



North Devon Council

Report Date: 24 August, 2022

Topic: Application for the Grant of a Premises Licence; Mad Hatter Plant Based Bistro and Lounge Bar, 8 and 10 Queens Walk, Bear Street, Barnstaple, EX32 7DA.

Reference Number 054744

Report by: LICENSING OFFICER PHIL FITZSIMONS

1. INTRODUCTION

- 1.1 The purpose of this report is to present an application for the grant of a premises licence in respect of the Mad Hatter Plant Based Bistro and Lounge Bar 8 and 10 Queens Walk, Bear Street, Barnstaple
- 1.2 The application (Appendix A) is made by Miss Casey Reed and requests the following licensing activity: Permit the supply of alcohol on and off the premises.
- 1.3 The Licensing Authority has received one relevant representation from a Responsible Authority in regard to the application which gives rise to the hearing.
- 1.4 A Letter dated 1st July 2022 and report dated 15th August 2022 from Mrs B Coles, Planning Officer, Strategic Development and Planning (Appendix D).
- 1.5 The relevant representation meets the Licensing Objective as follows:

Licensing Objectives	
The Prevention of Public Nuisance	x

2. RECOMMENDATIONS

2.1 That the Sub Committee:

Considers the request for determination of the application for the grant of a premises licence and the representation included in appendix 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 be minded to grant the application then it is recommended that this be subject to conditions which seek to mitigate the potential for contraventions of the Licensing Objectives. The following conditions are recommended:

2.3.1 The proposed conditions submitted by the applicant and included as (Appendix E) of the report.

2.4 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.

- 2.5 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.
- 2.6 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.

3. REASONS FOR RECOMMENDATIONS

- 3.1 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.
- 3.2 The recommendations in relation to the imposition of conditions on the premises licence are made with a view to promoting the licensing objectives.

4. REPORT

- 4.1 An application to grant a premises licence for the Mad Hatters Plant Based Bistro 8-10 Queens Walk, Bear Street, Barnstaple, EX32 7DA was submitted by Miss Casey Reed Ltd on the 1st July, 2022.
- 4.2 The proposed grant application as applied is to enable the supply of alcohol on and off the premises Tuesday to Thursday from 11:00 to 21:30 hours, Friday and Saturday 11:00 hours to 22:00 hours and Sunday 12:00 hours to 16:00 hours.
- 4.3 The proposed licensing activities and hours applied for are as follows:

Activity	Day	Start	Finish
Supply of Alcohol on and off the premises	Tuesday to Thursday	11:00	21:30
Supply of Alcohol on and off the premises	Friday to Saturday	11:00	22:00
Supply of Alcohol on and off the premises	Sunday	12:00	16:00
Hours open to the public	Tuesday to Thursday	11:00	22:00
Hours open to the public	Friday to Saturday	22:30	22:30
Hours open to the public	Sunday	12:00	16:30

- 4.4 Any grant of a premises licence may be subject to conditions applied by the Licensing Authority as a result of this hearing
- 4.5 A plan of the internal layout of the premises is attached at (Appendix B) and location at (Appendix C).
- 4.6 In addition to the above applied for licensable activity, Section 16.6 of the Statutory Guidance issued under Sec. 182 of the Licensing Act 2003, outlines the deregulatory changes that have amended the Licensing Act 2003 to make certain activities non-licensable. Of particular relevance to the representation received against this application are the following provisions introduced by the Live Music Act 2012:
- Live music: no licence permission is required for:
 - 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, provided that the audience does not exceed 500.
 - Recorded Music: no licence permission is required for:
 - 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

- 4.7 Although Live and recorded music have been deregulated subject to the conditions set out above, it is still open to the Licensing Authority to add conditions to a Premises Licence as though the live or recorded music were regulated entertainment authorised by that Premises Licence (between 8am and 11pm), where the Licensing Authority feel it is necessary for the promotion of the licensing objectives.
- 4.8 In addition, the Licensing Authority can determine that live or recorded music at the premises is a licensable activity and live or recorded music cannot be provided without permission on the Premises Licence.

5. RELEVANT REPRESENTATIONS

- 5.1 The relevant licensing objective is:

Licensing Objective	
The Prevention of Public Nuisance	x

- 5.2 Responsible Authorities

5.2.1 Devon and Cornwall Police – No representation received under the licensing objectives but observation made with regard Police logs in the area. (Appendix F)

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

5.2.1.2 NDC Environmental Protection – No representation received.

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

5.2.1.4 NDC Planning – Observation received that the proposal falls outside permitted development and a formal planning application is required for change of use, **Representation received under the licensing objective of the Prevention of Public Nuisance. (Appendix D).**

5.2.1.5 NDC Licensing – No representation received.

5.2.1.6 Devon County Council, Business Strategy and Support Services (Child Protection) - No representation received.

5.2.1.7 Devon County Council, Trading Standards – No representation received.

5.2.1.8 Public Health Devon – No representation received.

5.2.1.9 Home Office Immigration Enforcement – No representation received.

5.3 The Licensing Authority has received one relevant representation:

5.3.1 Mrs B Coles, Planning Officer, Strategic Development and Planning (Appendix D).

The email and report expresses concern with regard to the licensing objective of the prevention of public nuisance.

In summary concerns relate to:

Impact of noise from the bistro and bar from recorded and live music and the effect on neighbouring flats situated above.

5.4 On the 26th July 2022 (Appendix G) Casey Reed responded to the Licensing Authority remove open mic nights and to close the bar on Fridays and Saturdays at 9pm.

6. RELEVANT LICENSING POLICY CONSIDERATIONS

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

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

6.2 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 2.15 to 2.21 (Prevention of Public Nuisance).

- Paragraphs 14.64 to 14.65 (Planning and Building Control), specifically section 14.64 which states “The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa”.

7. OBSERVATIONS / 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.
- 7.5 The Committee must have regard to all the evidence it hears in reaching its decision.

8. RESOURCE IMPLICATIONS

- 8.1 There are no direct financial or human resource implications for the Council associated with this report.
- 8.2 Should an appeal against the decision of the Licensing Sub-Committee be brought there are potential financial consequences to the Council should the Council’s decision be overridden.

9. EQUALITIES ASSESSMENT

- 9.1. Not Applicable.

10. ENVIRONMENTAL ASSESSMENT

10.1. There are no direct environmental implications for the Council associated with this report.

11. CORPORATE PRIORITIES

11.1. What impact, positive or negative, does the subject of this report have on:

11.1.1. The commercialisation agenda: Neutral.

11.1.2. Regeneration or economic development: Neutral

12. CONSTITUTIONAL CONTEXT

12.1. The Licensing Sub-Committee Article of part 3 Annexe 1 paragraph 4b

12.2. Referred or delegated power Delegated
Legislative Context

13. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

14. BACKGROUND PAPERS

The following background papers were used in the preparation of this report:

- Licensing Act 2003.
- Amended guidance issued under section 182 of the Licensing Act 2003 (Home Office April 2018).
- Licensing Act 2003 (Hearings) Regulations 2005.
- North Devon Council Licensing Policy Approved 21.11.18.
- Live Music Act 2012
- Appendix A Premises Application
- Appendix B Plan of Premises
- Appendix C Location Plan
- Appendix D Letter / Email and report Beth Coles Planning
- Appendix E Proposed Licence Conditions by Applicant
- Appendix F Police Observation

15. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers:



Phil Fitzsimons Licensing Officer. 15/08/22