

Licensing Sub-Committee – Thursday 14 June 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A NEW PREMISES LICENCE WHEREBY RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED FROM INTERESTED PARTIES AND HAVE NOT BEEN WITHDRAWN.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 Venus Café, Ferry Steps, Millbay Road, East Portlemouth** 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 The Venus Company Ltd for the grant of a New Premises Licence for **Venus Café, Ferry Steps, Millbay Road, East Portlemouth**. A copy of the application is attached (**Appendix 'A'**).

1.2 The Venus Company are an established company with a good standard for quality of food and their environmental practices and awareness. They operate four open-air beach cafés, three within the South Hams and one in Tolcarne, Newquay. The company seek to provide an alfresco, mediterranean style dining experience.

The company offer food and drink that is either locally sourced or organic and they have won awards for their mission of being the greenest beach café and shop.

Within the vicinity of the cafe there is some provision for customers to sit but on the whole the food is prepared for takeaway.

The premises in concern have a planning condition that only permits operating times between 1st March and 31st October.

1.3 The premises in question is located next to the single road which runs from the village of East Portlemouth right through to the National Trust Car Park for persons wishing to visit the beach.

1.4 During the advertising period the Licensing Department received representations from the Police and from twenty-two residents, one of which was in support of the application (representation 2). It will be up to the Committee to determine if the persons making representations live within the vicinity of the premises. Further representations have since been received but deemed 'out of time'

1.6 There are no other licensed premises in East Portlemouth and attention has been drawn to the fact through letters of representation that there is a covenant on East Portlemouth with regards to alcohol.

1.7 The Responsible Authorities also made suggestions of how their concerns may be overcome by the addition of conditions to the licence. Their suggestions are detailed below but unfortunately not all the proposals will resolve the issues raised by the residents.

1.8 Proposed conditions from Responsible Authorities as follows:

1.9 Police (Representation 9)

All alcohol sold for consumption on the beach area, will be served in non-glass bottles or vessels.

The Venus Company have agreed in writing to accept this condition.

1.9 The applicants have sought:-

- To supply alcohol both on and off the premises Monday to Sunday 09:00 – 23:00

1.10 As the applicant wishes to provide retail sale of alcohol, under the Licensing Act they require a new style premises licence. As regards to this application, only Interested Parties or Responsible Authorities may make representation.

1.11 A plan of the location will be available at the hearing showing the premises and other occupied properties in the location.

1.12 The Licensing Department have been unable to mediate with both parties and a satisfactory conclusion has not been possible.

(Please note that due to the vast amount of paperwork contained within these appendices, full copies have only been circulated to the Subcommittee 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
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 one of the Responsible Authorities and from over twenty-two residents. 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 and therefore, 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. (The statistics and graphs are available on pages 5,6,& 7 of the Policy).
- 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 the retail supply of alcohol taking place in East Portlemouth:
- 5.2. The beaches are privately owned and have a restriction time of sunset which is in conjunction with Salcombe Harbour Authority. Allowing alcohol sales, especially off sales, until 23:00 at night may encourage persons to remain on the beach.
- 5.3 There is a ferry which operates a service from East Portlemouth to Salcombe and vice versa. Residents are concerned that if alcohol is allowed to be sold later than the ferry operating times then there is the potential that boats will be borrowed to get back to Salcombe.
- 5.4 Litter is a big concern for residents as they are already clearing the beach of litter.
- 5.5 Noise has been addressed as a concern. Persons taking meals at the premises until 23:00 will cause noise disturbance to residents.
- 5.6 Some representations have acknowledged that their concerns would be dealt with if the alcohol remain within the premises (on licence) and the hours be reduced.
- 5.7 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 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.

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 international visitors who are, in the main, 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.

Risk Assessment

- 7 The Sub-Committee will, in considering the applications and any representations, have to give consideration to the licensing objectives contained within the Licensing Act 2003 of:
1. The prevention of Crime and Disorder;
 2. Public Safety;
 3. The prevention of Public Nuisance; and
 4. The Protection of children from harm

In addition, due consideration should also be given to the Council's Licensing Policy Statement.

Failure to adequately consider these issues could result in the Council facing an appeal to the Magistrates' Court.

Conclusion

- 8 For the Licensing Sub-committee to determine the Premises Licence application and give reasons for the decision made.

Graham Munson
Licensing Manager

Licensing Sub-Committee 14th June 2007

Contact 01803 861336

Background Documents:

- Licensing Application for new premises.
- Representations received from those residents or those having businesses in the vicinity of the premises to be licensed.
- Responses to Notices of Hearing from residents and businesses
- Responses to Notices of Hearing from Responsible Authorities
- Summary of Key Points
- Guidance on Meeting the Licensing Objectives
- Guidance issued under Section 182 of the Licensing Act 2003
- The District Council's Statement of Licensing Policy