

Report to: **Licensing Sub-Committee**

Date: **29<sup>th</sup> April 2021**

Title: **Application for a new Premises Licence at Rockfish Takeaway, 28 Lower Street, Dartmouth, TQ6 9AN**

Portfolio Area: **Customer First**

Wards Affected: **Dartmouth and East Dart**

Relevant Scrutiny Committee:

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

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**Recommendations:**

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

- i) grant the application as submitted, subject to any Mandatory Conditions required;**
- ii) modify the conditions of the licence;**
- iii) exclude any of the licensable activities to which the application relates;**
- iv) to refuse to specify a person in the licence as the premises supervisor;**
- v) reject 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 new Premises Licence at **Rockfish Takeaway, 28 Lower Street, Dartmouth, TQ6 9AN** in accordance with Section 18 of the Licensing Act 2003.
- 1.2 The Licensing Authority received an application from Rockfish (Dartmouth) Ltd for a new Premises Licence on 3<sup>rd</sup> March 2021. The application is for:
- Sale of alcohol for consumption off the premises:
    - Monday to Sunday from 11am to 10pm;
- A copy of the application and plan is attached at **Appendix A**.
- 1.3 The premises is described as a small fish and chip takeaway, which includes a waiting area for customers. Alcohol will only be sold to takeaway, there will be no consumption on the premises.

## 2. Background

- 2.1 The premises is located in the town centre of Dartmouth, close to the Bayards Cove area and the Lower Ferry Slipway. A map of the location is attached at **Appendix B**.
- 2.2 During the consultation period, eight relevant representations were received from local residents in objection to the application. No representations were received from any of the Responsible Authorities or District Councillors. Copies of the representations are attached at **Appendix C**.
- 2.3 Issues raised make reference to all four of the licensing objectives, but there is particular concern in relation to the prevention of public nuisance and prevention of crime and disorder licensing objectives. A major concern throughout all representations is about litter generated by customers of the premises. Current problems have been raised, with the fear that rubbish may increase should a premises licence be granted.
- 2.4 Another concern raised is the possibility that customers may take off-sales of alcohol to consume in the local area and the potential anti-social behaviour of customers under the influence of alcohol. Other concerns include customers queuing outside of the premises blocking the pavement and the proximity to traffic using the Lower Ferry Slipway.
- 2.5 Any references within the representations to the 'need' for the supply of alcohol at the premises or the number of other licensed premises in the local area are not relevant and cannot be taken into consideration. Toilet provision has also been raised in several of the representations, but as no food or drink will be consumed on the premises, the owners have no obligation to provide customer toilets

and cannot be held responsible for the availability of public toilets in the vicinity.

- 2.6 During the consultation period the applicant provided the Licensing Department with further information about how the business currently operates. The applicant also proposed additional conditions to address the concerns raised in the representations relating to litter and glass waste. The additional information received and the proposed conditions are at **Appendix D**. These proposals were sent to all those that had submitted a representation on 22<sup>nd</sup> March 2021 (objections 6 and 7 had not been received by this date so did not receive a copy). Only objector 8 confirmed their agreement to withdraw their representation, subject to the proposed amendments. We received two responses confirming that they wished to continue with their objection despite these proposals (objections 3 and 4) and no response was received from the three other parties.
- 2.7 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 issued under Section 182 Licensing Act 2003 (revised April 2018).
- 2.8 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.
- 2.9 The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 2.10 Section 3.2 of the Policy states: 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. Each objective is of equal importance. A licence will only be granted where the Licensing Authority is satisfied that these objectives have been met.
- 2.11 Section 2.4 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.
- 2.12 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).

- 2.13 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)
- 2.14 No representations have been received from any of the responsible authorities.
- 2.15 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 immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave (paragraph 2.19 of the guidance).
- 3.3 Sections 5.5.1 and 5.5.2 of the policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application, but the presumption will be to grant the hours requested unless there are relevant objections to those hours raised on the basis of the licensing objectives.
- 3.4 However, when issuing a licence with hours beyond midnight it is more likely that relevant representations will be made unless there are higher standards of control within operating schedules in order 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 5.5.5 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 appropriate to restrict the hours required due to the nature of the activities and the amenity of the area. If the Licensing Committee or a sub-committee believes that granting longer hours would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 3.6 Section 3.8.1 of the Policy states: The Authority recognises the great variety of premises for which licences may be sought. These include theatres, members' clubs, sports clubs, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls, schools and off-licences. The Authority will not restrict access by children to any particular type of premises unless it is considered appropriate to do so in order to protect them from harm.
- 3.7 Section 3.8.6 of the Policy states: When deciding whether or not to limit access to children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children would include premises: -
- ❑ where entertainment of an adult or sexual nature is provided
  - ❑ where there is a strong element of gambling taking place
  - ❑ with a known association with drug taking or dealing
  - ❑ where there have been convictions of the current management for serving alcohol to those under 18 years
  - ❑ where the supply of alcohol for consumption on the premises is exclusive or primary purpose of the services provided at the premises
  - ❑ where there are unsupervised areas (for example toilets, beer gardens, play zones).
- 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 new Premises Licence and make a determination in respect of this application, namely to:
  - i) grant the application as submitted, subject to any Mandatory Conditions required;
  - ii) modify the conditions of the licence;
  - iii) exclude any of the licensable activities to which the application relates;
  - iv) to refuse to specify a person in the licence as the premises supervisor;
  - v) reject the application, in line with the licensing objectives (Section 4) contained within the Licensing Act 2003.

**6. Implications**

| Implications | Relevant to | Details and proposed measures to address |
|--------------|-------------|--|
|--------------|-------------|--|

|                  | proposals<br>Y/N |  |
|------------------|------------------|--|
| 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 18) that in dealing with a new premises licence application, the committee takes any of the following steps which are appropriate for the promotion of the licensing objectives:</p> <ul style="list-style-type: none"> <li>(a) to grant the licence subject to:- <ul style="list-style-type: none"> <li>i) the conditions mentioned in section 18 (2)(a) [ie as applied for] modified to such an extent as the authority considers necessary for the promotion of the licensing objectives, and</li> <li>ii) any conditions which must under section 19, 20 or 21 be included in the licence;</li> </ul> </li> <li>(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;</li> <li>(c) to reject the application</li> </ul> <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</p> |

|   |   |   |
|---|---|---|
|   |   | <p>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"> <li>a) dismiss the appeal;</li> <li>b) substitute for the decision appeal against another decision which could have been made by the Licensing authority;</li> <li>c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.</li> </ul>                          |
| 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 2.9). 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> |
| <b>Comprehensive Impact Assessment Implications</b> |   |   |
| 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 2.3 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(i) – premises licence application



- Appendix A(ii) – premises licence plan
- Appendix B – location plan
- Appendix C – representations
- Appendix D – additional information from applicant and proposed conditions

**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

Consent to be DPS form

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