

Report to: Licensing and Enforcement Sub Committee



Date of Meeting 29 January 2025

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Exemption applied: None

Review date for release N/A

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

Report summary:

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

Is the proposed decision in accordance with:

Budget Yes ☒ No ☐

Policy Framework Yes ☒ No ☐

Recommendation:

That members consider an application for the variation of a premises licence for the premises known as Heydays at Unit 1 Sideshore, Queens Drive, Exmouth EX82GD.

The applicant seeks to add the sale of alcohol for consumption OFF the premises.

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

APPENDIX D – Representations received

APPENDIX E – Response from Police

APPENDIX F – Responses to Notice of Hearing

APPENDIX G – Copy of Current Premises Licence (PLWA0877)

APPENDIX H – Current licence conditions

APPENDIX I – Section 9: Statement of Licensing Policy

APPENDIX J – Pool of Conditions- Glassware & Bottles

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 Exe Exe Exe Ltd for a variation to premises licence PLWA0877 at Heydays, Unit 1 Sideshore, Queens Drive, Exmouth. These premises were formerly known as Mickeys Beach Bar & Patisserie Glacerie.
- 1.2 A location map is provided at **APPENDIX C**.
- 1.3 The application is provided at **APPENDIX A**.
- 1.4 The premises are currently licensed for a number of activities as follows:
 - The sale of alcohol for consumption ON the premises
 - Performance of live music
 - Playing of recorded music
 - Provision of late night refreshment
- 1.5 The variation application seeks to add the sale of alcohol for consumption OFF the premises. This will apply to one specific area of the premises only. It is referred to in the application as the bakery/retail space. This is the area of the premises formerly known as the Patisserie Glacerie. This is on the ground floor only.
- 1.6 Any alcohol sold for consumption OFF the premises from this area will be Monday to Sunday: 11:00 – 18:30 only.
- 1.7 Premises plans, submitted with the application, are provided at **APPENDIX B**. Three plans are provided in total:

- Site
- Ground floor
- First floor

- 1.8 Plans are submitted to clearly identify the area where the OFF sale of alcohol is proposed to take place. The area is identified by way of a solid green line on both the site and ground floor plans.
- 1.9 The first floor plan is provided for information only.
- 1.10 Other than identifying the proposed OFF sales area, the plans remain the same as the current approved plans. There is no extension to the overall licensed area and no amendment to the footprint of the building.

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Police
No representations. Additional information received from the Police Licensing Officer is provided at **APPENDIX E**.
- 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 Exmouth Town Council and two Exmouth residents. 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 F**, including a summary of key points submitted by all parties.

4 Proposed Operating Schedule

- 4.1 The current premises licence is provided at **APPENDIX G**. All existing licensable activities and the existing permitted hours will remain as they currently are.

- 4.2 The existing licence includes a number of conditions. These are set out at **APPENDIX H**.
- 4.3 The conditions at Annexe 2 (**APPENDIX H**) are those offered when the licence was initially applied for in 2021, or conditions agreed at the time with the Responsible Authorities.
- 4.4 The conditions at Annexe 3 (**APPENDIX H**) were added as a result of a licensing sub-committee hearing, on grant of the initial licence in 2021.
- 4.5 The applicant is not seeking to remove any of the existing conditions, they will remain.
- 4.6 No additional conditions have been offered within the variation application. Reference is made within the application to CCTV, a Challenge 25 policy and also noise levels. The licence already includes conditions relating to these matters.

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.

Nuisance

- 5.6 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.

Cumulative Impact

- 5.7 Section 9.1 – 9.8 of the Policy refers to cumulative impact of licensing premises on the promotion of the licensing objectives. This is set out at **APPENDIX I.**

Pool of Conditions

- 5.8 When submitting a new or variation application applicants are required to set out the steps they intend to take to promote the licensing objectives.
- 5.9 East Devon District Council has produced a pool of licensing conditions to assist applicants in completing their application. This is intended to provide a range of conditions to cover most eventualities. Applicants should consider offering conditions that are appropriate to their particular application.
- 5.10 The Pool of Conditions are set out within Appendix C of the Statement of Licensing Policy.
- 5.11 Representations received refer to suggested conditions contained within the Pool of Conditions, specifically those relating to glassware and bottles at Section 32. Provided at **APPENDIX J.**

6 Guidance issued under Section 182 Licensing Act 2003 (revised December 2023)

Public Safety

- 6.1 Section 2.8 of the Guidance states:

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

6.2 Public Nuisance

Section 2.21 of the Guidance states: 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.

Representations

- 6.3 Section 9.4 of the Guidance 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.

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.

- 6.4 Section 9.9 of the Guidance states: 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.

The Role of Responsible Authorities

- 6.5 Section 9.12 of the Guidance states: 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.

Imposing conditions

- 6.6 Section 10.8 of the Guidance states: The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.
- 6.7 Section 10.9 of the Guidance states: It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

6.8 Proportionality

Section 10.10 of the Guidance states: The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.

6.9 Hours of Trading

Section 10.13 of the Guidance states: The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. 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.

- 6.10 Section 10.14 of the Guidance states: Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

The need for licensed premises

- 6.11 Section 14.19 of the Guidance states: There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is

not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

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 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 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.

(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

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 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 the applicant appeals against the decision made, with the possibility of court costs.

Legal implications:

Legal implications are set out within the report and require no further comment.