



## North Devon Council

Report Date: 11<sup>th</sup> January, 2023

**TOPIC: APPLICATION FOR THE GRANT OF A PREMISES LICENCE;  
HARTA RETREAT CLEAVE FARM HOLE LANE EAST DOWN  
BARNSTAPLE NORTH DEVON EX31 4NX**

**REFERENCE NUMBER 055556**

**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 Harta Retreat Cleave Farm Hole Lane East Down Barnstaple North Devon EX31 4NX.
- 1.2 The application (Appendix A) is made by Mr Aaron Cousins and requests the following licensing activity: Permit the supply of alcohol on and off the premises. A location plan of the premises has also been supplied (Appendix B) and a plan of the premises (Appendix C).
- 1.3 The Licensing Authority has received relevant representation from two neighbouring residents in regard to the application which gives rise to the hearing.
- 1.4 The representations are made in the form of two emails from Elissa Natasha Frohlich dated 7<sup>th</sup> and the 23<sup>rd</sup> December 2022 (Appendix D) and two emails from a [REDACTED] dated 9<sup>th</sup> and 15<sup>th</sup> December 2022 (Appendix E).
- 1.5 The relevant representation meets the Licensing Objective as follows:

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

## 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 F) 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 Harta Retreat Cleave Farm Hole Lane East Down Barnstaple North Devon EX31 4NX was submitted on the 2<sup>nd</sup> December 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 22:30 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	Monday to Sunday	12:00	23:30
Hours open to the public	Monday to Sunday	12:00	00:00
Provision of Films	Monday to Sunday	11:00	00:00
Provision of Live Music	Monday to Sunday	11:00	00:00
Provision of Recorded Music	Monday to Sunday	11:00	00:00
Late Night Refreshment	Monday to Sunday	23:00	00:00

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 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	<b>x</b>
Public Safety	<b>x</b>

- 5.2 Responsible Authorities

5.2.1 Devon and Cornwall Police – No representation received.

- 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 – No representation received
- 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 two relevant representations:

5.3.1 Elissa Natasha Frohlich of Hammets Park Farm a neighbouring premises. (Appendix D).

The two emails and attached representation form expresses concern with regard to the licensing objective of the prevention of public nuisance.

In summary concerns relate to:

Impact of noise from Harta Retreat and the fact that the loud live and recorded music seven days a week would cause noise pollution, an environmental impact, and an impact on her well-being causing health issues.

5.3.2 [REDACTED] a neighbouring premises. (Appendix E)

The two emails and attached representation forms expresses concerns with regards to the licensing objective of Public Safety and To Prevent Public Nuisance.

In summary concerns relate to:

The Public Safety risk associated with the increased traffic that the premises will attract to utilise the small lane that leads down from the A3123 to the premises.

The public nuisance associated with the playing of live or recorded music and the provision of films between 1100hrs and 0000hrs daily. The representation also discloses a diagnosis of Multiple Sclerosis and the impact that the noise nuisance would have in increasing their stress levels and in turn would worsen their overall health.

5.4 The applicant and the two persons making representations have attempted to mediate in relation to the application and the representations in person or via email and have been unable to agree on a compromise.

## **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).
- Paragraphs 3.3 to 3.32 (Public Safety).

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 2.7 to 2.14 (Public Safety).

## **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 Email and representations report Elissa Natasha Frohlich
- Appendix E Emails containing representation forms from a [REDACTED]
- Appendix F Proposed Licence Conditions by Applicant
- Appendix G Police email in response to their licensing visit
- Appendix H North Devon Online Planning Status report.

#### **15. STATEMENT OF INTERNAL ADVICE**

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

Noel Bourke Licensing Officer. 11<sup>th</sup> January 2023