

Agenda Item

REPORT OF LEAD LICENSING OFFICER

To: LICENSING SUB-COMMITTEE

Subject: LICENSING ACT 2003 – APPLICATION FOR A PREMISES LICENCE – THE CABIN, 12A SOUTH STEET, TORRINGTON

Date: 3 JULY 2023

Reference: LAPRE1/00118/23

PURPOSE OF REPORT:

To provide the sub-Committee with information relating to an application for a premises licence for The Cabin, 12A South Street, Torrington to enable the sub-Committee to determine the application.

1. INTRODUCTION

An application for a 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 in the main square in Torrington. The area consists of a mix of commercial and residential premises. The premises is currently operating as a café and has applied to include alcohol on the licence.

3. THE APPLICATION

Supply of alcohol for consumption on the premises

Monday to Saturday 10:00 – 23:30
Sunday 11:00 – 22:00

Recorded Music

Monday to Saturday 10:00 – 23:00
Sunday 11:00 – 22:30

Opening Hours

Monday to Saturday 10:00 – 00:00
Sunday 11:00 – 22:30

It should be noted that, as a result of deregulatory changes that have amended the Licensing Act 2003, no licence is required for the following activities:

- A performance of unamplified live music between 08:00 and 23:00 on any day, on any premises

- A performance of amplified live music between 08:00 and 23:00 on any day on premises authorised to sell alcohol for consumption on those premises,
- Any playing of recorded music between 08:00 and 23:00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

Licence conditions volunteered by the applicant and agreed with the Police Licensing Officer are included in Appendix A.

4. REPRESENTATIONS

4.1 Responsible Authorities

No representations have been received from the responsible authorities.

4.2 Other Persons

Eight objections have been received from members of the public.

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 specifically 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 following licensing objectives:

- The prevention of crime and disorder
- The prevention of public nuisance

5.3 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. These include alcohol-related violence and disorder, anti-social behaviour, littering, fouling and noise.

5.4 Paragraph 5.3.4 states that the vast majority of complaints about licensing premises are caused by public nuisance, in particular excessive noise from live and recorded music and disturbance caused by customers congregating outside licensed premises. The Authority will expect applicants to have particular regard to these issues and to include in their operating schedules adequate and effective steps to control noise and disturbance from their premises.

5.5 As stated previously, live and recorded music is deregulated, therefore, there are no grounds to include conditions relating to live and recorded music as these are unlicensed activities.

- 5.6** Although live and recorded music have been deregulated subject to the conditions set out above, under Section 177A of the Licensing Act 2003 it is still open to the Licensing Authority to add conditions to a Premises Licence upon determination of a review as though the live or recorded music were regulated entertainment authorised by that Premises Licence (between 8am and 11pm), where the Licensing Authority believe it is necessary for the promotion of the licensing objectives. Where this does take place it is necessary that any condition clearly cites this (namely that Section 177A does not apply to it).
- 5.7** 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.”
- 5.8** 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.
- 5.9** When considering this matter, the sub-Committee must have regard to government guidance. This makes it clear that 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.
- 5.10** 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).
- 5.11** 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).
- 5.12** 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.
- 5.13** 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 for a premises licence for The Cabin 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.