

Report to: **Licensing Sub-Committee**

Date: **22 June 2023**

Title: **Application for a new Premises Licence at Rockbox, Field Adjacent to Golf Club, Thurlestone, Kingsbridge, TQ7 3NZ**

Portfolio Area: **Customer First**

Wards Affected: **Salcombe and Thurlestone**

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 **Rockbox, Field Adjacent to Golf Club, Thurlestone, Kingsbridge, TQ7 3NZ (grid reference SX 67629 42169)** in accordance with Section 18 of the Licensing Act 2003.

- 1.2 The Licensing Department have received two representations in objection to 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 Mr Rupert Stockwell for a new premises licence on 26th April 2023. The application is for:

- Sale of Alcohol for consumption on and off the premises:
 - Monday to Sunday from 11:00 to 22:00.
- Opening hours:
 - Monday to Sunday from 11:00 to 22:30.

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

- 2.2 The premises is within a field located opposite Thurlestone Golf Club. A location plan showing the local area is attached at **Appendix B.** The sale of alcohol will take place from a catering unit, with alcohol being consumed in a designated area on the site (as marked on the plan). Customers will not be permitted to take open containers of beverages from the designated area.

- 2.3 During the consultation period, two relevant representations were received in objection to the application from local residents. Copies of the representations are attached at **Appendix C.**

Representations

- 2.4 Issues raised in the representations relate mainly to the Prevention of Public Nuisance licensing objective. Concerns include potential disturbance to local residents from the noise of customers and cars on the site, as well as light pollution from outdoor lighting. In addition there are concerns that noise will continue after closing time. As the application does not include live or recorded music, objections which relate to noise from music cannot be taken into consideration, see 2.7.
- 2.5 During the consultation period the Police requested that three of the proposed conditions were re-worded and that four additional conditions were included to promote the prevention of crime and disorder licensing objective, which the applicants have agreed to, see **Appendix D.** These include the conditions that the premises will only open during the months of April to September and that the sale of alcohol will only take place when the adjacent food outlets are open for business. The Police have confirmed that with the inclusion of these additional conditions, they have no objection to the application
- 2.6 Any information contained in the representations which is not relevant to the promotion of the four licensing objectives (see 2.16) cannot be taken into consideration when determining the premises licence application.

The Live Music Act 2012

- 2.7 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 23:00 on any day, or until the end of alcohol sales (whichever is earlier).
- 2.8 Therefore the concerns relating specifically to noise from amplified music cannot be taken into consideration. If the premises licence is granted, amplified music will automatically be permitted to take place at the premises during the hours alcohol can be sold: 11:00 to 22:00.
- 2.9 In addition, any conditions proposed by the Applicant or imposed by the Licensing Sub-Committee which relate to amplified music cannot be enforced when entertainment takes place under the provisions of the Live Music Act 2012.

Temporary Event Notices

- 2.10 Rockbox have previously operated at several locations in the South Hams over the last few years, including this location in Thurlestone, using temporary event notices (TENS). Last year a premises licence was granted for their South Milton location.
- 2.11 There is a restriction on how many days TENS can be used in any one location of 21 days per calendar year (maximum of 15 TENS). This has temporarily been increased to 26 days (maximum 20 TENS) for 2022 and 2023 due to changes brought in following COVID restrictions. It is not known whether these changes will be extended.
- 2.12 A premises licence would not restrict the number of days during which licensable activities can take place, unless conditions were placed on the licence. The Applicant has agreed with the Police to include the condition that the premises will only be open between the months of April and September.
- 2.13 However, the site does not have formal planning permission to carry out these activities at this location, so it has been operating under planning regulations which allow the temporary use of land for no more than 28 days per calendar year. If a premises licence is granted, the premises would not be able to operate at this site for more than 28 days per calendar year, until such time formal planning permission were granted. The usual planning application

process would need to be followed which is completely separate to the premises licence application process. The fact that the Applicant has not obtained planning permission for this location cannot be taken into consideration when determining the premises licence application.

2.14 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

2.15 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.

2.16 The four licensing objectives are:

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

2.17 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.

2.18 Section 2.4 of the Policy sets out additional legislation, strategies, policies and guidance to which the Licensing Authority will have regard.

2.19 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).

2.20 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)

- 2.21 No representations have been received from responsible authorities.
- 2.22 The Police have agreed to additional conditions with the applicants (see **Appendix D**).
- 2.23 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 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"> (a) to grant the licence subject to:- <ul style="list-style-type: none"> 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 ii) any conditions which must under section 19, 20 or 21 be included in the licence; (b) to exclude from the scope of the licence any of the licensable activities to which the application relates; (c) to reject the application <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>
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		<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 2.9). 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>
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 – representations
Appendix D – additional conditions agreed with Police

Background Papers:

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