



North Devon Council

Report Date: 12 September 2022

Topic: Application by Gabriela Marchewka for the Grant of a Premises Licence; Vintage 21 Horse Lorry, Car Park accessed off Sandy lane, Croyde, Devon, Grid Reference 244401,139182 (across stream from village hall)

Report by: LICENSING OFFICER NOEL BOURKE

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 Vintage 21 Horse Lorry, Car Park accessed off Sandy lane, Croyde, Devon, Grid Reference 2444401, 139182 (across stream from village hall)
- 1.2** The application (Appendix A) is made by Gabriela Marchewka and requests the following licensing activity: Permit the supply of alcohol on and off the premises. A plan of the premises (Appendix B) and a location plan (Appendix C) have also been provided by the applicant.
- 1.3** The Licensing Authority has received the below thirty three relevant representations both from members of the community and one from a Responsible Authority (Planning) in regard to the application which gives rise to the hearing.
- 1.4** An email from Sarah Duncombe (Appendix D).
- 1.5** An email from Mr Malcolm Locke (Appendix E)
- 1.6** An email from Margaret Beaumont (Appendix F)
- 1.7** An email from Matthew Pine and Robert Colwill (Appendix G)
- 1.8** An email from Robert Cornell (Appendix H)
- 1.9** An email from Rock Barouh (Appendix I)
- 1.10** An email from Scott Pirie (Appendix J)
- 1.11** An email from Karen Hinnells (Appendix K)

- 1.12** An email from Justin Dyson (Appendix L)
- 1.13** An email from Martin Lee, Planning Officer, Strategic Development and Planning (Appendix M)
- 1.14** An email from Paul Watkins (Appendix N)
- 1.15** An email from Richard Windsor (Appendix O)
- 1.16** An email from Jennie Windsor (Appendix P)
- 1.17** An email from Caroline Bailey (Appendix Q)
- 1.18** An email from Paul Spooner (appendix R)
- 1.19** An email from Steve Gibbs making representations for Susan and Rob Gibbs (Appendix S)
- 1.20** An email from Adele and Steve Gibbs (Appendix T)
- 1.21** An email from Ali Green-Price (Appendix U)
- 1.22** An email from Ralph Eric Gordon (Appendix V)
- 1.23** An email from Frankie Gordon (Appendix W)
- 1.24** An email from Sue Squire -Georgeham Parish Council (Appendix X)
- 1.25** An email from Annette Spencer (Appendix Y)
- 1.26** An email from Joe Harvey (Associate Solicitor) Poppleston Allen Solicitors acting on behalf of Jane Young and Brian Whitty (Appendix Z)
- 1.27** An email containing observations from Elaina Knibb – North Devon Council Environmental Protection Team. No representation made. (Appendix AA)
- 1.28** An email from Helen Michael (Appendix BB)
- 1.29** An email from S Young (Appendix CC)
- 1.30** An email from Shirley Lewis (Appendix DD)
- 1.31** An email from Jane Bull (Appendix EE)
- 1.32** An email from Brian Whitty (Appendix FF)

1.33 An email Gillian Dallimore (Appendix GG)

1.34 An email from Russell Dallimore (Appendix HH)

1.35 An email from Jo McDonald (Appendix II)

1.36 An email from Mrs Osbourne (Appendix JJ)

1.37 These relevant representations meets the Licensing Objective as follows:

Licensing Objectives	
The Prevention of Public Nuisance	x
The Prevention of Crime and Disorder	x
Public Safety	x
Protection of Children from Harm	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 representations 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 KK) of the report.
 - 2.3.2 The proposed conditions submitted by Paul Butler (Police Licensing Officer Devon and Cornwall Police) and included as (Appendix LL) of the report. These conditions have been accepted by the applicant as detailed in email response from them (Appendix MM)
- 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 Vintage 21 Horse Lorry Car Park accessed off Sandy Lane, Croyde, Devon, Grid Reference 244401,139182 (Across stream from village hall) was submitted by Gabriela Marchewka on the 14th June 2022.

- 4.2 The proposed grant application as applied is to enable the supply of alcohol on and off the premises Monday to Sunday from 12:00 to 21:30.

- 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	Monday to Sunday	12:00	21:30
Hours open to the public	Monday to Sunday	12:00	22:00

- 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 of the premises 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
The Prevention of Crime and Disorder	x
Public Safety	x
Protection of Children from Harm	x

- 5.2 Responsible Authorities

5.2.1 Devon and Cornwall Police – No representation received under the licensing objectives but proposed conditions provided (Appendix LL) and observation made with regard to reported crime and Police logs in the Croyde area. (Appendix NN)

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 would represent a use requiring planning permission for change of use to Use Class E.b (retail of food and drink for consumption mainly on the premises) under the Town and Country Planning (Use Classes) order 2020 as amended. Any such planning may raise concerns on a variety of grounds including adverse visual impact within a sensitive landscape, flood risk, loss of parking, adverse impact on biodiversity in the area. **The planning representation received specifically under the licensing objective of the Prevention of Public Nuisance relates to a reduction in quality of living conditions for nearby private residential property owners/occupants. (Appendix M).**

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 thirty three relevant representations as per points 1.4 to 1.37.

5.4 There are numerous representations raised within many of the communications received by North Devon Council. The committee should only consider those representations that are relevant to the four licensing objectives.

5.5 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing

objectives. For example a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives

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 3.2 to 3.2.2 (Prevention of Crime and Disorder)
- Paragraphs 3.3 to 3.3.2 (Public Safety)
- Paragraphs 3.4 to 3.4.3 (Prevention of Public Nuisance).
- Paragraphs 3.5 to 3.5.2 (Protection of children from harm)

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 2.1 to 2.6 (Crime and disorder)
- Paragraphs 2.7 to 2.14 (Public safety)
- Paragraphs 2.15 to 2.21 (Prevention of Public Nuisance).
Paragraphs 2.22 to 2.31 (Protection of children from harm)
- 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 Martin Lee Planning
- Appendix KK Proposed Licence Conditions by Applicant
- Appendix LL Proposed Licence Conditions by Devon and Cornwall Police
- Appendix MM Vintage 21 email accepting Licence conditions proposed by the Police
- Appendix NN Police Observations of crime and disorder in Croyde

15. STATEMENT OF INTERNAL ADVICE

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

Noel Bourke Licensing Officer. 12/09/22