

**NORTH DEVON DISTRICT COUNCIL**

**REPORT TO LICENSING AND COMMUNITY SAFETY SUB-COMMITTEE  
HEARING:**

**26 February, 2020**

**Application by: Mr Justin Schamotta**

**Application for the Grant of a Premises Licence; Madrigal Brewery, Unit 2, Hele Business Park, Witheridge Place, Ilfracombe, Devon, EX34 9RA**

**Reference Number: 051118**

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

**1. INTRODUCTION**

**1.1** The purpose of this report is to present an application for the grant of a premises licence in respect of Madrigal Brewery, Unit 2, Hele Business Park, Witheridge Place, Ilfracombe, Devon, EX34 9RA.

**1.2** The application (Appendix A) is made by Mr Justin Schamotta and requests the following licensing activity:

**1.2.1** Permit the supply of alcohol on and off the premises.

**1.3** The Licensing Authority has received one relevant representation from a Responsible Authority:

**1.3.1** A Letter from Mrs B Coles, Case Officer, Strategic Development and Planning (Appendix D).

**1.4** The relevant representation meets the Licensing Objective as follows:-

<b>Licensing Objectives</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 representation included in Appendix D 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 G) 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 grant a premises licence for Madrigal Brewery, Unit 2, Hele Business Park, Witheridge Place, Ilfracombe, Devon, EX34 9RA, was submitted by Justin Schamotta on the 2<sup>nd</sup> January, 2020.
- 3.2** The proposed licensing activities and hours applied for 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	10:00	23:00
Hours open to the public	Monday to Sunday	10:00	23:30

- 3.3** On the 11<sup>th</sup> February 2020 Mr Justin Schamotta emailed the Licensing Authority (Appendix E) to advise he had amended his application following mediation with Ilfracombe Town Council to the following hours:-

<b>Activity</b>	<b>Day</b>	<b>Start</b>	<b>Finish</b>
Supply of Alcohol on and off the premises	Monday to Sunday	10:00	19:30
Hours open to the public	Monday to Sunday	10:00	20:00

- 3.4 Any grant of a premises licence may be subject to conditions applied by the Licensing Authority as a result of this hearing.
- 3.5 A plan of the premises is attached at Appendix B.
- 3.6 A location plan is attached at Appendix C.

#### 4. RELEVANT REPRESENTATIONS

4.1 The relevant licensing objective is:

Licensing Objective	
Public Safety	<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 F).

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

4.2.1.4 NDC Planning – **Representation received.** (Appendix D)

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 has received one relevant representation:

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

The letter of representation expresses concern with regard to the licensing objective of public safety.

## **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 consideration appear to be the following:

- Paragraphs 3.3 to 3.3.2 (Public Safety).

## **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).

## **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 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 Letter from Mrs B Coles, Case Officer, Strategic Development and Planning
- Appendix E Email from Mr Justin Schamotta
- Appendix F Comment from Mr Rob Parkinson Environmental Protection Team
- Appendix G Proposed Licensing Conditions submitted by applicant
- Appendix H Photograph of brewing area
- Appendix I Photograph of area where alcohol to be sold
- Appendix J Photograph of front of building

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*Date: 13/02/20*  
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