

# Somerset West and Taunton Council

## Licensing Sub-Committee – 8 December 2021

### Application for the grant of a Premises Licence under the Licensing Act 2003

This matter is the responsibility of Cllr Andrew Sully

Report Author: Brad Fear – Licensing Officer

#### 1 Executive Summary / Purpose of the Report

1.1 Members are asked to consider an application to grant a Premises Licence under the Licensing Act 2003 for Horner Farm, Horner, Minehead TA24 8HY.

#### 2 Recommendations

2.1 As relevant representations have been received by the licensing authority, the sub-committee must take such steps as it considers appropriate for the promotion of the four licensing objectives, being:

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

2.2 The steps the sub-committee may take are to:

- Grant a premises licence subject to conditions identified in the applicant's operating schedule/agreed position (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and any appropriate mandatory conditions.
- Grant a premises licence subject to variations to the licensable activities and or timings proposed in the application, or to propose additional conditions relevant to the four licensing objectives.
- Reject the application.

#### 3 Risk Assessment (if appropriate)

3.1 The matters to which this report relates does not impact on any of the issues identified within the Corporate and Function Risk Registers.

## 4 Background and Full details of the Report

- 4.1 Horner Farm operates a small farm shop and pop-up restaurant, accessible directly off a large National Trust car park within the hamlet of Horner. Infrequent 'pizzas nights' are held at the premises during the summer months (usually from May to October) and a number of food events are held at the premises throughout the year. The farm shop and cafe area are within a traditional farm building, providing both a shop for off premise consumption and on site if purchased from the shop to be consumed during pizza evenings or feast nights.
- 4.2 A completed application and associated paperwork were received from applicant Holly Purdey (on behalf of herself and business partner Mark Brewer) for the granting of a premises licence for Horner Farm and this was circulated to relevant responsible authorities on 14th October 2021. A period of 28 days consultation commenced from this date. Public notices were also placed up at the premises by the applicant for this consultation period and the application information was posted to the Somerset West and Taunton Council 'list of current licence applications' on the Council's website. A copy of the public notice was also printed in the West Somerset Free Press.
- 4.3 A copy of the application can be found attached as **Appendix A**. The applicants are looking to be licensed to sell alcohol both for consumption on the premises and off the premises, between the hours 10:00-17:00 on Monday and Tuesday, 09:00 – 17:00 on Wednesday and Thursday, 09:00-17:00 and 18:00 -22:00 on Friday and Saturday, and 09:00-17:00 on Sunday.
- 4.4 Following a visit to the site by the Avon & Somerset Constabulary Area Licensing Practitioner, a number of conditions were proposed to form the basis of an operating schedule/agreed position. The conditions proposed are attached as **Appendix B**.

### Representations

- 4.5 Representations against the application have been received from interested parties within the 28-day consultation period. These are shown in **Appendix C**. The main areas of concern are the possibility of public nuisance/disturbance to local residents/neighbours should a licence to sell alcohol for evening events be granted. One objecting party has also expressed concerns of the potential risk of drunk drivers and an increase in littering in the area.

### Representations from Responsible Authorities

- 4.6 No formal objections/representations were raised by responsible authorities during the 28 day consultation period.

### 4.7 Mediation

The Licensing Authority made contact with objecting parties following receipt of their representations and also made contact with the applicant to confirm the nature of the concerns raised. This gave us the opportunity to forward on assurances and measures proposed by the applicant to concerned parties, as well as inviting objecting parties to make their own suggestions on amendments to the proposed activities or propose conditions which might address their concerns. E-mail responses from the applicant addressing concerns raised by each of the objecting parties have been attached to this report as **Appendix D**.

A mediation meeting was scheduled to take place over Zoom on Friday 19<sup>th</sup> November at 10:30 am, with the intention of discerning if any compromise could be

reached that might fully alleviate the concerns of objecting parties.

Regrettably, however, neither objecting party was able to attend the mediation meeting and this could not proceed as planned. However, objecting parties were again invited to submit to the Licensing Authority any proposals they might have for the applicant, to see if mediation outside of a formal meeting was still possible. Unfortunately, no suggestions for amendments or conditions have been forthcoming from objecting parties at the time of writing this report.

#### Responses to notice of hearing

- 4.8 Notices of hearing were sent out by e-mail and (where addresses were provided) by post on Friday 19<sup>th</sup> November 2021 to the applicant and objecting parties. Responses to this notice are shown as **Appendix E** (Please note: these are responses received as of the time of posting this report. At the time of submitting this report, we have yet to receive a response back from the applicant. Further relevant responses will be circulated for the sub-committee's consideration, should these be received).

#### Relevant Licensing Policy considerations

- 4.9 Section 1.2 of the Authority's Licensing Policy states: "The Act requires the Licensing Authority to carry out its various licensing functions so as to promote the four licensing objectives". "These four objectives will be the paramount considerations when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective will be given equal importance". The four objectives are: the prevention of crime and disorder, public safety, prevention of children from harm and prevention of public nuisance.

#### Conditions

- 4.10 Section 1.5.2 of the Policy states "The Licensing Authority may only impose conditions on a premises licence if they are consistent with the operating schedule or after receiving relevant representations. Any conditions attached to the licence must relate to the promotion of the Licensing Objectives".
- 4.11 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.
- 4.12 The guidance issued under Section 182 of the Licensing Act 2003 states: "(9.38) *All licensing determinations should be considered on a case by case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. (9.39) The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. (9.40) Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.*"

- 5.1 The granting of this application would support an existing business within the district, creating additional sources of income. However, considerations must also be made, where necessary, to the Corporate Strategy's commitment to – where the granting of varying of any premises licence is concerned – 'reduce anti-social behaviour, through working with residents'.

## **6 Finance / Resource Implications**

None.

## **7 Legal Implications**

- 7.1 The Licensing Sub Committee, when determining this application, must comply with the Licensing Act 2003. It should also have due regard to the Home Office Guidance and the Council's Licensing Policy.
- 7.2 In determining an application relating to a Premises Licence, any Responsible Authority or other party can make representations in relation to the application.
- 7.3 The Licensing Act 2003 created four licensing objectives and in determining this application, only factors that relate to the licensing objectives can be taken into account. Any representation must relate to the licensing objectives and any conditions added by the Licensing Sub Committee must relate to the promotion of the licensing objectives.

### Human Rights Act 1998

- 7.4 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.

### Appeals

- 7.5 If the sub-committee modifies conditions or rejects the application, the applicant may appeal within 21 days of notification of the decision to the Magistrates' Court. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the Licensing Authority ought to have imposed different or additional conditions or excluded a licensable activity. 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.

## **8 Environmental Impact Implications**

None identified

## **9 Safeguarding and/or Community Safety Implications**

None identified.

**10 Equality and Diversity Implications**

None identified.

**11 Social Value Implications**

No social value implications were identified.

**12 Partnership Implications**

No partnership implications were identified.

**13 Health and Wellbeing Implications**

Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

**14 Asset Management Implications**

No asset management implications have been identified.

**15 Consultation Implications**

None identified.

**16 Scrutiny Comments / Recommendation(s)**

Not applicable.

**Democratic Path:**

**Licensing Sub-Committee**

**Reporting Frequency : Ad-hoc**

**List of Appendices**

Appendix A	Application to grant a premises licence for Horner Farm
Appendix B	Agreed position/operating schedule agreed between applicant and Avon & Somerset Constabulary
Appendix C	Objections/representations received from members of the public
Appendix D	Feedback from Applicant, addressing objections
Appendix E	Responses to Notice of Hearing

**Contact Officers**

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