & Cornwall Police Service. **(APPENDIX G)**.
- To produce and submit a Noise Management Plan to the satisfaction of the Environmental Health Service prior to the event taking place. **(APPENDIX D)**.
- To produce and present to the Committee an Event Management Plan, also to be considered by the East Devon District Council's Safety Advisory Group. This document has not been made available ahead of the hearing.
- 7.7 Alexander McEwan is nominated as the Designated Premises Supervisor. Mr McEwan holds a personal licence issued by the Cotswold District Council.
- 7.8 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 to 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

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

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 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 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 there is an appeal against the decision made, with the possibility of court costs.

Legal implications:

Legal implications are included within the report.