

Report to: **Licensing Sub-Committee**
Date: **23rd August 2022**
Title: **Application for a new Premises Licence at Eversfield Manor Cottages, Bratton Clovelly.**
Portfolio Area: **Customer First**
Wards Affected: **Bratton Clovelly**
Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: 23rd August 2022

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Recommendations:

That the Sub-Committee considers the application for a new Premises Licence and decides whether:

- i) to grant the application in full on the terms and conditions contained in the operating schedule along with relevant mandatory conditions;
- ii) to grant the application, modified to such an extent as considered appropriate to satisfy any relevant representations so as to adequately promote the licensing objectives; or
- iii) to refuse the application in its entirety.

1. Executive summary

- 1.1 The purpose of the Licensing Sub-Committee meeting is to determine an application for a new Premises Licence at **Eversfield Manor Cottages, Bratton Clovelly, EX20 4JF**, in accordance with Section 18 of the Licensing Act 2003.
- 1.2 The Application seeks approval for the supply of alcohol for consumption on- and off- the premises; the provision of late-night refreshment and the performance of live music. Following the application being advertised in accordance with the statutory requirements, a number of relevant representations were received and as these have not been resolved a hearing is required before the application can be determined.

1.3 As each application must be considered on its individual merits and in relation to the licensing objectives under the Licensing Act 2003, recommendations as such cannot be made. However, having considered the individual circumstances of this application and representations and evidence received at hearing, the Sub-Committee may grant or refuse the application as outlined in the Recommendations.

2. Background

2.1 The Licensing Authority received an application from Bernard McNelis and Li Zhu for a new Premises Licence on 6th June 2022. The application is for:

- The supply of alcohol for consumption on and off the premises Monday to Sunday 12:00 to 23:00.
- The provision of late-night refreshment on and off the premises Monday to Sunday 23:00 to 01:00.
- The performance of live music Monday to Sunday 12:00 to 2300.

2.2 A copy of the application and plan is attached at **Appendix A.2.3** In addition to the Licensable activities listed above, the applicants have also included within their application non-standard timings applicable to the application, namely:

- Late night refreshment "On a maximum of 25 occasions during the year, food will be served from 23:00 until 01:00 hrs to cater for wedding receptions and dining club dinners", and between 23:00 and 01:00 on the following days Christmas Eve, New Year's Eve, Chinese New Year, Summer and Winter Solstice;
- Supply of alcohol on and off the premises "On a maximum of 25 occasions during the year, food will be served from 23:00 until 02:00 hrs to cater for wedding receptions and dining club dinners", and between 23:00 and 02:00 on the following days Christmas Eve, New Years Eve, Chinese New Year, Summer and Winter Solstice.
- Live music "On a maximum of 25 occasions during the year, food will be served from 23:00 until 01:00 hrs to cater for wedding receptions and dining club dinners", and between 23:00 and 01:00 on the following days Christmas Eve, New Years Eve, Chinese New Year, Summer and Winter Solstice. The application further states that amplified music will not be played after 24:00hrs.

2.4 The premises is located near the village of Bratton Clovelly. A map of the location is attached at **Appendix B**. It is described in the application as a cluster of exclusive, high end, self-catering apartments with ancillary amenities set half-a-mile from the Village of Bratton Clovelly. The 'premises' is described as being contained within this complex and will provide accommodation for occasional banquets for guests, weddings, company events and a members-only dining club.

2.5 During the consultation period, 22 relevant representations were received from local residents in objection to the application, as well as 17 relevant representations in support of the application. Copies of the representations are attached at **Appendix C**. No representations were received from any of the Responsible Authorities or District Councillors.

2.6 Issues raised by those objecting to the application make reference to all four of the licensing objectives, but there is particular concern in relation to the prevention of public nuisance and also public safety. Concerns regarding public nuisance relate in particular to the potential for disturbance from the noise of licensable activities, whereas the concerns regarding public safety relate primarily to the road access to the site, and the potential for vehicle movements to cause a hazard on the adjacent rural road network.

2.7 Another issue raised repeatedly in the representations received against the application is the impact of noise and light from licensable activities on the local wildlife, in particular the local bat population. These concerns are not relevant for consideration in respect of a premises licence application. In addition references within the representations to the number of other licensed premises in the local area are not relevant, and as such also cannot be taken into consideration.

2.8 Comments included in the representations of support for the application include that the premises is an "asset, which brings revenue and jobs to the area", and "Issuing the premises with a license would allow the owners to control the availability of alcohol and any associated disturbance". In addition numerous respondents in support of the application comment that no complaints were received about events held prior to this application, and further respondents mention events that they have attended and enjoyed at the premises previously.

2.9 During the consultation period the applicant engaged with Devon and Cornwall Constabulary and have agreed a number of proposed licence conditions with the applicant which are attached at **Appendix D**.

2.10 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 issued under Section 182 Licensing Act 2003 (revised April 2018).

2.11 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.

2.12 The four licensing objectives are:

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

2.13 Section 3.2 of the Policy states: 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. Each objective is of equal importance. A licence will only be granted where the Licensing Authority is satisfied that these objectives have been met.

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

2.15 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in April 2018 states: 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).

2.16 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
- West Devon District Council Planning Department
- West Devon District Council Environmental Health (Health & Safety)
- West Devon District Council Environmental Health (Pollution Control)

2.17 No representations have been received from any of the responsible authorities. However, Devon and Cornwall Police have put forward conditions agreed with the applicant, and the application was acknowledged by Devon and Somerset Fire and Rescue service who highlighted the need for a fire risk assessment in the event that the licence is granted.

2.18 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 immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.19 of the Guidance).
- 3.3 Sections 5.5.1 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.
- 3.4 Section 5.5.2 of the policy states: 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 within operating schedules 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 appropriate to restrict the hours required due to the nature of the activities and the amenity of the area. If the Licensing Committee or a 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 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.
- 3.7 Section 3.8.6 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 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 years
- where the supply of alcohol for consumption on the premises is exclusive or primary purpose of the services provided at the premises
- where there are unsupervised areas (for example toilets, beer gardens, play zones).

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

- 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. West Devon relies on tourism, with the population in the district increasing considerably 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. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The legal and governance implications are set out in the body of the report
Financial implications to include reference to value for money	Y	There are no direct financial implications to the Council from this Report.
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 2.9). 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 leading to risks under the following categories if the above precautions are not taken:</p> <ul style="list-style-type: none"> - Legal Governance - finance <p>(see financial and legal/governance sections above).</p>
Supporting Corporate Strategy	Y	Stimulating a thriving economy
Climate Change - Carbon / Biodiversity Impact	N	
Comprehensive Impact Assessment Implications		

Equality and Diversity	Y	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 2.8 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(i) – premises licence application

Appendix A(ii) – premises licence plan

Appendix B – location plan

Appendix C – representations

Appendix D – additional licence conditions agreed between the applicant and Devon and Cornwall Constabulary

Background Papers:

There are none