

**NORTH DEVON DISTRICT COUNCIL**

**REPORT TO LICENSING AND COMMUNITY SAFETY SUB-COMMITTEE  
HEARING: 24 NOVEMBER 2020  
Application by: The Old Cream Shop Ltd**

**Application for the Variation of a Premises Licence: The Old Cream Shop, 8 Hobbs Hill, Croyde, Devon, EX33 1LZ**

**Reference Number: 051959**

**REPORT BY ACTING SERVICE LEAD (LICENSING)**

**1. INTRODUCTION**

- 1.1** The purpose of this report is to present an application for the variation of a premises licence in respect of The Old Cream Shop, 8 Hobbs Hill, Croyde, Devon, EX33 1LZ.
- 1.2** The application (Appendix A) is made by The Old Cream Shop Ltd and requests to vary the current licensing activity:
- 1.2.1** Permit the supply of alcohol on and off the premises.
- 1.3** The Licensing Authority has received two relevant representations in regard to the application which gives rise to this hearing:
- 1.3.1** A letter submitted by Samuels Solicitors, 18 Alexandra Road, Barnstaple, Devon, EX33 1LZ on behalf of Mr & Mrs L Vickery, 6 Hobbs Hill, Croyde, Devon, EX33 1LZ (Appendix E).
- 1.4** One representation has been received from a Responsible Authority:
- 1.4.1** A Letter from Mr Rob Parkinson, Environmental Health Officer (Agency) (Appendix D).
- 1.4.2** On 3 November 2020 an email was received from Mr Andy Cole (Service Lead – Environmental Protection) advising that after reviewing the case history and agreeing amendments to the application he has withdrawn the representation. (Appendix E).
- 1.5** The relevant representation meets the Licensing Objectives as follows:-

<b>Licensing Objectives</b>	
Public Safety	<b>x</b>
Prevention of Public Nuisance	<b>x</b>

## **2. RECOMMENDATIONS**

### **2.1** That the Sub Committee:

Considers the request for determination of the application for the variation of the premises licence and additional representations included in appendices A to K of this report, together with any oral submissions at the hearing.

### **2.2** In determining this application, the Sub-Committee must take one of the following steps, as it considers necessary for the promotion of the licensing objectives. The Sub-Committee should be mindful that in making their decision, if it involves the modification or imposition of conditions or the rejection in whole or in part of the application, such a decision could only be justified if it is made to promote the licensing objectives:

#### **2.2.1** The steps are:

- (a) to grant the licence subject to:
  - (i) the terms sought by the applicant, including such conditions as are consistent with the operating schedule.
  - (ii) such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the authority considers necessary for the promotion of the licensing objectives.
- (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 Designated Premises Supervisor.
- (d) to reject the application.

### **2.3** Should the Sub-Committee decide to grant the application, it is recommended that this be subject to conditions which seek to mitigate the potential for contraventions of the Licensing Objectives.

### **2.4** The following conditions are recommended:

#### **2.4.1** The following conditions were submitted by the applicant and included as (Appendix K) of the report.

### **2.5** It will be best practice, as well as a matter of elemental fairness, that at a hearing, the licensing authority ensures that parties are aware of any condition the licensing authority is proposing to add of its own volition to a licence, in advance of the decision being made.

- 2.6** When Members are considering adding a condition that has not been addressed during the hearing, for example because it is raised after the Members have retired to consider their decision, the parties should be given an opportunity to address the Members on the new condition being considered. This can be done informally, for example, by the legal advisor passing a message to the waiting parties.
- 2.7** If the proposed condition proves controversial, the parties should be afforded the opportunity of addressing the Members further on both the principle of the condition or its specific working. This is likely to serve the interests of all parties, including the Members who will be better informed about the impact and practicability of their proposal. Moreover, a failure to follow this approach risks attracting criticism from the appeal courts.

## **2.8 REASONS FOR RECOMMENDATIONS**

- 2.8.1** The recommendations are made so that the Sub-Committee fulfils its duty under section 18 of the Licensing Act 2003 to determine the application for a premises licence where relevant representations have been made.
- 2.8.2** The recommendations in relation to the imposition of conditions on the premises licence are made with a view to promoting the licensing objectives.

## **3. BACKGROUND**

- 3.1** An application to vary the premises licence for The Old Cream Shop, 8 Hobbs Hill, Croyde, Devon, EX33 1NP, was submitted by The Old Cream Shop Ltd on the 21 August 2020.
- 3.2** The current licensable activities and hours permitted are as follows:

<b>Activity</b>	<b>Day</b>	<b>Start</b>	<b>Finish</b>
Supply of Alcohol on and off the premises	Monday to Sunday	12:00	18:00
<b>Seasonal Variation: During the months of July and August the permitted hours are Monday to Sunday 12:00 hours to 22:00 hours.</b>			
Hours open to the public	Monday to Sunday	09:00	18:00
<b>Seasonal Variation: During the months of July and August the opening hours of the premises are Monday to Sunday 08:00 hours to 22:00 hours.</b>			

- 3.3 The original proposed licensable activities and hours requested were as follows:

Activity	Day	Start	Finish
Supply of Alcohol on and off the premises	Monday to Sunday	12:00	18:00
<b>Seasonal Variation: From 1 April to 31 October Monday to Sunday 12:00 hours to 22:00 hours.</b>			
Hours open to the public	Monday to Sunday	09:00	18:00
<b>Seasonal Variation: From 1 April to 31 October Monday to Sunday 08:00 hours to 22:20 hours.</b>			

- 3.4 Following mediation with the Environmental Protection Team the application has been amended as follows:

Activity	Day	Start	Finish
Supply of Alcohol on and off the premises	Monday to Sunday	12:00	18:00
<b>Seasonal Variation: From 15 May to 30 September Monday to Sunday 12:00 hours to 22:00 hours.</b>			
Hours open to the public	Monday to Sunday	09:00	18:00
<b>Seasonal Variation: From 15 May to 30 September Monday to Sunday 08:00 hours to 22:20 hours.</b>			

- 3.5 Any grant of a premises licence may be subject to conditions applied by the Licensing Authority as a result of this hearing.

- 3.6 A plan of the premises is attached at Appendix B.

- 3.7 A location plan is attached at Appendix C.

#### 4. RELEVANT REPRESENTATIONS

- 4.1 The relevant licensing objectives are:

Licensing Objective	
Public Safety	<b>x</b>
Prevention of Public Nuisance	<b>x</b>

- 4.2 Responsible Authorities:

4.2.1 Devon and Cornwall Police – No representation received

4.2.1.1 Devon and Somerset Fire and Rescue Service – No representation received.

4.2.1.2 NDC Environmental Protection – the following comments received. (Appendix D) & (Appendix E).

4.2.1.3 NDC – Health Food and Safety – No representation received.

- 4.2.1.4 NDC Planning – the following comments received (Appendix 6)
- 4.2.1.5 NDC Licensing – No representation received.
- 4.2.1.6 Devon County Council, Business Strategy and Support Services (Child Protection) - No representation received.
- 4.2.1.7 Devon County Council, Trading Standards – No representation received.
- 4.2.1.8 Public Health Devon – No representation received.
- 4.2.1.9 Home Office Immigration Enforcement- No representation received.
- 4.3** The Licensing Authority had received two relevant representations but confirmation has now been received that the representation from Mr R Parkinson Environmental Health Officer has been withdrawn by Mr Andy Cole (Service Lead - Environmental Protection) following mediation with the applicant.
- 4.3.1 Mr R Parkinson, Environmental Health Officer (Agency) and Mr Andy Cole (Service Lead – Environmental Protection) (Appendix D) & (Appendix E).
- 4.3.2 Samuels Solicitors, 18 Alexandra Road, Barnstaple, Devon, EX32 8BA on behalf of Mr & Mrs Lee Vickery of 6 Hobb's Hill, Croyde, Devon, EX33 1LZ (Appendix E).
- 4.3.3 The letter of representation expresses concern with regard to two of the licensing objectives of public safety and public nuisance.
- 4.3.4 A warning letter was issued to the premises licence holder on 30 July 2020, by the Licensing Team, in respect of complaints of operating beyond the licensed hours. (Appendix F)
- 4.3.5 Mr Alistair Poll of The Old Cream Shop Ltd has confirmed that he has put in the following measures to reduce the potential for noise nuisance:
- (i) Moved the speaker from next to the neighbour's property to the other side. It is to be moved further away once the wiring has been changed.
  - (ii) The BBQ has been moved from next to the neighbour's property to the far end of the property, which is approximately 30 meters from the neighbour's living quarters.
  - (iii) Purchased a professional decibel meter, and monitor noise levels, ensuring they always remain under 85 decibels.

- (iv) Will erect signage to remind customers to respect neighbours.

4.3.6 Following mediation with the Service Lead - Environmental Protection the following has also been agreed:

- (i) Amend the application to 1800 – 2200, 15<sup>th</sup> May – 30<sup>th</sup> September.
- (ii) The only music to be played will be recorded music at a background level – from midday to 2200 – and that no live music will be played.
- (iii) The speaker will be moved to an alternative location to mitigate noise impact.
- (iv) Reduce the number of customers allowed in the premises from 60 (as is currently allowed under the fire risk assessment) to 50.
- (v) Install signage in prominent locations within the premises and outside reminding customers of the need to avoid any anti-social behaviour (including excessive noise) which could have a detrimental effect on your neighbours.
- (vi) Have at least 2 members of staff available outside, who will enforce this as part of their role and implement a policy to warn people once before then asking them to leave if their behaviours continues.
- (vii) Will move the BBQ to an alternative location which is not on the boundary of the neighbouring premises.

4.3.7 Application has also been made to remove Mr Alistair Poll as the Designated Premises Supervisor and replace him with Mr Isaac Harper, which has been approved.

## **5. RELEVANT LICENSING POLICY CONSIDERATIONS**

**5.1** The Sub-Committee is entitled to draw upon any of the considerations outlined in its Licensing Policy document. However, the most significant policy considerations appear to be the following:

- Paragraphs 3.3 to 3.3.2 (Public Safety).
- Paragraphs 3.4 to 3.4.3 (Prevention of Public Nuisance).

## **6. RELEVANT STATUTORY GUIDANCE CONSIDERATIONS**

**6.1** The Sub-Committee is entitled to draw upon any of the considerations outlined in the Statutory Guidance issued under Sec. 182 of the Licensing Act 2003 and published by the Home Office. However, the most significant statutory guidance appears to be in the following:

- Paragraphs 2.7 to 2.9 (Public Safety).
- Paragraphs 2.15 to 2.21 (Public Nuisance).

## **7. OPTIONS**

- 7.1** The Act at section 18(3a) states that, before determining the application, the Licensing Authority must hold a hearing to consider it and any relevant representations. It must, having regard to the application and any relevant representations, take such steps mentioned in section 18 (4) (if any) as it considers necessary for the promotion of the licensing objectives.
- 7.2** In determining this application, the Sub Committee must take one of the following steps as outlined in section 2.2.1 of this report.
- 7.3** If a licence is granted, any relevant mandatory conditions must be imposed in addition to any conditions the subcommittee decides to impose at the hearing. Mandatory conditions are standard conditions imposed by way of legislation and in respect of which there is no power to vary.
- 7.4** Any party to the hearing has the right of appeal to North and East Devon Magistrates' Court following the determination of the application under section 181 of the Act.

## **8. BACKGROUND PAPERS**

- Licensing Act 2003.
- Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office April 2017).
- Licensing Act 2003 (Hearings) Regulations 2005.
- North Devon Council Licensing Act 2003 Policy Approved 21.11.18.

## **9. APPENDICES**

- Appendix A Application for the grant of a Premises Licence
- Appendix B Plan of premises
- Appendix C Location Plan
- Appendix D Email from Mr Rob Parkinson EHO (Agency)
- Appendix E Email from Mr Andy Cole (Service Lead – Environmental Protection)
- Appendix F Warning letter issued 30 July 2020
- Appendix G Letter from Samuel Solicitors on behalf of Mr & Mrs Vickery, 6 Hobbs Hill, Croyde

Appendix H	Response from Planning
Appendix I	Response from Fire Authority
Appendix J	Current Licence Conditions
Appendix K	Proposed Licensing Conditions submitted by applicant

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*Date: 10/11/20*  
*Reference: 051959*