

Report to: **Licensing Sub-Committee**
Date: **12th August 2020**
Title: **Application to vary the Premises Licence of
Morrisons, Coronation Road, Totnes**
Portfolio Area: **Customer First**
Wards Affected: **Totnes Town**
Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

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Recommendations:

That the Sub-Committee consider the application for a variation to the Premises Licence and make determinations in respect of this application, namely:

- (a) to modify the conditions of the licence;**
- (b) to reject the whole or part of the application;**

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The decision must be in line with the licensing objectives contained within the Licensing Act 2003.

1. Executive summary

- 1.1 The purpose of the Licensing Sub-Committee meeting is to determine an application for a variation to the Premises Licence at **Morrisons, Coronation Road, Totnes, TQ9 5GN** in accordance with Section 35 of the Licensing Act 2003.
- 1.2 The Licensing Authority received an application from Wm Morrison Supermarkets Plc for a variation to the Premises Licence on 19th June 2020. The purpose of the application is to vary the hours for sale of alcohol and opening from 6am to midnight (currently) to 24hrs. Also to include the provision of late night refreshment from 11pm to 5am. A copy of the application is attached at **Appendix A** and a copy of the current premises licence is at **Appendix B**.
- 1.3 Sixteen representations have been received during the consultation period (**Appendix C**) and therefore the application must be determined by the Licensing Sub-Committee.

2. Background

- 2.1 The premises is currently licensed for the sale of alcohol for consumption off the premises, Monday to Sunday from 6am to midnight. There are no set opening hours on the premises licence, a copy of the premises licence and plan is at **Appendix B**.
- 2.2 The mandatory conditions under Annex 1 of the premises licence and the conditions relating to the licensing objectives under Annex 2 of the premises licence will remain in place should the application be granted, unless specifically removed by the Licensing Sub-Committee. The committee also have the power to include additional conditions if they believe appropriate to promote the licensing objectives. The applicant has not offered to include any further conditions within their operating schedule as part of this application.
- 2.3 Should the variation application be granted the premises licence would not supersede any planning restrictions in place at the premises or the limits on opening hours under Sunday Trading legislation, including further restrictions on Christmas Day and Easter Sunday.
- 2.4 Sixteen representations in objection to this application were received during the consultation period from District Councillors, Totnes Town Council, local charitable organisations and local residents. Copies of their representations can be found at **Appendix C**.
- 2.5 The representations make reference to the 'prevention of crime and disorder', 'prevention of public nuisance' and 'protection of children from harm' licensing objectives and the potential impact that the extended hours for sale of alcohol may have on the local

community. The main areas for concern relate to: anti-social and criminal behaviour linked to alcohol consumption; underage alcohol sales; noise and disturbance; and litter. There is particular reference in many of the representations to the welfare of rough sleepers and other vulnerable persons within the town, should access to alcohol be available throughout the night.

- 2.6 The premises is located on the edge of the town centre, close to other businesses and residential properties. As has been mentioned in some of the representations, it is adjacent to the area covered by the Public Spaces Protection Order (PSPO) 2018 in relation to alcohol consumption. The PSPO was brought in to control anti-social behaviour associated with the consumption of alcohol and requires that any person within the PSPO area must surrender any open vessel containing alcohol to an authorised person when requested to do so. To refuse to surrender the alcohol is an offence.
- 2.7 There is also reference within the representations to 'public safety', although the reasons given are in fact in relation to 'public health'. 'Public health' in itself is not a licensing objective and therefore cannot be considered when determining a premises licence application. The Home Office guidance issued under Section 182 Licensing Act 2003 defines 'public safety' as concerning 'the safety of people using the relevant premises rather than public health which is addressed in other legislation.' It goes on to state that 'there will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act.'
- 2.8 Any reference within the representations to the 'need' for the additional hours for sale of alcohol or to the number of other outlets selling alcohol within the town cannot be taken into consideration.
- 2.9 As relevant representations in respect of this application have been received, which have not been withdrawn and mediation has not been possible, the Licensing Sub-Committee acting on behalf of the Licensing Authority must make a determination on this application. When coming to a decision, the Licensing Sub-Committee must give consideration to the Council's Statement of Licensing Policy (the Policy) and Home Office guidance (the Guidance) issued under Section 182 Licensing Act 2003 (revised April 2018).
- 2.10 Section 3.1 of the Policy states: The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives. (These objectives are the only matters to be taken into account in determining the application and any conditions attached must be appropriate to achieve the licensing objectives).
- 2.11 The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

- 2.12 Section 3.2 of the Policy states: A licence (or club premises certificate) will only be granted where the Licensing Authority is satisfied that these objectives have been met.
- 2.13 Section 4.1 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.
- 2.14 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in April 2018 state: The Licensing Authority may not impose conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives (paragraph 10.8 of the guidance).
- 2.15 The following responsible authorities are statutory consultees under the Licensing Act 2003:
- Devon and Cornwall Police
 - Devon and Somerset Fire and Rescue Service
 - Devon Safeguarding Children's Board
 - Devon County Council Trading Standards
 - Devon Drug and Alcohol Action Team, NHS Devon
 - South Hams District Council Planning Department
 - South Hams District Council Environmental Health (Health & Safety)
 - South Hams District Council Environmental Health (Pollution Control)
- 2.16 No representations have been received from any of the responsible authorities.
- 2.17 In addition to the above responsible authorities, any person may make a representation in relation to a premises licence application.

3. Outcomes/outputs

- 3.1 When determining an application for a premises licence, particularly when considering appropriate conditions and operating hours, the following sections of the Statement of Licensing Policy (the policy) and Section 182 Guidance (the guidance) are especially relevant:
- 3.2 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. In certain circumstances, conditions relating to noise

emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.19 of the guidance).

- 3.3 Paragraph 10.14 of Guidance issued under Section 182 of the Licensing Act 2003 states: where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 3.4 Section 6.1 & 6.2 of the policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When the Authority's discretion is engaged, consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or other persons on the basis of the licensing objectives. However, when dealing with licensing hours beyond midnight it is more likely that relevant representations will be made unless there are higher standards of control within operating schedules to promote the licensing objectives, especially for premises which are situated near residential areas or in areas where anti-social disorder takes place.
- 3.5 Section 6.4 of the policy states: The terminal hours will normally be approved where the Applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the Licensing Authority believe it necessary, proportionate and reasonable to restrict the hours required. The Licensing Authority may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area.
- 3.6 Section 6.8 of the policy states: Shops, stores and supermarkets will generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance. This could be if an individual shop is known to be a focus of disorder and disturbance and relevant representations have been received. Another such reason may be a particularly early opening time, where there are reasons to believe that the availability of alcohol at that hour could impact adversely on the licensing objectives.
- 3.7 Section 10.1 of the Policy states: The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. Access

by children to all types of premises will not be limited unless it is considered necessary to do so in order to protect them from harm.

- 3.8 The desired outcome is a determination of the application with reasons provided which relate to the four licensing objectives and when conditions are imposed, that these are appropriate to address the licensing objectives.

4. Options available and consideration of risk

- 4.1 The Licensing Authority may decide to impose additional conditions to address the four licensing objectives, or to amend or remove requested licensable activities. When coming to their decision the Licensing Sub-Committee must give consideration to the Section 182 Guidance and the Statement of Licensing Policy. Reasons must be given which relate to the licensing objectives for any decision made.
- 4.2 The Sub-Committee will need to consider the hours of operation proposed, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential properties, the history of the management of the premises (if applicable), the evidence provided of any problems in the past, the likely impact of any extension of hours and activities, public transport, taxi availability, the right the applicant has to operate a business and balancing the rights of residents to the quiet enjoyment and privacy of family life. The South Hams relies on tourism, with the population in the district doubling in the summer months with holidaymakers both from this country and international visitors who are, in the main, families with young children and retired people – the very segment of society who would perhaps be deterred by anti-social behaviour. These, and any other relevant issues, may be explored at the hearing in so far as it reflects the four licensing objectives.
- 4.3 A decision made by the Licensing Sub-Committee may be appealed by the applicant or any person who has made relevant representations. The right of appeal is to the Magistrates' Court by virtue of Section 181 and Schedule 5 of the Licensing Act 2003. The Magistrates' Court may dismiss the appeal, or substitute its own decision, or send back the case to the Licensing Authority with directions as to how the case is to be dealt with. The Magistrates' Court may make any costs order it thinks fit.
- 4.4 The Licensing Act 2003 contains a provision which enables a responsible authority or any other person to apply to this Licensing Authority for a review of the premises licence once granted. A hearing follows which enables the Sub-Committee to use the normal powers available, but also to suspend the licence for a period of up to three months or to withdraw it.

5. Proposed Way Forward

5.1 That the Sub-Committee consider the application for a variation to the Premises Licence and make a determination in respect of this application, namely to:

- i) modify the conditions of the licence;
- ii) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The decision must be in line with the licensing objectives contained within the Licensing Act 2003.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Licensing Act 2003 gives Licensing Authorities the responsibility for determining applications submitted under this provision. This is a statutory obligation.</p> <p>As there have been relevant representations in respect of this application which have not been resolved, this hearing must be held. Relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives, by responsible authorities or any other person. The Licensing Sub-Committee must disregard any information or evidence not relevant to the licensing objectives.</p> <p>The Licensing Sub-Committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The Licensing Authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.</p> <p>The Act requires (Section 35) that in dealing with a variation to a premises licence application, the committee takes any of the following steps which are appropriate for the promotion of the licensing objectives: (i) modify the conditions of the licence; ii) to reject the whole or part of the application;</p>

		<p>The Sub-Committee must give its reasons for its decision to take any of these steps. Similarly, if the application is rejected, the Sub-Committee must give its reasons.</p> <p>The applicant or any person who has made relevant representations has the right to appeal a decision made by the Licensing Sub-Committee to the Magistrates' Court by virtue of Section 181 and Schedule 5 of Licensing Act 2003.</p> <p>On appeal, the Magistrates' Court may:</p> <ul style="list-style-type: none"> a) dismiss the appeal; b) substitute for the decision appeal against another decision which could have been made by the Licensing authority; c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.
Financial	N	There are no direct financial implications to the Council from this Report. However, should a decision be challenged this could result in the Council facing an appeal to the Magistrates Court with the risk of costs being awarded against the Council.
Risk	Y	<p>The Licensing Authority must follow strict legislation in accordance with the Licensing Act 2003 and adhere to the statutory instruments contained with the Act.</p> <p>All decisions must be taken in consideration of the four licensing objectives (section 2.11). These objectives are in place to give protection to the public from the potential negative impacts caused by licensed premises.</p> <p>Decisions may be appealed (see financial and legal/governance sections above).</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		Compliance with the Human Rights Act 1998 – Article 6: right to a fair trial.
Safeguarding		All decisions must take into consideration the 'protection of children from harm' licensing objective.
Community Safety, Crime and Disorder		Section 17 Crime and Disorder Act 1998 applies. Decisions made must relate to the four licensing objectives as detailed in section 2.11 of this report.

Health, Safety and Wellbeing		All decisions must take into consideration the four licensing objectives, including 'public safety' and 'protection of children from harm'.
Other implications		

Supporting Information

Appendices:

Appendix A – variation application

Appendix B – current premises licence and plan

Appendix C – representations

Background Papers:

[under provisions of the Local Government Act 1972]

The Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003

South Hams District Council's Statement of Licensing Policy

Responses to Notices of Hearing

Process checklist	Completed
Portfolio Holder briefed	Yes/No
SLT Rep briefed	Yes/No
Relevant Exec Director sign off (draft)	Yes/No
Data protection issues considered	Yes/No
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	Yes/No