

Agenda Item

REPORT OF LEAD LICENSING OFFICER
To: LICENSING SUB-COMMITTEE
Subject: LICENSING ACT 2003 – APPLICATION FOR A VARIATION TO PREMISES LICENCE – THE BIG SHEEP, ABBOTSHAM
Date: 29th June 2021 **Reference:** TDPR0150

PURPOSE OF REPORT:

To provide the sub-Committee with information relating to an application for a variation to the premises licence for The Big Sheep, Abbotsham to enable the sub-Committee to determine the application.

1. INTRODUCTION

An application for a variation to the premises licence for the above premises has been made to Torridge District Council in accordance with the Licensing Act 2003. The Licensing Authority has received relevant representations about the application and, in accordance with s.35(3) of the Act, the application must now be determined by a sub-Committee of the Council's Licensing Committee at a licensing hearing.

2. BACKGROUND

The premises is located between Bideford and Abbotsham on Abbotsham Road adjacent to the A39.

The Big Sheep has held a premises licence for the sale of alcohol since the introduction of the Licensing Act in 2005.

In 2020 due to the coronavirus pandemic Mr Turner reviewed his business model and sought to provide live music at the venue. It was agreed that this would be covered by a minor variation on a time limited basis up to 30 September 2020.

A meeting was held on 1 April 2021 to determine Mr Turner's plans for 2021. He was advised that a full variation would be required if he wished to continue with the live music events.

A full variation application was submitted to the Council on 21 April 2021. The closing date for receipt of representations was 19 May 2021. Twenty objections were received.

The hearing regulations allow the Licensing Authority to extend the time limit required for a hearing to be held for a specified period where it considers this to be necessary in the public interest. Following consultation with the legal team and the Chair of the Licensing Committee it was decided it would be in the public interest to allow Mr Turner to hold forthcoming events. For these events Mr Turner would be required to employ an independent noise consultant to undertake monitoring of the noise levels. The Council would also undertake noise monitoring. These events would enable the gathering of essential noise data in order to inform a more robust noise management plan.

It would also allow the sub-Committee to receive specific noise data from live events to enable them to make a more informed decision when considering the application.

The Noise Management Plan and noise monitoring data will be provided as an addendum to this report at the hearing.

3. THE APPLICATION

The nature of the proposed variation is as follows:

Provision of regulated entertainment on whole site (indoors and outdoors):

- Plays & Films on Monday to Sunday from 10:00 to 22:00
- Boxing & Wrestling on Friday to Sunday from 10:00 to 22:00
- Live Music, Recorded Music & Performance of Dance on Friday, Saturday & Bank Holidays from 10:00 to 22:00 and Sunday from 10:00 to 18:00

The following conditions which are relevant to the music events will be attached to the licence:

- The Music Events will be managed strictly in accordance with the Noise Management Plan agreed with the Licensing Authority.
- The control limits in place shall be adequate to ensure that the Music Noise Levels detailed in the Noise Management Plan shall not be exceeded at any noise sensitive premises throughout the duration of the event.
- The Premises Licence Holder or Designated Premises Supervisor shall ensure that the promoter, sound system supplier and all individual sound engineers are informed of the sound control limits and that control measures detailed in the Noise Management Plan shall be implemented and complied with for the duration of the event.
- The Premises Licence Holder or Designated Premises Supervisor shall ensure that noise levels are monitored and the results recorded at intervals not exceeding 60 minutes. Records shall be kept for a minimum of 12 months and made available to the Licensing Authority on request.
- The Premises Licence Holder or Designated Premises Supervisor shall be available at all times during regulated entertainment and be responsible for cooperating and liaising with any responsible authority or complaints from members of the public.

A copy of the application is attached in Appendix A.

4. REPRESENTATIONS

4.1 Responsible Authorities

The following comments were received from the Environmental Protection Officer.

"In relation to the above application, a Noise Management Plan is required, particularly in relation to outdoor events. At a recent site meeting between the Authority and an acoustic consultant representing the applicant, it was agreed that sound testing of forthcoming events should be undertaken in order to define the content of the Noise Management Plan in relation to

noise limits and the number of events permitted. The Environmental Protection Team will provide further comments following the completion of the sound tests and upon review of the Noise Management Plan to be submitted.”

No other representations have been received from the responsible authorities.

4.2 Other Persons

Twenty objections have been received from neighbours living within the proximity of the premises.

These objections are provided in Appendix B.

The objections highlight a number of issues. However, the only issues that can be taken into consideration by the sub-committee are those that relate to the licensing objectives.

5. POLICY ISSUES

- 5.1** The Authority has a duty under s.4 of the Licensing Act 2003 to carry out its licensing functions with the aim of promoting the four licensing objectives. The objectives are:
- The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 5.2** The representations relate to the licensing objective of prevention of public nuisance. They raise concerns relating to noise and disturbance to the neighbouring residential amenity from noise in the outside area.
- 5.3** With regard to noise nuisance, paragraph 5.3.3 of the Authority’s Statement of Licensing Policy (‘the Policy’) states that the Authority, when determining applications, will have regard to wider considerations affecting the residential population, businesses and the amenity of the area.
- 5.4** The Policy states that the Authority will expect applicants to have particular regard to noise issues and to include in their operating schedule *adequate and effective steps to control noise and disturbance from their premises*” (paragraph 5.3.4).
- 5.5** Paragraph 6.3 states “Licensed hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives. The Licensing Authority may, however, set an earlier terminal hour where it considers this appropriate to the nature of the activities and the amenity of the area.”
- 5.7** It should be noted that, if a licence is granted, residents have the protection of the ‘review’ process. At any time after the grant of a licence, a person may apply for a review of the premises licence if there are problems at the premises which undermine the licensing objectives. This is a valuable safeguard for local residents.
- 5.8** When considering this matter, the sub-Committee must have regard to government guidance. This makes it clear that the four licensing objectives should be *‘paramount at all times’*. (Home Office Guidance 1.4). Where there are objections to an application, the sub-Committee must have regard to these and to the ‘likely effect’ on the licensing objectives of granting the application.

- 5.9** It is a fundamental principle of the Licensing Act that each application must be considered on its own merits. (Guidance 1.17; Policy 5.3.1).
- 5.10** If the sub-Committee, having considered the application, believes that extra measures are required in order to promote the licensing objectives, it may attach additional conditions to the licence provided that these are appropriate, reasonable and proportionate (Policy 7.2) or it may alter or amend any existing conditions. The sub-Committee must not impose conditions which would be beyond the control of the licence holder. (Guidance 1.16; Policy 7.6). The sub-Committee should also avoid imposing any conditions which would duplicate other statutory regulations (e.g. Health & Safety legislation, fire regulations).
- 5.11** The sub-Committee is advised to take the above matters into consideration when reaching their decision. Members are reminded that they should not consider any irrelevant matters and must confine their deliberations solely to the issues relating to the licensing objectives.

The sub-Committee may depart from Policy guidelines if there are sound and justifiable reasons for doing so. Any departure from Policy should be fully explained to the parties at the hearing. (Guidance 1.12)

6. CONCLUSIONS

- 6.1** When deciding whether this application should be granted, the sub-Committee should bear in mind that it is essentially making a judgement about risk. If, having regard to all the evidence, the sub-Committee believes that there is no or minimal risk to the promotion of the licensing objectives, then the application should be granted on the terms applied for. If the sub-Committee believes that there are risks which will undermine the objectives, then it should seek to mitigate those risks – either by modifying the application or – in the case of serious and significant risk - by outright refusal of the application.
- 6.2** Under s.35(4) of the Act, when determining this application, the sub-Committee must – having regard to the representations received - take such steps as it considers appropriate to promote the licensing objectives. The options are:
- To grant the application as submitted,
 - To modify timings and/or the conditions of the licence to the extent necessary to promote the licensing objectives,
 - To reject all or part of the application.
- 6.3** In determining the application, the sub-Committee must give appropriate weight to:
- evidence presented at the hearing,
 - Guidance issued by the Home Office under s.182 of the Act,
 - the Council's Statement of Licensing Policy
 - any advice given by the Council's Legal Advisor during the hearing.
- 6.4** Any party to the hearing may appeal to the Magistrates' Court against the decision of the Licensing sub-Committee. The appeal must be made within 21 days of the date of notification of the sub-Committee's decision.

7. RECOMMENDATION

It is recommended that:

The Licensing sub-Committee determine the application to vary the premises licence for The Big Sheep having regard to the information provided in this report, guidance issued by the Home Office under s.182 of the Act, the Council's Statement of Licensing Policy and the evidence presented during the hearing.