

Report to: **Licensing Sub-Committee**

Date: **18 April 2024**

Title: **Application to vary the Premises Licence of
The Crabshell Inn, Embankment Road,
Kingsbridge, TQ7 1JZ**

Portfolio Area: **Customer First**

Wards Affected: **Kingsbridge**

Relevant Scrutiny Committee:

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

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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 Crabshell Inn, Embankment Road, Kingsbridge, TQ7 1JZ** in accordance with Section 35 of the Licensing Act 2003.
- 1.2 The Licensing Department have received two representations in objection to the application and therefore the application will need to be determined by the Licensing Sub-Committee.

2. Background

2.1 The Licensing Authority received an application from St Austell Brewery Company Ltd to vary their premises licence on 22 February 2024. The application is to:

- Vary the premises licence plan to extend the licensable area to include the 'Shepherd Hut Servery' to be in use daily between the hours of 12:00 to 23:00.
- To include additional conditions in Annex 2 of the premises licence to promote the licensing objectives.

A copy of the application form and proposed plan is attached at **Appendix A.**

2.2 The premises is currently licensed for the following:

- Indoor sporting events:
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:00
- Live music (indoors and outdoors):
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:00
- Recorded music (indoors):
 - Monday to Saturday from 08:00 to 00:00
 - Sunday from 08:00 to 23:00
- Performance of dance:
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:00
- Supply of alcohol for consumption on and off the premises:
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:00
 - New Year's Eve from 11:00 to 03:00
- Opening hours:
 - Monday to Sunday from 08:00 to 01:00
 - Sunday from 08:00 to 00:00
 - New Year's Eve from 08:00 to 04:00

2.3 A copy of the current premises licence and licence plan is at **Appendix B.**

- 2.4 The premises is a pub and restaurant located on the east bank of Kingsbridge estuary, about half a mile south of the town centre. It is in close proximity to other businesses and to residential properties. A plan showing the location of the premises is at **Appendix C**. The premises currently consists of a pub building with an outside seating area covered by a pergola. There are also benches sited along the waterfront, but these are not within the area covered by the premises licence. The proposed location of the 'Shepherd Hut Served' is to the south of the covered seating area, which is currently part of the customer car park.
- 2.5 During the consultation period, two relevant representations were received in objection to the application from Kingsbridge Town Council and West Alvington Parish Council. Copies of the representations are attached at **Appendix D**.

Representations

- 2.6 Issues raised in the representations relate to the Public Safety and Prevention of Public Nuisance licensing objectives.
- 2.7 The main concerns relate to proximity of the new 'Shepherd Hut Served' to the car park and the potential danger of cars manoeuvring close by to customers congregating outside the hut, particularly those with children.
- 2.8 In addition, there are concerns about the potential for increased noise disturbance and smells coming from the site and affecting neighbouring properties.
- 2.9 One of the representations makes reference to the recently refused planning application. Planning and Licensing are two separate regimes with their own legislation, so the refusal of the planning application does not mean that the premises licence application cannot be considered and subsequently granted, if the licensing sub-committee are so minded. The business would not be able to operate the 'Shepherd Hut Served' as requested without first having both planning permission and premises licence approval in place.
- 2.10 Any information contained in the representations which is not relevant to the promotion of the four licensing objectives ([see 2.14](#)) cannot be taken into consideration when determining the premises licence application.

Applicant Response to Representation

- 2.11 Following receipt of the concerns raised by Kingsbridge Town Council, the Applicant has proposed positioning some planters outside the curtilage of the 'Shepherd Hut Served' to obstruct vehicles from going into the area in front of the hut.

2.12 At the date of the completion of this report, we have not received further information regarding this proposition.

Policy and Statutory Guidance

2.13 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.

2.14 The four licensing objectives are:

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

2.15 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.

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

2.17 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in August 2023 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).

2.18 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)

2.19 No representations have been received from responsible authorities.

- 2.20 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. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. 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 2.24 of the guidance).
- 3.3 Sections 5.5.1 and 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.
- 3.4 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 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 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 At paragraph 2.15 of the guidance it states:
Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:

- Providing information on the premises of local taxi companies who can provide safe transportation home.
- Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

3.9 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 new 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;

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</p>

		<p>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> <p>(i) modify the conditions of the licence; ii) to reject the whole or part of the application;</p> <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> <ol style="list-style-type: none"> a) dismiss the appeal; b) substitute for the decision appeal against another decision which could have been made by the Licensing authority; c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.
Financial	N	<p>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.</p>
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 2.21). These</p>

		objectives are in place to give protection to the public from the potential negative impacts caused by licensed premises. Decisions may be appealed (see financial and legal/governance sections above).
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 2.3 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) – application to vary premises licence
Appendix A(ii) – proposed licence plan
Appendix B(i) – current premises licence
Appendix B(ii) – current licence plan
Appendix C – location plan
Appendix D – representations

Background Papers:

None.

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