



Committee report

Committee	LICENSING SUB COMMITTEE
Date	2 FEBRUARY 2015
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR RYDE TOWN CLUB, 25-27 STAR STREET, RYDE, ISLE OF WIGHT
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BACKGROUND

1. A premises licence issued under section 18 of the Licensing Act 2003 authorises the use of premises for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
2. An application for a premises licence was submitted to the licensing authority on 9 December 2014 for Ryde Town Club, 25-27 Star Street, Ryde, Isle of Wight, PO33 2JH (Appendix A).
3. A plan of the premises accompanied the application as is required (Appendix B).
4. The applicant is required to submit a copy of the application to Responsible Authorities as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
5. Any person may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the application.
6. Ryde Town Club currently holds a Club Premises Certificate. The Club Premises Certificate was reviewed on 7 February 2014.
7. The review application was served by Environmental Health on the grounds that the licensing objective of the prevention of public nuisance was not being adequately promoted.
8. As a result of the review hearing a number of conditions were attached to Annex 3 of the Club Premises Certificate (Appendix C).
9. This application is for the function room to be licensed separately under a premises licence. The premises licence (if granted) and the club premises certificate will then run simultaneously.

10. Whilst this is a slightly unusual scenario it is not unique. There are other members clubs on the island that have licensed their function rooms in the same way.
11. Dividing the premises in this way (as opposed to applying for a premises licence to cover the entire building whilst keeping an area restricted for members only) does provide certain benefits to the club. These benefits are principally financial and are mostly based around the Gambling Act 2005.
12. The Gambling Act 2005 permits higher stake/higher prize gaming in premises which hold a club premises certificate and which satisfy the conditions of being a “qualifying club”. One of the conditions to determine whether a club is a “qualifying club” is that the club must be established and conducted in good faith. Various matters may be taken into account in determining the question of good faith, one of these matters is “the nature of the premises occupied by the club.”
13. Guidance provided in the Second Edition of Alcohol and Entertainment Licensing Law section 8.2.13 states that “nature’ of the premises suggests physical or structural layout and it is hard to see how this might affect whether a club is conducted in good faith, except perhaps the ability of the premises to provide sufficient demarcation between areas used by the public and areas reserved for members. If the premises were such that access to the club could not be controlled or there could be free movement of the public into areas comprising the club, this might indicate that the premises were not being properly run in good faith as a club. Similarly, given that there is no mandatory requirement for guests to be signed in by a member, if ‘guests’ were able to obtain easy access and purchase alcohol, this might indicate that the club was not being conducted in good faith. These instances apart, it would seem to be the use to which the premises are put and the way in which they are conducted as a club that would affect the question of good faith rather than the nature of the premises.”
14. The above guidance is relevant as due to the location of the smoking area, persons attending events or functions at the club will have to pass through a section of the members lounge in order to access the smoking area. A plan of the premises can be found at Appendix B.
15. Provided that no person merely accessing or returning from the smoking shelter via the club lounge has access to any of the benefits or privileges of the club this will demonstrate that they are acting in good faith.
16. This will place a responsibility on the club staff and committee members to ensure that the club continues to be operated in good faith at times when licensable activities are taking place in the function room and that persons accessing or returning from the smoking area do not linger in the members lounge. Conditions proposed by the police (conditions 9 and 10 Appendix D) and agreed by the applicant seek to address this matter.

CONSULTATION

17. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the application has been correctly served. Applicants are

required to serve each of the Responsible Authorities with a copy of the application, advertise the application at or on the premises and also in the local newspaper.

18. The application for a premises licence was received on 9 December 2014. The application was advertised in the Isle of Wight County Press, at the premises and on the Council's website. The consultation period ended on 6 January 2015.
19. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	Representation made – conditions agreed
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
Police	Representation made – conditions agreed
NHS	No Representation made
Licensing Authority	No Representation made

20. The police in discussions with the applicant during the consultation period have proposed ten conditions be attached to the premises licence if granted. The applicant has agreed to each of these conditions (Appendix D).
21. The Environmental Health section has recommended four conditions be attached to the premises licence if granted. The applicant has agreed to each of the conditions and a copy of these can be found at Appendix E to this report. The wording of condition no.4 has been revised and this also has been agreed by the applicant.
22. Two valid representations have been received from other persons relating to the licensing objectives:
 - Prevention of public nuisance
23. Mr Jones has made a representation (Appendix F). He states that both he and his wife are regularly woken between 01:00 and 02:00 hours by staff leaving the premises.
24. Mr Jones states that August Bank Holiday is the worst and claims that scooterists, some of whom are rowdy and coarse congregate outside the premises and drink on the pavement.

25. Concerns have also been raised that regardless of the time of year committee members are not present at closing time to ensure that members leave in an orderly manner.
26. Mr Jones fears that if a premises licence is granted with an extension to hours on Bank Holiday weekends that the disturbance he currently experiences will worsen.
27. Mr Walker raises concerns with regard to what he considers to be high noise levels, particularly from music escaping from the premises when members open the door to the smoking shelter (Appendix G).
28. Mr Walker states that seating is provided in the smoking shelter which allows members to rest, drink and listen to the music being played. The associated noise from this along with the secondary smoke entering his premises causes him considerable nuisance.
29. Mr Walker is concerned that if a premises licence is granted with the extension of hours on bank holidays as per the applicant's request that the nuisance and disturbance will worsen.
30. Concerns have also been raised that longer hours will lead to an increase in drunkenness and Mr Walker claims that drunks can be found lying on the pavement outside the club with cans of beer.
31. Concerns have also been raised again that committee members are not present on the door to regulate the ingress and egress of customers.
32. Copies of each of these representations were sent to the applicant for response and to the Environmental Health section for their comments. The responses from both parties can be found in the evaluation section of this report.

FINANCIAL/BUDGET IMPLICATIONS

33. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

34. The 28 day consultation period ended on 6 January 2015. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

National Guidance

35. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:

36. Each application on its own merits –

1.17 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style

and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in any individual case.

37. Proportionality

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or of the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

38. Hours of trading

10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.12 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.

39. Public nuisance

2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.
- 2.20 Conditions relating to noise nuisance will normally concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. 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.

Implications under the Crime and Disorder Act 1998

40. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

41. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
42. There are three convention rights, which need to be considered in this context:

Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

Article 8 - Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties".

43. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.
44. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2014 – 2017 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	All
Paragraph 5	Approach to Licensing Applications	All
Paragraph 6	Cumulative Effect	N/A
Paragraph 7	Representations, Reviews, and Appeals	7.1-7.2, 7.8-7.11
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.9 - 9.15

EQUALITY AND DIVERSITY

45. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
46. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

- Option 1: Grant the licence as per the application.
- Option 2: Grant the licence as per the application with any additional conditions that the Sub-Committee deem reasonable and proportional to promote the licensing objectives.
- Option 3: Refuse the whole or part of the application.

RISK MANAGEMENT

47. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance arising from regulated entertainment, and associated nuisance and disorder from the customers of the premises; should the Sub-Committee deem this to be a likely outcome. The decision not to address the concerns raised may subsequently be appealed by those parties who have made representations.

48. With regard to Option 2: The risk of crime and disorder or nuisance being attributed to the premises could be reduced by attaching the conditions recommended by the police and Environmental Health. Conditions must be appropriate and proportionate. Any decision to attach additional conditions may be appealed by all parties if they believe the conditions do not adequately promote the licensing objectives.
49. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, the decision may be appealed by all parties.

EVALUATION

50. At the end of the consultation period the applicant was sent copies of the representations received from Mr Jones and Mr Walker in order for them to provide any comments or address any of the concerns that had been raised. The applicant's comments in response to the representations can be found at Appendix H and I. Both Mr Jones and Mr Walker were provided with the applicant's comments in respect of their representations.
51. Mr Jones provided a further response to the applicant's comments via email on 16 January 2015 Appendix J. Mr Jones states that he agrees with the conditions proposed by the police and Environmental Health but disagrees with the comments made by Ms Jenvey.
52. With regard to the concerns raised by Mr Jones in respect of noise from staff when leaving the premises, the applicant states that they were not aware that this had been a cause for concern, or that any complaints have been made prior to this application being submitted. The applicant states that they feel concerns would have been voiced prior to the application if this had been a problem. Mr Jones' comments from his email of 16 January 2015 states that he has complained several times over the years but nothing has been done.
53. The applicant acknowledges that they are aware of previous concerns having been raised with regard to DJ equipment being taken out of the premises late at night which may have caused a nuisance. They state that steps have been taken to remedy this.
54. The applicant also states that staff members often work alone and therefore lock up alone. It is claimed that they no longer wait outside for taxis. Staff members are also apparently aware of Mr Jones' complaints and are sensitive to this. Mr Jones' comments in his email of 16 January 2015 claims that he and his wife were woken on Wednesday 14 January 2015 by two females locking up the club.
55. With regard to August Bank Holiday Weekend, the applicant states that it is a condition on their club premises certificate that drinks are not permitted in any outside area including the smoking area which they claim to have adhered to consistently.
56. They also state that last year they employed SIA registered door staff on each of the evenings over the weekend who went so far as to prevent customers from smoking outside the front of the building. They claim therefore that the allegation of scooterists drinking outside on the pavement is a total fabrication. Again the applicant's have responded by stating that to their knowledge there were no

complaints made by Mr Jones either during or after the weekend. Mr Jones' comments from his email of 16 January 2015 states that he was referring to previous August Bank Holiday weekends and not last year.

57. The applicant states that committee members along with staff members often remind customers to leave in an orderly manner and that notices are also displayed reminding them to be considerate to neighbours. They state that not standing outside the premises is a conscious decision on their part as they feel that their presence outside would encourage customers to congregate and begin discussions in the street which in turn could cause a nuisance. Mr Jones from his email of 16 January 2015 disagrees with this view.
58. The applicant states that members of the clubs committee believe it was inevitable that Mr Jones would object to this application despite them having made several changes to help with containing the noise from music and having taken on board recommendations made by Environmental Health. The Licensing section does not consider Mr Jones' comments to be vexatious and they therefore need to be considered. Members are reminded that the club premises certificate was reviewed in February 2014 by the Environmental Health section because at the time there was evidence to demonstrate that the licensing objective of the prevention of public nuisance was not being upheld.
59. The requirement for the club to produce a Noise Management Plan was imposed by Members at the review hearing. A Noise Management Plan has been approved but it must be kept under review to ensure that it continues to uphold the licensing objectives. The plan states it will be updated and Environmental Health has requested a copy of this following a complaint in September in 2014; but to date this remains outstanding.
60. Mr Walker refers to retrospective planning permission that has been granted in respect of the smoking shelter at the premises. This is not a matter for Members to consider as there are no outstanding planning control issues regarding the shelter. Members are also reminded that the premises already hold a club premises certificate and the shelter will therefore be used by club members regardless of whether or not a premises licence is granted.
61. The applicant states that seating has been provided in the shelter for the comfort of disabled members of the club. They refute allegations that members take drinks to the smoking area as this is in contravention of their club premises certificate conditions. There is no evidence at this time to either confirm compliance with this condition or prove otherwise.
62. With regard to Mr Walker's concerns regarding noise breakout from music from the premises when people enter or leave the smoking area, the club refutes the allegation that the door to the smoking area is left open. They do say however that it is their intention to install a secondary door thus creating a lobby which they believe will reduce any noise pollution being caused from this area. No proposed timescales have been provided in respect of these plans.
63. The applicant wishes to re-iterate to Mr Walker that the proposed extended opening hours until 02:00 are for bank holidays and New Years Eve only. Mr Jones's view is

that this is an attempt by the club to claw back the hour that Members reduced the club's operating times by at the review hearing last year.

64. The applicant disagrees that extending the opening times of the club by an hour on bank holidays will lead to an increase in the amount of drunk persons in the area. They refute completely allegations that any drunk person who Mr Walker may have seen lying on the pavement outside the premises with a can of beer are anything to do with the club and state they do not sell beer in cans.
65. The applicant also states that the club is not authorised to provide off sales however the current club premises certificate does permit this.
66. The conditions proposed by Environmental Health and agreed by the applicant mirror conditions 1 and 3 on Annex 3 of the existing club premises certificate. These conditions were imposed at the review hearing in February 2014.
67. Environmental Health state they have concerns about the management of the premises and as such recommend these conditions be placed on the licence in order to uphold the licensing objective of the prevention of public nuisance.
68. Revised condition no.4 proposed by Environmental Health and agreed by the applicant which states "The licence holder shall not permit patrons to smoke outside of the premises after 21:00 hours save for the designated smoking area " seeks to prevent nuisance arising from smokers outside of the front of the premises.
69. Whilst neither Environmental Health nor the Licensing section have evidence of noise from the smoking area, the distance between the smoking area and the nearest residential property is so small that there is a potential for nuisance. Mr Walker has raised concerns that if the premises licence is granted with the extension of hours on Bank Holiday weekends that he will suffer further disturbance from noise and smoke from this area, for the additional hour they intend to trade.
70. Members may wish to consider imposing a condition in order to address Mr Walker's concerns by preventing the use of the smoking area after 01:00 hours. This is the latest time that the premises can currently close and may therefore prevent any further disturbance to Mr Walker or his family as in effect there would be no change from the current times that this area is used.
71. The sub-committee must have regard to all of the representations made and the evidence it hears as well as the national guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
72. The Committee should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005 and with a view to promoting the licensing objectives, which are:
 - a. The Prevention of Crime and Disorder
 - b. The Prevention of Public Nuisance
 - c. Public Safety
 - d. The Protection of Children from Harm

RECOMMENDATION

PREMISES

73. Members should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

APPENDICES ATTACHED

[Appendix A](#) Application for a premises licence under section 17 of the Licensing Act 2003

[Appendix B](#) Plan of the premises

[Appendix C](#) Copy of the Club Premises Certificate for Ryde Town Club

[Appendix D](#) Agreed Police conditions

[Appendix E](#) Agreed Environmental Health conditions

[Appendix F](#) Copy of representation from Mr Jones

[Appendix G](#) Copy of representation from Mr Walker

[Appendix H](#) Applicant's response to Mr Jones

[Appendix I](#) Applicant's response to Mr Walker

[Appendix J](#) Email from Mr Jones 16/1/2015

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2014 – 2019.
<http://www.iwight.com/azservices/documents/1226-Statement-of-Licensing-Policy-2014-2019-Adopted-v1.pdf>

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