

Report to: **Licensing Sub-Committee**
Date: **6th April 2023**
Title: **Application for a new Premises Licence at
The Angel, South Street, Totnes, TQ9 5DZ**
Portfolio Area: **Customer First**
Wards Affected: **Totnes**
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 **The Angel, South Street, Totnes, TQ9 5DZ** in accordance with Section 18 of the Licensing Act 2003.
- 1.2 The Licensing Department have received a large number of representations in both objection and support of the application and therefore the application will need to be determined by the Licensing Sub-Committee.

2. Background

- 2.1 The Licensing Authority received an application from The Angel Totnes Ltd for a new premises licence on 15th February 2023. The application is for:
- Films (indoors):
 - Sunday to Wednesday from 9am to 9pm;
 - Thursday to Saturday from 9am to 10pm.
 - Live and Recorded Music (indoors):
 - Friday and Saturday from 9am to midnight.
 - Late Night Refreshment (indoors):
 - Friday and Saturday from 11pm to midnight.
 - Sale of Alcohol for consumption on and off the premises:
 - Sunday to Wednesday from 10am to 9pm;
 - Thursday from 10am to 11pm;
 - Friday and Saturday from 10am to 11.30pm.
 - All of the above activities during the following Non-Standard Timings:
 - Bank Holiday Mondays and Sunday prior to Bank Holiday from 7am to midnight.
 - New Year's Eve from 7am to 2am.
 - SeaChange Festival (Friday, Saturday and Sunday) from 9am to 1am.
 - Totnes XX Festival (one week in the month of March) from 9am to midnight.
 - Ways with Words Festival (one week per calendar year) from 9am to midnight.
 - International Women's Day (8 March) from 7am to midnight.
 - Totnes Pride (three days in month of September) from 9am to midnight.

The dates of those events that change each year will be notified to the Licensing Department at least three months prior to the event taking place.
 - Opening hours:
 - Monday to Wednesday from 7am to 11pm; Thursday to Saturday from 7am to midnight; Sunday from 7am to 10pm.
 - Non-Standard Timings as above, with closing time 30 minutes after licensable activities have ended.

A copy of the application form and plan is attached at **Appendix A**.

- 2.2 The premises is located in the town centre of Totnes, not far from the High Street, in an area with a mix of residential and commercial properties. The premises is a two storey building, the proposed licensed area is the first floor only (see premises licence plan at **Appendix Aiii**). A map of the location is attached at **Appendix B** and photographs of the premises and nearby properties are at **Appendix C**.
- 2.3 During the consultation period, 28 relevant representations were received from local residents in objection to the application and 43 representations were received in support of the application, including one from a local District Councillor. A representation has also been received in objection to the application from Environmental Health. Copies of the representations are attached at **Appendices D, E and F**.

Representations

- 2.4 Issues raised in the representations in objection to the application 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. Noise nuisance from both music and customers coming from within the premises and noise from customers leaving or standing outside of the premises have been raised by nearby residents as a major concern. The narrow street and lack of sound insulation at both the premises and within properties in the area have been noted in many of the representations. Reference has been made to noise disturbance experienced during previous events held at the premises.
- 2.5 Another concern raised is the potential for anti-social behaviour and criminal damage caused by customers of the premises, due to the consumption of alcohol. Some of the representations have mentioned the possibility of rubbish such as empty bottles and glass being left in the road and outside nearby properties.
- 2.6 Access to the premises and traffic concerns have also been noted in many of the representations, due to the narrow road and lack of parking in the area.
- 2.7 The main concerns raised in the representation from Environmental Health (**Appendix D**) relate to the playing of live music and recorded music and how customers will leave the premises without causing a disturbance to local residents. They have requested further information from the applicants to explain how these issues will be addressed, in the form of a noise management plan. Whilst they appreciate the conditions which have been offered to address the prevention of public nuisance licensing objective, they do not believe that they are sufficient to manage noise from music nor noise from customers gathering outside the premises.

- 2.8 Environmental Health have provided a list of the types of measures and conditions which they suggest may help to prevent a nuisance being caused. They have stated that four complaints about noise emanating from the premises have been received by the Council since 2020, from three different addresses.
- 2.9 Representations in support of the application emphasise the strong management controls in place during events held at the premises, particularly how customers are asked to be mindful of local residents and to leave the vicinity quickly and quietly. Also noted is that security staff are used during music events to ensure customers are not causing a nuisance outside in the street and that they smoke away from nearby properties. It has been highlighted in many of the representations that the management are very conscientious in refusing entry where appropriate and follow a strict Challenge 25 policy to prevent underage sales.
- 2.10 During the consultation period the Police requested that four additional conditions were included to promote the prevention of crime and disorder licensing objective, which the applicants have agreed to, see **Appendix G**. These include the condition that the venue will only be open for sale of alcohol when pre-booked events or functions are taking place. This will prevent the premises from being open for the sale of alcohol on other days, such as a public house or bar. Also included is the condition that open vessels will not be taken from the venue and that a risk assessment will be carried out prior to each event to assess the need to use polycarbonate or plastic drinking receptacles. The Police have confirmed that with the inclusion of these additional conditions, they have no objection to the application
- 2.11 Some of the representations in objection to the application make reference to concerns about fire safety and ease of escape in case of emergency. Devon and Somerset Fire and Rescue Service were consulted on the premises licence application. They have confirmed that they have carried out a Fire Safety inspection at The Angel and have made some observations and recommendations for the applicants to undertake. No representation has been received from the Fire Service in relation to the licence application.
- 2.12 Any information contained in the representations which is not relevant to the promotion of the four licensing objectives (see 2.19) cannot be taken into consideration when determining the premises licence application.

Temporary Event Notices

- 2.13 The premises has been used for events involving the sale of alcohol and provision of regulated entertainment through the use of temporary event notices (TENs). Since March 2022 there have been 12 TENs served for the premises, covering a total of 16 calendar days. The timings and details of these are at **Appendix H**. The

event descriptions vary from live music and DJs to theatrical performances, supper clubs, pop up cafés and cocktail bar. The finish times have ranged from 10pm to 1am.

2.14 The maximum number of TENs that can take place at any one premises is 15 per calendar year, covering a total of 21 days (due to changes brought in following COVID restrictions, this has been increased from 15 to 20 TENs and 21 to 26 days for the 2022 and 2023 calendar years – there has been no indication that this will be extended).

The Live Music Act 2012

2.15 The Live Music Act 2012 and subsequent amendments, allow the provision of live and recorded amplified music at any premises licensed for the sale of alcohol for consumption on the premises between the hours of 08:00 and 23:00. There is no way to restrict these activities through the premises licence during these hours, other than through the review process once a licence has been granted. Music played in the background (at a level where a conversation can be easily held) is never licensable. Should a licence be granted to include the sale of alcohol for consumption on the premises, live and recorded amplified music will automatically be permitted until 11pm on any day, or until the end of alcohol sales (whichever is earlier).

2.16 Therefore the concerns relating specifically to noise from amplified music should only be taken into consideration when the activity will be 'licensable', which in this case would be on Friday and Saturday between 11pm and midnight and after 11pm during Non-Standard Timings. Any conditions relating to noise from music would only be enforceable when the activity is 'licensable'.

2.17 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 December 2022).

Policy and Statutory Guidance

2.18 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.

2.19 The four licensing objectives are:

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

- 2.20 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.
- 2.21 Section 2.4 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.
- 2.22 The Guidance issued under Section 182 of the Licensing Act 2003 which was revised and re-published in December 2022 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).
- 2.23 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)
- 2.24 A representation has been received from Environmental Health.
- 2.25 The Police have agreed four additional conditions with the applicants.
- 2.26 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. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early

morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. 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 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</p>

		<p>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> <p>(a) to grant the licence subject to:-</p> <p>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</p> <p>ii) any conditions which must under section 19, 20 or 21 be included in the licence;</p> <p>(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;</p> <p>(c) to reject 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> <p>a) dismiss the appeal;</p> <p>b) substitute for the decision appeal against another decision which could have been made by the Licensing authority;</p> <p>c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.</p>
Financial	N	<p>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.</p>
Risk	Y	<p>The Licensing Authority must follow strict legislation in accordance with the Licensing Act 2003 and adhere to the statutory instruments contained within the Act.</p> <p>All decisions must be taken in consideration of the four licensing objectives (section 2.9). These</p>

		objectives are in place to give protection to the public from the potential negative impacts caused by licensed premises. Decisions may be appealed (see financial and legal/governance sections above).
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 2.3 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 application (Section M)
Appendix A(iii) – premises licence plan
Appendix B – location plan
Appendix C – photographs
Appendix D – representation from Environmental Health
Appendix E – representations in objection
Appendix F – representations in support
Appendix G – additional conditions agreed with Police
Appendix H – summary of TENs March 2022 to March 2023

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

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