

Licensing Sub-Committee – Thursday 3 December 2009

TO DETERMINE THE FOLLOWING APPLICATION RECEIVED UNDER THE LICENSING ACT 2003 FOR THE VARIATION OF A PREMISES LICENCE WHEREBY RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED FROM A RESPONSIBLE AUTHORITY AND INTERESTED PARTIES AND HAVE NOT BEEN WITHDRAWN. AS A CONSEQUENCE THE MATTER MUST BE DETERMINED BY THE LICENSING SUB COMMITTEE.

Report of the Licensing Manager

Statutory Powers: Licensing Act 2003

Financial Implications: There are no direct financial implications to the Council from this Report

Purpose: To determine an application for the variation of a Premises Licence at **The Barrel House, 59-59A High Street, Totnes, TQ9 5PB** in accordance with Section 35 of the Licensing Act 2003.

There is a link to the Council's priorities of CP2: 'Creating the conditions for the growth and maintenance of quality economic activity' and CP3: 'Maintaining the district's distinctive environment whilst enabling access and sensitive development'.

RECOMMENDATION

That the Sub-Committee consider the application to vary the Premises Licence and make a determination in respect of this application, namely to:

- i grant the application as submitted, subject to any Mandatory Conditions required;**
- ii modify the conditions of the licence;**
- iii reject the whole or part of the application;**
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

in line with the licensing objectives (Section 4) contained within the Licensing Act 2003.

Background/The Issues

1 Summary of Application

- 1.1 An application has been received from Mr Harbans Singh-Matto to vary the Premises Licence of **The Barrel House, 59-59A High Street, Totnes, TQ9 5PB**. A copy of the existing Premises Licence is attached (**Appendix 'A'**) and the variation application with a plan of the premises are attached (**Appendix 'B'**).
- 1.2 The Barrel House is currently trading as a public house. The request from the applicant is to increase the capacity of the main dining/events space in the ballroom upstairs from 60 to 120 persons.
- 1.3 During the advertising period the Licensing Department received representations from the Police, the Fire Service and an interested party living in the vicinity. Environmental Health have also made an observation. The representations and comments from Environmental Health are attached (**Appendix 'C'**).
- 1.4 As the applicants wish to significantly increase their capacity which may have an adverse impact on the licensing objectives, under the Licensing Act they are required to apply for a variation to their premises licence. As regards to this application, only Interested Parties or Responsible Authorities may make a representation.
- 1.5 It has not been possible for the Licensing Department to mediate with all parties therefore a satisfactory conclusion has not been possible. However, the Police have indicated that a CCTV condition would address the Prevention of Crime and Disorder objective and the Fire Service have suggested that a maximum capacity of 90 persons on the first floor would address the Public Safety objective.

(Please note that due to the amount of paperwork contained within these appendices, full copies have only been circulated to the Sub-committee Members. Any Interested Parties who would like to receive full (or part) copies are asked to contact Member Support Services on (01803) 861273.)

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Constabulary
A representation has been received (**Appendix C**)
- 2.2 Devon and Somerset Fire & Rescue Service
A representation has been received (**Appendix C**)
- 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 South Hams District Council, Environmental Health Department
Some comments have been made (**Appendix C**)
- 2.6 South Hams District Council, Planning Department
No representations have been received

3 Summary of Representations / Objections

- 3.1 The Fire Service are primarily concerned about the lack of alternative means of escape. They would consider an increase in capacity to 90 persons acceptable, as long as certain conditions are adhered to.
- 3.2 The Police have requested that a CCTV system is installed to satisfy the Prevention of Crime and Disorder licensing objective.
- 3.3 Environmental Health have made some observations with regard to noise complaints against the Barrel House, which they are currently investigating. These relate to noise from people and noise from music.
- 3.4 We have received one objection from an Interested Party living in the vicinity. They are concerned that any increase to the capacity of the premises would bring more disturbance from the noise of music and people.
- 3.5 The representations are set out in **Appendix 'C'**.

4 Relevant Licensing Policy Considerations

Licensing Objectives

- 4.1 Section 2.1 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 objectives are the only matters to be taken into account in determining the application and any conditions attached must be necessary to achieve the licensing objectives.
- 4.2 Section 2.2 of the Policy states: A licence will only be granted where the Licensing Authority is satisfied that these objectives have been met.
- 4.3 Section 2.3 of the Policy lists the kind of measures the Licensing Authority will be expecting to see taken into account to promote the objectives.

Conditions

- 4.4 Sections 2.5 & 2.6 of the Policy sets out additional legislation, strategies, policies and guidance that the Licensing Authority will have regard to. Section 4 of the policy sets out what the Sub-Committee should consider before imposing conditions on a licence.
- 4.5 The Guidance issued under Section 182 Licensing Act 2003 also states:
- 4.6 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 necessary 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.
- 4.7 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

Licensing Hours

- 4.8 Section 6.1 of the Policy states: The licensing authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with hours beyond midnight it is more likely that relevant representations will be made unless there are higher standards of control included within operating schedules in order to promote the licensing objectives especially for premises which are situated near residential areas. There is no presumption within the legislation for longer opening hours.
- 4.9 Section 6.2 of the Policy states: When relevant representations are made to the Licensing Authority by interested parties or responsible authorities, concerning the prevention of crime and disorder licensing objective, the discretion of the licensing authority will be engaged. When considering the representations the licensing authority will give due weight to the alcohol related violence statistics, especially on the Friday and Saturday evening and generally expect premises used for the sale of supply of alcohol or the supply of hot food or hot drinks that wish to operate after midnight, to have CCTV installed inside and outside the premises included in their operating schedule.

- 4.10 Section 6.3 of the Policy states: In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.
- 4.11 Section 6.4 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.

Children

- 4.12 Section 7.1 of the Policy states: The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. Access by children to all types of premises will not be limited unless it is considered necessary to do so in order to protect them from harm.
- 4.13 Section 7.2 of the Policy states: When deciding whether to limit access to children or not the licensing authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children would include premises: -
- ❑ where entertainment of an adult or sexual nature is provided
 - ❑ where there is a strong element of gambling taking place
 - ❑ with a known association with drug taking or dealing
 - ❑ where there have been convictions of the current management for serving alcohol to those under 18
 - ❑ with a reputation for allowing underage drinking

5. Key Issues

- 5.1 The Interested Party is primarily concerned that there will be an increase in noise disturbance if more people are permitted on the premises
- 5.2 The Fire Service would have no objection to this application if the number of persons requested was reduced to 90.
- 5.3 The Police require the applicant to install a CCTV system. If this is done they would have no objection to the application.
- 5.4 Environmental Health have some concerns about noise from the Barrel House which they are currently investigating. An increase in capacity may have an adverse effect on noise from the premises.

- 5.5 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.

6 Legal Implications

- 6.1 The Act requires Mandatory conditions to be imposed (if applicable) on the licence, the wording of which is prescribed by the Act but may be summarised as follows:

(a) Section 19 - Mandatory conditions relating to the supply of alcohol

No alcohol may be supplied unless there is a Designated Premises Supervisor who also holds a personal licence.

Every supply of alcohol under a premises licence must be made or authorised by a personal licensee

(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.

- 6.2 As there are relevant representations, in respect of this variation application, a 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 interested parties or responsible authorities). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.
- 6.3. 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.
- 6.4. The Act requires (Section 35) that in determining a variation application, the committee takes any of the following steps which are necessary for the promotion of the licensing objectives. The steps are:
- i) grant the application as submitted, subject to any Mandatory Conditions required;
 - ii) modify the conditions of the licence;

iii) reject the whole or part of the application;
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The sub-committee must give its reasons for its decision to take any of these steps. Similarly, if the application is rejected, the sub-committee must give its reasons.

- 6.5 The committee will need to consider the hours of operation proposed, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential properties, the history of the management of the premises, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities, public transport, taxi availability, the right the applicant has to operate a business and balancing the rights of residents to the quiet enjoyment and privacy of family life. That South Hams relies on tourism, with the population in the district doubling in the summer months with holidaymakers both from this country and abroad. The majority of visitors are families with young children and retired people, the very segment of society who would perhaps be deterred by anti-social behaviour. These issues, and any other relevant ones, may be explored at the hearing in so far as it reflects the four licensing objectives.
- 6.6 If the sub-committee rejects the application, or modifies the conditions of the licence, the applicant or Interested Parties or Responsible Authorities may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may also appeal if they believe that the licence should not have been varied, or that, when varying the licence, the Licensing Authority ought not to have modified the conditions, or ought to have modified them in a different way. 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.
- 6.7 If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, 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.

7. Risk Assessment

7.1 The following are the significant risks and opportunities identified;

Opportunity	Issues / Obstacles	Benefits
<p>To review the application in line with:</p> <ul style="list-style-type: none"> • The Licensing Act; • National Guidance issued by the Secretary of State, and, • The South Hams District Council Statement of Licensing Policy. 	<p>The need to address the four Licensing Objectives written within the Act namely:</p> <ul style="list-style-type: none"> • The prevention of Crime and Disorder; • Public Safety; • The prevention of public nuisance; and • The Protection of children from harm. <p>(Also listed alongside as a benefit)</p> <p>Due consideration should be given to Guidance issued by the Secretary of State under section 182 of the said Act 2003.</p> <p>Due consideration should be given to the Council's Licensing Policy Statement.</p> <p>Failure to adequately consider these issues could result in the Council facing an appeal to the Magistrates Court.</p>	<p>To be able to give consideration to representations made by 'Interested Parties' and / or 'Responsible Authorities' in line with the Licensing Objectives, namely:-</p> <ul style="list-style-type: none"> • The prevention of Crime and Disorder; • Public Safety; • The prevention of public nuisance; and • The Protection of children from harm.
<p>To create an increased opportunity for employment in the district.</p>	<p>The above must always take precedence.</p>	<p>As detailed above.</p>
<p>An opportunity to maintain the districts distinctive environment whilst enabling access and sensitive development.</p>	<p>The above must always take precedence.</p>	<p>As detailed above.</p>

To consider whether the proposal would promote tourism. The population doubles in the summer months with tourists and international visitors who are, in the main, families with young children and retired people – the very segments of society who would perhaps be deterred by anti-social behaviour.	The above must always take precedence.	As detailed above.

8. Conclusion

- 8.1 For the Licensing Sub-committee to determine the application for the variation of this Premises Licence and give reasons for the decision made.

Graham Munson
Licensing Manager

Licensing Sub-Committee
3 December 2009

Background Documents:

- ❑ Responses to Notices of Hearing from Interested Parties and Responsible Authorities.
- ❑ Summary of Key Points
- ❑ Guidance on Meeting the Licensing Objectives
- ❑ The Licensing Act 2003
- ❑ Guidance issued under Section 182 of the Licensing Act 2003
- ❑ The District Council's Statement of Licensing Policy
- ❑ Letter received from Devon & Somerset Fire & Rescue Service on 12th October 2009, objecting to any increase in capacity from 60 persons. This has been superseded by letter received from Fire Service on 26th October 2009 (see Appendix 'C').