

## Agenda Item

**Licensing & Enforcement Sub Committee**

**11 August 2009**

### **Application for a premises licence to be granted under the Licensing Act 2003**

#### **Summary**

The report summarises an application for a premises licence to be granted.

#### **Recommendation**

**That members consider the application for a premises licence to be granted under the Licensing Act 2003 - To permit the provision of regulated entertainment, entertainment facilities and late night refreshment and the sale of alcohol for consumption both on and off the premises at The Redwing Inn, Church Road, Lympstone, Exmouth, EX8 5JT.**

a) **Reasons for Recommendation**

To comply with statutory processes.

b) **Alternative Options**

To either grant, refuse or modify the application.

c) **Risk Considerations**

None

d) **Policy and Budgetary Considerations**

The Council's Licensing Policy is referred to in the body of the report. There is a possibility of the Council having to pay the applicant's court costs if a successful appeal is brought against the decisions made today.

e) **Date for Review of Decision**

The council's decision may be appealed to the Magistrates Court. The Licensing Act 2003 also contains review provisions.

---

#### **1 Description of Application**

- 1.1 An application has been received from Redwing Inn Ltd for the grant of a premises licence at Redwing Inn, Church Road, Lympstone, Exmouth EX8 5JT.
- 1.2 The premises are located within a residential area within the village of Lympstone. The premises were previously a pub and are currently being refurbished to provide areas for public trade on the ground floor with a lounge and public bar, on the first floor with a restaurant area and outdoors with a patio and beer garden.
- 1.3 Until May 2008 the premises benefited from Premises Licence PLWA0245 when it was surrendered by the premises licence holder. The licence authorised the provision of live music indoors and

outdoors, the provision of facilities for making music and dancing and authorised the sale of alcohol for consumption on & off the premises. A copy of the licence is attached at **Appendix I**.

- 1.4 A plan of the premises will be available at the meeting to show the layout of the establishment and the areas of licensable activity.
- 1.5 The timings and licensable activities originally applied for are produced in table form at **Appendix A**.

### **Mediation Meeting & Amended Application**

- 1.6 Mediation has taken place between the applicant and the Police which has resulted in an agreed position being reached. The agreed position includes a reduction in hours for some licensable activities and the addition of two conditions to the operating schedule requiring the closure of the beer garden and patio. These amendments are included within **Appendix B** and **Appendix E**. There is at the time of writing however some confusion over the extent of the agreed position with regard to the timings for Christmas Eve, New Year's Eve and Bank Holiday Friday & Saturday. The disputed timings have therefore remained unaltered within the appendix and the applicant will bring evidence of the full agreed position to the hearing.
- 1.7 A mediation meeting chaired by the Licensing Authority and attended by the Applicants, twenty three Interested Parties and the Council's Environmental Health Service was held at Lympstone Village Hall on 28 July 2009. As a result of this meeting the applicant has further amended the application by removing the request for the performance of live music outdoors and offering additional conditions. The additional conditions are listed within **Appendix E**.

## **2 Statutory Bodies' Response**

- 2.1 Devon & Cornwall Constabulary  
Representations received see **Appendix C**
- 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 East Devon District Council, Environmental Health Service  
Representations received see **Appendix C**.
- 2.6 East Devon District Council, Planning & Countryside Service  
No representations have been received

## **3 Representations and Responses to Notices of Hearing**

- 3.1 Representations have been received from twenty eight (28) interested parties. Details of the representations are attached at **Appendix C**.
- 3.2 Details of the responses to the statutory Notice of Hearing are attached at **Appendix D**.

## **4 Proposed Operating Schedule**

- 4.1 The applicants have prepared an Operating setting out the steps they propose to take, including those additional conditions agreed through mediation, to promote the licensing objectives. A copy of

the proposed Operating Schedule, numbered for ease of reference is attached at **Appendix E**.

- 4.2 The proposed Designated Premises Supervisor is Liane Asel who holds a Personal Licence EDVE1322 issued by East Devon District Council.

## **5 Relevant Licensing Policy Considerations**

### **Licensing Objectives**

- 5.1 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 objectives are the only matters to be taken into account in determining the application and any conditions attached must be necessary to achieve the licensing objectives.
- 5.2 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.
- 5.3 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**

- 5.4 Section 4 of the policy sets out what the Sub Committee should consider before imposing conditions on a licence.
- 5.5 The **Guidance** issued under Section 182 Licensing Act 2003 also states:

The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

Licensing authorities should only impose conditions which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties.

### **Licensing Hours**

- 5.6 Section 6.1 of the Policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with licensing hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas. There is no presumption within the legislation for longer opening hours and the licensing objectives are paramount in any consideration of an application.
- 5.7 Section 6.3 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.

### **Entertainment**

- 5.8 Section 13.1 of the Policy states: The licensing authority recognises that, as part of implementing its cultural strategy, proper account will be taken of the need to encourage and promote entertainment including live music, dancing and theatre for the wider cultural benefit of the community. Conditions to be imposed on relevant licences will not discourage the promotion of such entertainment but will relate solely to the promotion of the licensing objectives.

### **Nuisance**

- 5.8 Section 17.1 of the Policy states: To promote the licensing objectives, applicants for licences for licensable activities will be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of interested parties.

## **6. Observations**

- 6.1 The application being considered is for the grant of a Premises Licence to permit :
- the performance of live music
  - the playing of recorded music
  - the provision of facilities for making music
  - the provision of facilities for dancing
  - the provision of late night refreshment
  - the supply of alcohol for consumption on and off the premises
- 6.2 The Police originally made representations but have reached an agreed position with the applicants.
- 6.3 Representations remain from the Council's Environmental Health service and interested parties who believe that if the licence is granted it will fail to promote all four licensing objectives.
- 6.4 The representations received show there are concerns that there may be traffic noise from the premises and the highway and that the number of vehicles will present parking problems and may lead to safety issues for highway users. Concern has also been expressed over noise from the premises and patrons and the potential for disorderly & criminal behaviour from people attending & leaving the establishment. Problems from cooking smells and lighting have also been raised.
- 6.5 From an inspection of the representations the main areas of concern are the lateness of the hours proposed and noise from music and patrons. Reference is also made to the problems of noise that has occurred in the past under the previous licence.
- 6.6 Attached at **Appendices G & H** are copies of the current premises licences for the Globe Inn and the Swan Inn Lympstone both of which are referred to within the interested parties' representations.
- 6.7 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. To assist the Sub Committee a set of conditions have been prepared at **Appendix F** that members may wish to consider having heard from both the

applicant and the interested party. The conditions are in part suggested to replace those offered by the applicant with conditions that reflect the applicants intentions but offer a more concise and enforceable operating schedule.

## 6.8 A location plan is attached at **Appendix J**.

---

### **Legal Implications**

1. As relevant representations have been made in respect of the 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.
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. Section 18 of the Act requires the licensing authority to grant a premises licence unless it considers additional steps are needed for the promotion of the licensing objectives having regard to any relevant representations.

The steps are:

- (a) to grant the licence subject to:-
  - (i) the conditions in the operating schedule modified to such extent as members consider necessary for the promotion of the licensing objectives, and
  - (ii) any condition which must under sections 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application.

The conditions of the licence are modified if any are altered or omitted or any new condition is added. Different conditions may be applied to different parts of the premises, and to different licensable activities. The sub-committee must give its reasons for its decision to take any of these steps. Similarly, if any part of an application is rejected, the sub-committee must give its reasons.

4. The Act requires mandatory conditions to be imposed where supplying alcohol or exhibiting films are approved as licensed activities. It also requires a mandatory condition to be imposed where door supervisors or other individuals carrying out security activities are conditions on the licence.

**(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-not relevant in this case**

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.

5. The sub-committee will need to consider the hours of operation proposed in relation to the licensable activities in the light of the promotion of the licensing objectives, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential and other commercial properties including other licensed premises, the history of the management of the premises and how it is proposed to be run in the future, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities. These issues, and any other relevant ones, may be explored at the hearing.

**6. Human Rights Act 1998**

- 6.1 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions are explained below. Essentially, they require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.
- 6.2 Under Article 6, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The procedures established by this Council for hearings under the Licensing Act 2003 are compliant with Article 6.
- 6.3 Under Article 8, "everyone has the right to respect for his private and family life, his home and his correspondence". This right may not be interfered with except in accordance with the law and as may be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Licensing Act cases this means that the sub-committee must have regard to the effect of its decisions on local residents, and balance their interests against those of the public at large (e.g. the customers of the premises under consideration) and the people operating the business from the premises.
- 6.4 Under Article 11, "everyone has the right to freedom of peaceful assembly and to freedom of association with others" except where it is lawful to restrict that freedom in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". In Licensing Act cases this means, for example, that the sub-committee is entitled to impose conditions to ensure that patrons of licensed premises do not unreasonably disturb others living or working nearby. Again, the sub-committee should balance the competing interests.
- 6.5 Article 1 of the First Protocol (that is, the first amendment to the Convention) says that every natural or legal person (meaning a human being or a company) is entitled to peaceful enjoyment of his possessions, except where the law provides for restrictions on that right in the public interest. This means, for example, that it is compliant with the Convention to impose restrictions, such as those provided in the Licensing Act 2003, upon business premises where it is in the public

interest to do so. On the other hand the same applies to the owners and occupiers of neighbouring premises.

#### **7. Appeals.**

If the sub-committee imposes conditions on the licence with which the applicant disagrees, or modifies the licensable activities permitted or refuses to specify a person a designated premises supervisor, he or she may appeal within 21 days of notification of the decision to the Magistrates' Court. The applicant may also appeal if an application for a premises licence is rejected. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the licensing authority ought to have imposed different or additional conditions or excluded a licensable activity or refused to specify a person as designated premises supervisor. 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.

#### **8. Review provisions.**

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.

#### **9 Police Closure**

A senior police officer may close any premises for 24 hours (this can be extended) where s/he reasonably believes there is or is likely imminently to be disorder on, or in or in the vicinity of the premises and their closure is necessary in the interests of public safety. Closure can also be effected if public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance

### **Financial Implications**

No apparent financial implications

### **Appendices**

- Appendix A – Originaly requested times and activities in table form
- Appendix B – Requested times and activities in table form
- Appendix C – Details of representations received
- Appendix D – Details of responses to the Notice of Hearing
- Appendix E –. Applicants proposed Operating Schedule
- Appendix F – Items for consideration
- Appendix G – Copy of Premises Licence PLWA0103 Globe Inn, Lympstone
- Appendix H – Copy of Premises Licence PLWA0107 Swan Inn, Lympstone
- Appendix I – Copy of Premises Licence PLWA0245 Redwing Inn, Lympstone
- Appendix J – Location Plan

### **Background Papers**

- Licensing Application dated 11 June 2009
- The District Council's Statement of Licensing Policy