

AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

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NAME OF COMMITTEE	Licensing Sub-Committee
DATE	Thursday 9 September 2010
REPORT TITLE	Application for a new Club Premises Certificate
Report of	The Licensing Manager
WARDS AFFECTED	Brixton and Wembury

Summary of report:

To determine an application for a new Club Premises Certificate at **Plymstock Albion Oaks Rugby Club, Horsham Playing Fields, Staddiscombe Road, Plymstock, Plymouth, PL9 0DF**, in accordance with Section 72 of the Licensing Act 2003.

Financial implications:

There are no direct financial implications to the Council from this Report unless the matter is appealed to the Magistrates Court.

RECOMMENDATIONS:

That the Sub-Committee consider the application for a Club Premises Certificate together with the amendments agreed following representations and to make a determination in respect of this application, namely to:

a) grant this certificate subject to

i) the conditions mentioned in section 72 (2)(a) [i.e. as applied for] modified to such an extent as the authority considers necessary for the promotion of the licensing objectives, and

ii) any conditions which must under section 73 (2) to (5) or 74 be included in the Certificate [i.e. The supply of alcohol must be made at a time when the premises are open for the purposes of supplying alcohol,

in accordance with a club premises certificate, to members for the club for consumption on the premises; any alcohol for consumption off the premises must be in a sealed container; and any supply of alcohol for consumption off the premises must be made to a member of the club in person.]

- b) to exclude from the scope of the certificate any of the qualifying club activities to which the application relates;**
- c) reject the application**

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

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1. BACKGROUND

- 1.1 The Licensing Authority received an application for a new club premises certificate on 26th July 2010 from Plymstock Albion Oaks Rugby Club. The application is for the sale and supply of alcohol for consumption on and off the premises between the hours of 7pm and 10.30pm Monday to Friday and from 11am to 10.30pm on Saturday and Sundays.
- 1.2 With regard to the above application, only interested parties, responsible authorities or district councillors may make representations.
- 1.3 The application has received a relevant representation from the Police in relation to the Prevention of Crime and Disorder, Prevention of Public Nuisance and Protection of Children from Harm licensing objectives. The Police have requested that the sale of alcohol is restricted to consumption on the premises only as well as the addition of further conditions. The applicant has agreed to these amendments.
- 1.4 Both parties have agreed, subject to these amendments being implemented on the licence that a hearing is unnecessary.
- 1.5 The new club premises certificate application can be found in Appendix A and the agreed amendments are in Appendix B.

(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. ISSUES FOR CONSIDERATION

- 2.1 The Police who have made a representation were concerned with the Prevention of Crime and Disorder, the Prevention of Public Nuisance and the Protection of Children from Harm. They are satisfied that their concerns will be addressed through the implementation of the agreed amendments.
- 2.2 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.

3. LEGAL IMPLICATIONS

- 3.1 As there has been relevant representation 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.
- 3.2 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.
- 3.3 The Act requires (Section 72) in determining an application for a new club premises certificate where relevant representations are made, for the authority to take the following steps:
 - a) to grant the certificate subject to:
 - i) The conditions as are consistent with the club operating schedule accompanying the application as modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - ii) any conditions which must under Section 73 (2) to (5) or 74 to be included on the certificate, (these sections refer to authorising the supply of alcohol for consumption off the premises and a mandatory condition about the exhibition of films.)

b) to exclude from the scope of the certificate any of the qualifying activities to which the application relates.

c) to 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.

3.4 If the Sub-Committee rejects the application, or modifies the conditions of the certificate, 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 certificate should not have been varied, or that, when varying the certificate, 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.

3.5 The Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them, any of the responsible authorities or a District Councillor to apply to this Licensing Authority for a review of the certificate. Under the review proceedings the authority may:

- a) modify the conditions of the certificate;
- b) exclude a qualifying club activity from the scope of the certificate;
- c) suspend the certificate for a period not exceeding three months;
- d) withdraw the certificate;

and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications to the Council from this Report unless the matter is appealed to the Magistrates Court.

5. RISK MANAGEMENT

5.1 The risk management implications are:

Opportunities	Benefits
To review the application in line with: <ul style="list-style-type: none">• The Licensing Act;	To be able to give consideration to representations made by 'Interested Parties' and / or 'Responsible

<ul style="list-style-type: none"> • National Guidance issued by the Secretary of State, and, • The South Hams District Council Statement of Licensing Policy. <p>To create an increased opportunity for employment in the district.</p> <p>An opportunity to maintain the districts distinctive environment whilst enabling access and sensitive development.</p> <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.</p>	<p>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>Issues/Obstacles/Threats</p>	<p>Control measures/mitigation</p>
<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 above 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>The Licensing Authority follows strict legislation in accordance with the Licensing Act 2003 and adheres to the statutory instruments contained within the Act.</p>

Corporate priorities engaged:	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'.
Statutory powers:	Licensing Act 2003
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998 – Article 6: Right to a fair trial
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	<p>Written agreement from the Police that the proposed amendments address the licensing objectives and that a hearing is unnecessary.</p> <p>Written agreement from the applicant to the proposed amendments and that a hearing is unnecessary.</p> <p>The Licensing Act 2003</p> <p>Guidance issued under Section 182 of the Licensing Act 2003</p> <p>The District Council's Statement of Licensing Policy</p>
Appendices attached:	<p>Appendix A – application for new club premises certificate</p> <p>Appendix B – agreed amendments</p>