

Report to: **Licensing Sub-Committee**  
Date: **4<sup>th</sup> August 2021**  
Title: **Application to vary the Premises Licence of  
The Albert Inn, Totnes**  
Portfolio Area: **Customer First**  
Wards Affected: **Totnes Town**  
Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

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**Recommendations:**

**That the Sub-Committee consider the application for a variation to the Premises Licence and make determinations in respect of this application, namely:**

- (a) to modify the conditions of the licence;**
- (b) to 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 decision must be in line with the licensing objectives contained within the Licensing Act 2003.**

## 1. Executive summary

- 1.1 The purpose of the Licensing Sub-Committee meeting is to determine an application for a variation to the Premises Licence at **The Albert Inn, 32 Bridgetown, Totnes, TQ9 5AD**, in accordance with Section 35 of the Licensing Act 2003.
- 1.2 The application is to:
- Vary the premises licence plan to include an area previously used for 'private parking' as an area for sale and consumption of alcohol.
  - Vary the premises licence to remove 'out of date' and 'unenforceable' conditions from Annex 2 and to include new conditions to address the licensing objectives.
  - A copy of the application and proposed plan is attached at **Appendix A** and a copy of the current premises licence and licence plan is at **Appendix B**.
- 1.3 Three representations have been received in objection to the application and four representations were received in support of the application during the consultation period (**Appendix F**). The application must therefore be determined by the Licensing Sub-Committee.

## 2. Background

- 2.1 The premises is currently licensed for:
- The sale of alcohol for consumption on and off the premises: Monday to Saturday from 10am to midnight; Sunday from 11am to midnight; New Year's Eve – from the end of licensing hours on New Year's Eve to the commencement of licensing hours on New Year's Day.
  - Live and recorded music (indoors): Monday to Saturday from 10am to midnight; Sunday from 11am to midnight; New Year's Eve – from the end of licensing hours on New Year's Eve to the commencement of licensing hours on New Year's Day.
  - Indoor sporting events: Monday to Saturday from 10am to midnight; Sunday from 11am to midnight.
  - Opening hours: Monday to Saturday from 10am to 12.30am; Sunday from 11am to 12.30am; New Year's Eve from the end of licensing hours on New Year's Eve to the commencement of licensing hours on New Year's Day.
  - A copy of the premises licence and licence plan is at **Appendix B**.
- 2.2 It is proposed that all the conditions under Annex 2 of the premises licence are removed and replaced with new, updated conditions. The current conditions under Annex 2 are listed at **Appendix C**. The new conditions proposed to replace these are listed at **Appendix D**. The conditions under Annex 1 of the premises licence are mandatory conditions and will remain in place on the licence whether or not the application is granted. The sub-committee also

have the power to include additional conditions if they believe appropriate to promote the licensing objectives.

- 2.3 The application is also to include an additional outside area to the premises licence plan. This area is located between the pub building and the beer garden and was previously designated as private parking area but more recently used as an area for storing bins. The premises licence holder has requested to be able to use this new area for the sale of alcohol up to four times per year and used for consumption of alcohol as part of the beer garden throughout the year. The new area is outlined in red and labelled 'private parking' on the proposed premises licence plan at **Appendix A(ii)**. Photographs of this area are also included in the photographs at **Appendix G**. The area will not be used for parking.
- 2.4 During the consultation period the Police requested that the applicant include an additional condition in relation to having a refusals register. The premises licence holder has confirmed his agreement to this condition in writing. The additional condition is shown at **Appendix E**. If the application is granted, it is requested that this condition is also included on the premises licence.
- 2.5 Seven representations were received during the consultation period, four in support of the application and three in objection to the application. The representations were all received from local residents. Copies of their representations can be found at **Appendix F**.
- 2.6 The representations in objection to the application mainly relate to 'the prevention of public nuisance' licensing objective. In particular there is concern regarding the removal of the following condition:
  - Use of gardens, play areas and outside areas. The use of gardens and external play areas must not commence before the start of normal trading hours and must cease at dusk.
- 2.7 Within the objections there is reference to disturbance from customers using the beer garden, with particular concern about noise after dusk. The premises licence holder has proposed to replace this condition with the condition that outdoor areas must not be used after 11pm.
- 2.8 There is also reference in the representations to lack of enforcement by the council of the condition relating to dusk. The lack of compliance with the dusk condition was brought to the council's attention in September 2019. The DPS was spoken to at the time, but the problem was raised again in December 2019. The DPS was sent a warning letter at the beginning of January 2020 and following this it appeared that the condition was being complied with. All pubs had to close in March 2020 due to the national lockdown because of the Coronavirus pandemic.

- 2.9 Upon re-opening on 4<sup>th</sup> July 2020, all hospitality venues were encouraged by the government to use outdoor spaces for their customers and had to limit the number of customers inside their premises due to strict social distancing measures to limit the spread of the virus. Councils were sent a letter from Kit Malthouse MP and Minister of State for Crime and Policing in April 2020 to encourage licensing authorities to consider a flexible approach when dealing with licensed premises. The letter advises authorities that 'a considered and pragmatic approach should be taken to breaches of licence conditions and procedural defects caused by the COVID-19 pandemic, particularly where these breaches or defects do not have a significant adverse impact on the licensing objectives.' Not being able to use the garden after dusk severely restricted the business, due to the more limited capacity within the building because of social distancing measures. It was decided that action would only be taken against the breach of the dusk condition if there was evidence that noise from the beer garden was causing a public nuisance. Environmental Health have been unable to establish a nuisance, due to lack of evidence being provided to progress with an investigation.
- 2.10 It has also become clear that the wording of the condition relating to dusk is open to interpretation, as there are several possible definitions. It is recommended that a specific definition or set time is used, to make this condition enforceable and more consistent.
- 2.11 Representations received in support of the application are from neighbours advising that they are not disturbed by noise from the beer garden and confirming that the premises licence holder is cooperative if there has been a problem in the past. It is stated in one of the representations that the garden being brought out of use at 11pm is reasonable.
- 2.12 The premises is located on the edge of the town centre, close to other businesses and residential properties. A map showing the location of the premises is at **Appendix H**. Photographs showing the outside area and properties surrounding the premises are at **Appendix G**.
- 2.13 As relevant representations in respect of this application have been received, which have not been withdrawn and mediation has not been possible, the Licensing Sub-Committee acting on behalf of the Licensing Authority must make a determination on this application. When coming to a decision, the Licensing Sub-Committee must give consideration to the Council's Statement of Licensing Policy (the Policy) and Home Office guidance (the Guidance) issued under Section 182 Licensing Act 2003 (revised April 2018).
- 2.14 Section 3.1 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 appropriate to achieve the licensing objectives).

2.15 The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

2.16 Section 3.2 of the Policy states: A licence (or club premises certificate) will only be granted where the Licensing Authority is satisfied that these objectives have been met.

2.17 Section 2.4 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.

2.18 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in April 2018 state: The Licensing Authority may not impose conditions unless its discretion has been engaged 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 (paragraph 10.8 of the guidance).

2.19 The following responsible authorities are statutory consultees under the Licensing Act 2003:

- Devon and Cornwall Police
- Devon and Somerset Fire and Rescue Service
- Devon Safeguarding Children's Board
- Devon County Council Trading Standards
- Devon Drug and Alcohol Action Team, NHS Devon
- South Hams District Council Planning Department
- South Hams District Council Environmental Health (Health & Safety)
- South Hams District Council Environmental Health (Pollution Control)

2.20 No representations have been received from any of the responsible authorities. An additional condition has been agreed between the premises licence holder and the Police (**Appendix E**).

2.21 In addition to the above responsible authorities, any person may make a representation in relation to a premises licence application.

### **3. Outcomes/outputs**

3.1 When determining an application for a premises licence, particularly when considering appropriate conditions and operating hours, the

following sections of the Statement of Licensing Policy (the policy) and Section 182 Guidance (the guidance) are especially relevant:

- 3.2 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.19 of the guidance).
- 3.3 Paragraph 10.14 of Guidance issued under Section 182 of the Licensing Act 2003 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.
- 3.4 Section 5.5.1 & 5.5.2 of the policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application, but the presumption will be to grant the hours requested unless there are relevant objections to those hours raised on the basis of the licensing objectives. 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 or in areas where anti-social disorder takes place.
- 3.5 Section 5.5.5 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 due to the nature of the activities and the amenity of the area. If the Licensing Committee or sub-committee believes that granting longer hours would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 3.6 Section 3.8.1 of the Policy states: The Licensing Authority recognises the great variety of premises for which licences may be sought. These include theatres, members' clubs, sports clubs, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls, schools and off-licences. The Authority will not restrict access by children to any particular type of premises unless it is considered appropriate to do so in order to protect them from harm.
- 3.8 The desired outcome is a determination of the application with reasons provided which relate to the four licensing objectives and

when conditions are imposed, that these are appropriate to address the licensing objectives.

#### **4. Options available and consideration of risk**

- 4.1 The Licensing Authority may decide to impose additional conditions to address the four licensing objectives, or to amend or remove requested licensable activities. When coming to their decision the Licensing Sub-Committee must give consideration to the Section 182 Guidance and the Statement of Licensing Policy. Reasons must be given which relate to the licensing objectives for any decision made.
- 4.2 The Sub-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 (if applicable), the evidence provided of any problems in the past, 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. The 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, and any other relevant issues, may be explored at the hearing in so far as it reflects the four licensing objectives.
- 4.3 A decision made by the Licensing Sub-Committee may be appealed by the applicant or any person who has made relevant representations. The right of appeal is to the Magistrates' Court by virtue of Section 181 and Schedule 5 of the Licensing Act 2003. 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.
- 4.4 The Licensing Act 2003 contains a provision which enables a responsible authority or any other person to apply to this Licensing Authority for a review of the premises licence once granted. A hearing follows which enables the Sub-Committee to use the normal powers available, but also to suspend the licence for a period of up to three months or to withdraw it.

#### **5. Proposed Way Forward**

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

- i) modify the conditions of the licence;
- ii) to 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 decision must be in line with the licensing objectives contained within the Licensing Act 2003.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Licensing Act 2003 gives Licensing Authorities the responsibility for determining applications submitted under this provision. This is a statutory obligation.</p> <p>As there have been relevant representations in respect of this application which have not been resolved, 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 responsible authorities or any other person. The Licensing Sub-Committee must disregard any information or evidence not relevant to the licensing objectives.</p> <p>The Licensing 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.</p> <p>The Act requires (Section 35) that in dealing with a variation to a premises licence application, the committee takes any of the following steps which are appropriate for the promotion of the licensing objectives:</p> <ul style="list-style-type: none"> <li>(i) modify the conditions of the licence;</li> <li>ii) to reject the whole or part of the application;</li> </ul> <p>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.</p>



		<p>The applicant or any person who has made relevant representations has the right to appeal a decision made by the Licensing Sub-Committee to the Magistrates' Court by virtue of Section 181 and Schedule 5 of Licensing Act 2003.</p> <p>On appeal, the Magistrates' Court may:</p> <ul style="list-style-type: none"> <li>a) dismiss the appeal;</li> <li>b) substitute for the decision appeal against another decision which could have been made by the Licensing authority;</li> <li>c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.</li> </ul>
Financial	N	There are no direct financial implications to the Council from this Report. However, should a decision be challenged this could result in the Council facing an appeal to the Magistrates Court with the risk of costs being awarded against the Council.
Risk	Y	<p>The Licensing Authority must follow strict legislation in accordance with the Licensing Act 2003 and adhere to the statutory instruments contained with the Act.</p> <p>All decisions must be taken in consideration of the four licensing objectives (section 2.11). These objectives are in place to give protection to the public from the potential negative impacts caused by licensed premises.</p> <p>Decisions may be appealed (see financial and legal/governance sections above).</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		Compliance with the Human Rights Act 1998 – Article 6: right to a fair trial.
Safeguarding		All decisions must take into consideration the 'protection of children from harm' licensing objective.
Community Safety, Crime and Disorder		Section 17 Crime and Disorder Act 1998 applies. Decisions made must relate to the four licensing objectives as detailed in section 2.11 of this report.
Health, Safety and Wellbeing		All decisions must take into consideration the four licensing objectives, including 'public safety' and 'protection of children from harm'.
Other implications		

## **Supporting Information**

### **Appendices:**

Appendix A – variation application and proposed licence plan

Appendix B – current premises licence and plan

Appendix C – current conditions under Annex 2 of the premises licence

Appendix D – proposed conditions to address the licensing objectives

Appendix E – additional condition agreed between premises licence holder and the Police

Appendix F – representations

Appendix G – photographs of beer garden and area surrounding premises

Appendix H – map showing location of premises

### **Background Papers:**

[under provisions of the Local Government Act 1972]

The Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003

South Hams District Council's Statement of Licensing Policy

Responses to Notices of Hearing

Letter from Kit Malthouse MP to Chairs of Licensing Committees, dated 8<sup>th</sup> April 2020

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes/No</b>
SLT Rep briefed	<b>Yes/No</b>
Relevant Exec Director sign off (draft)	<b>Yes/No</b>
Data protection issues considered	<b>Yes/No</b>
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	<b>Yes/No</b>