

Licensing Sub-Committee – Tuesday 4 December 2007

TO DETERMINE THE FOLLOWING APPLICATION RECEIVED UNDER THE LICENSING ACT 2003 FOR A NEW PREMISES LICENCE WHEREBY RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED FROM INTERESTED PARTIES AND HAVE NOT BEEN WITHDRAWN.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 a new Premises Licence at **The White House, Chillington, Kingsbridge** in accordance with Section 18 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 for a new style 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;**
- iii exclude any of the licensable activities to which the application relates;**
- iv to refuse to specify a person in the licence as the premises supervisor;**
- v reject the application,**

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 Mrs Tamara Costin and Mr Matthew Hall for the grant of a New Premises Licence for **The White House, Chillington, Kingsbridge**. A copy of the application is attached (**Appendix 'A'**).

1.2 The White House was run as a hotel for many years until 2001 when planning permission was granted for the change of use to a private dwelling.

Planning permission has recently granted Change of use of dwelling to guesthouse.

The premises are situated in Chillington on the A379 from Kingsbridge to Dartmouth. The house is situated on the edge of a residential area with the garden adjoining neighbours' gardens and the car parking area in front of a further residential property. Access to the premises is from the A379 down a single track beside the house. The House itself currently has parking for about ten cars.

Residents are concerned that due to the close proximity of their properties to the White House that noise will emanate from the premises and cause nuisance. Egress from the premises is also considered to be hazardous.

1.3 During the advertising period the Licensing Department received thirteen letters of representation from residents. It will be up to the Committee to determine if the persons making representations live within the vicinity of the premises, although the Licensing Department are satisfied that this is the case.

1.4 The Licensing officer visited the applicant and a couple of the residents to seek ways in which the concerns could be addressed. The discussion was very useful and it appeared that by taking the outdoor music away and only allowing music in certain areas of the premises it would address the concerns, however further representations were received and mediation then became impractical.

1.5 The main concerns from the residents are the noise element from music inside and outside and parking issues. Residents are also mindful that the smoke free legislation came into force on the 1st July 2007 meaning persons would need to be outside to smoke.

1.6 Proposals from the applicants have been circulated for consideration but not all parties are in agreement with these suggestions. It may be the case whereby further additional information is circulated prior to the hearing for discussion.

- 1.7 As the applicant wishes to provide retail sale of alcohol and provide entertainment under the Licensing Act, only Interested Parties or Responsible authorities may make representation.
- 1.8 A plan of the location will be available at the hearing showing the premises and other occupied properties in the vicinity.
- 1.9 It has not been possible for the Licensing Department to mediate with all parties therefore a satisfactory conclusion has not been possible.

(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
No Representations have been received
- 2.2 Devon 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 South Hams District Council, Environmental Health Department
No representations have been received
- 2.6 South Hams District Council, Planning Department
No representations have been received

3 Summary of Representations / Objections

- 3.1 As mentioned above, representations have been received from thirteen residents, but none from the Responsible Authorities. Their representations are set out in **Appendix 'B'**

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 are the only matters that the Sub Committee should take into account when determining the application and any conditions to be attached to the licence must be lawful, necessary, appropriate, relevant, proportionate, realistic, achievable and within the control of the applicant to accomplish 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 conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions that are necessary to promote the licensing objectives arising out of the consideration of the representations.
- 4.7 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises due to them being in the immediate vicinity of the premises.

Licensing Hours

- 4.8 Section 6.1 of the Policy states: The LA will deal with the issue of licensing hours on the individual merits of each application. However, when dealing with licensing hours beyond midnight it is more likely that relevant representations will be made, unless there are higher standards of control within operating schedules to promote the licensing objectives, especially for premises which are situated near residential areas.
- 4.9 Section 6.2 of the Policy states: When considering the representations the Licensing Authority will give due weight to the alcohol related violence statistics, especially on a Friday and Saturday evening and generally expect premises used for the sale or 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.
- 4.12 Section 6.5 of the Policy states: The Licensing Authority recognises that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when large numbers of people tend to leave licensed premises at the same time. Longer opening hours for the sale of alcohol with longer time for consumption (which is not a licensable activity) before closing time may therefore be considered as an important factor in reducing friction at late night food outlets, taxi ranks and other sources of transport in areas where there have already been incidents of disorder and disturbance.

Children

- 4.13 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.

4.14 Section 7.2 of the Policy states: When deciding whether or not to limit access to children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children 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 minors
- with a reputation for allowing underage drinking

5. Key Issues

5.1 The residents have raised their concerns about music emanating from the premises in a residential area.

5.2 Some representees acknowledged their concerns would be addressed should music be refrained from outside and only permitted in certain rooms inside the premises.

5.3 Access to the A379 from the premises is hazardous due to restricted visibility.

5.4 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 the new premises 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 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 18) that in dealing with a new application, the committee takes any of the following steps which are necessary for the promotion of the licensing objectives. The steps are:
- (a) To grant the Licence subject to:-
 - i subject to any Mandatory Conditions required;
 - ii modify the conditions;
 - iii exclude any of the licensable activities to which the application relates;
 - iv to refuse to specify a person in the licence as the premises supervisor;
 - v reject the application,
- 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>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>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>	
To create an increased opportunity for employment in the district.	The above must always take precedence.	As detailed above.
An opportunity to maintain the districts distinctive environment whilst enabling access and sensitive development.	The above must always take precedence.	As detailed above.
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 a new Premises Licence and give reasons for the decision made.

Graham Munson
Licensing Manager

Licensing Sub-Committee
4 December 2007

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