



PAPER B

Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	13 APRIL 2015
Title	TO DETERMINE AN APPLICATION FOR THE VARIATION OF THE PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR HAVEN HALL, 5 HOWARD ROAD, SHANKLIN, ISLE OF WIGHT
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BACKGROUND

1. Under section 34 of the Licensing Act 2003, a premises licence holder may apply to vary the licence to add licensable activities or alter the times for such activities, or to remove conditions, where this cannot be done by way of a minor variation.
2. 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.
3. 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.
4. Details of the current licence for Haven Hall at 5 Howard Road, Shanklin, Isle of Wight, PO37 6HD can be found at Appendix A.
5. An application for variation of the premises licence was submitted to the licensing authority on 16 February 2015 (Appendix B).
6. The proposed variation is to extend the hours for the sale of alcohol, to add regulated entertainment to the scope of the licence and update the plan attached to the licence following refurbishment of the building and to include an outdoor area to allow for a marquee to be sited at the premises occasionally.

CONSULTATION

7. 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.

8. The application for variation of the premises licence was received on 16 February 2015. 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 16 March 2015.
9. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

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

10. Police and Environmental Health have agreed a number of modifications to the proposed variation, including a reduction in the hours and additional conditions to be attached to the licence if it is granted. These modifications have been agreed with the applicant and therefore the updated proposed operating schedule along with the conditions that have been agreed can be found at Appendix C.
11. Recent updates to the legislation now mean that plays, live and recorded music can be provided between 8am and 11pm for up to 500 people without the need for a licence at premises that are authorised to sell alcohol. This is reflected in the amended operating schedule at Appendix C to clarify that it is not the intention of the applicant to provide entertainment in excess of these new exemptions from regulation.

Other Persons

12. Twenty-two valid representations have been received from other persons (Appendix D) relating to the licensing objectives:
 - Prevention of public nuisance
 - Prevention of crime and disorder
13. Local residents are concerned that the proposed variations to the licence will compromise the above licensing objectives. There are particular concerns regarding the proposal for entertainment to be provided outside as well as the times for activities in general and the potential frequency of the events that could take place under the proposed non-standard timings.
14. Residents have raised concerns regarding the potential increase in traffic and the nuisance this could cause. One of the residents, Mr Cooper, has submitted additional representations in relation to this, which can be found at Appendix E.

15. There are also concerns that customers will cause nuisance and disorder when leaving the premises.
16. Other matters have been raised, such as a possible lack of parking as well as references to applications made to the local Planning Authority. However, these cannot be taken into consideration when determining this application as they do not relate to one or more of the licensing objectives.
17. Residents have been notified of the modifications to the proposals but the concerns remain outstanding.

LEGAL IMPLICATIONS

18. The 28 day consultation period ended on 16 March 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

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

20. Each application on its own merits –

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location 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 an individual case.

9.42 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.

21. 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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. 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 for 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.

22. Hours of trading

10.13 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 about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. 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.

10.14 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.

23. Public nuisance

2.14 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.

2.15 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 may 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. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.16 Conditions relating to noise nuisance will usually 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 persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the

specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.17 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation 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.
- 2.18 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 emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.20 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

Implications under the Crime and Disorder Act 1998

24. 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

25. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
26. 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".

27. 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.
28. 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	7.8 – 7.11
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.3 – 9.6, 9.9 – 9.15

EQUALITY AND DIVERSITY

29. 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).
30. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

- Option 1: Vary the licence as per the application with the conditions agreed with Responsible Authorities.
- Option 2: Vary 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 all or part of the application.

RISK MANAGEMENT

31. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of nuisance arising from the licensable activities. The decision not to address the concerns raised may subsequently be appealed by those parties who have made representations.
32. With regard to Option 2: The risk of nuisance being attributed to the premises could be reduced by attaching conditions to the licence or modifying the proposed hours for activities in order to promote the licensing objectives. 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.
33. 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

34. Environmental Health and Police, as responsible authorities under the Act, have agreed modifications to the proposed variations of the operating schedule for this licence. Following these amendments, there are no outstanding representations from any of the responsible authorities.
35. Representations have been received from other persons, which remain outstanding and therefore must be considered before determining the application.

36. Local residents have concerns that if entertainment and the sale of alcohol are provided as proposed, the prevention of public nuisance objective in particular will be compromised. There is particular concern with regard to the lateness of the hours proposed, the potential frequency of events that could be held under the non-standard timings and entertainment being provided outside.
37. The Environmental Health Department has agreed amendments to the hours for entertainment and conditions which will control the entertainment when it is provided.
38. The proposed operating schedule now specifies that entertainment will not be provided outside or in a marquee after 23:00hrs.
39. Conditions cannot be attached to the licence to control Live/Recorded music provided before 23:00hrs as this is not regulated under the Live Music Act 2012 and the Legislative Reform (Entertainment Licensing) Order 2014. Anyone providing such entertainment under an exemption still has a duty not to cause nuisance as action can be taken by Environmental Health under the Environmental Protection Act 1990. As well as this, if problems arise the licence could be reviewed and this entertainment could then be regulated.
40. The sale of alcohol is currently permitted to 23:00hrs; this is proposed in the application to be extended by half an hour 7 days a week. It is also proposed to add entertainment to the operating schedule to be provided until 23:30hrs.
41. The proposed non-standard timings are until 01:00hrs for entertainment and 02:00hrs for the sale of alcohol (or until midnight for the sale of alcohol outside or in a marquee) on the days specified and up to 12 other occasions per year.
42. When entertainment is provided after 23:00hrs, this must be inside, doors and windows must be closed and the level must be barely audible at the boundary of any noise sensitive premises. This will ensure that the prevention of public nuisance objective is upheld.
43. It should be noted that the sub-committee cannot grant a licence for less than the hours currently permitted. Such action would only be possible following an application to review a premises licence.
44. With regard to the proposed non-standard timings, including these in the operating schedule of the licence prevents the need for authorising such extensions by submitting Temporary Event Notices (TENs). Although it is now provided in the Act that conditions attached to a licence can be applied to temporary events, it is possibly preferable that non-standard timings are included in the licence. This means that residents are aware of the operating schedule of the premises; they would not be notified or consulted in the TENs process. It also means that these extensions would be included in considering an application for review of the licence.
45. Residents have raised concerns regarding nuisance from traffic and people leaving the premises. The applicant has confirmed that there will be parking facilities available at the hotel; however, it should be noted that it is not a requirement of the Licensing Act 2003 to provide parking for customers.

46. Reference has been made by Mr Cooper in his representations at Appendix E to sections of the Council's Statement of Licensing Policy.
47. The sections referred to are in relation to the operating schedule of a licence and give general examples of what an applicant may be expected to address in their proposed operating schedule in an application. These sections do not relate to how the council will determine applications.
48. Paragraph 9.15 in the Council's Statement of Licensing Policy states, "If premises are open past 2300hrs, it will be expected that... the activity will not be likely to lead to a demonstrable increase in car parking demand in surrounding residential streets and that there is a particularly high level of public transport accessibility to and from the premises at the appropriate times".
49. Typically, the above would be more applicable to large events where there will be a substantial increase in traffic in the area of the event. There have been no instances that have been brought to the attention of the department where a hotel in a residential area is causing problems with regard to traffic nuisance.
50. It should also be noted that there is no mention of traffic nuisance in the national guidance accompanying the Licensing Act.
51. It is therefore the view of the Licensing Department that there is no evidence to suggest that a hotel providing entertainment and selling alcohol would be likely to lead to an increase in parking demand or that a high level of public transport accessibility is required in these circumstances. It would therefore be disproportionate for the committee to modify the operating schedule as a result of these concerns.
52. Environmental Health have provided subsequent representations in relation to the traffic concerns that have been raised. These can be found at Appendix F.
53. Residents also have concerns that customers will cause nuisance and disorder when they leave the premises late at night. Taking into account paragraph 2.24 in the national guidance, it is beyond the control of the licence holder to ensure that people act responsibly once they leave the premises as they are accountable in their own right. However, they can encourage people to leave the premises and the area quietly and, if music is provided, include a wind down period before it finishes.
54. In light of the modifications made to proposed times by responsible authorities along with the agreed conditions, it is the view of the Licensing Department that the activities will be appropriately controlled and therefore the concerns raised should be unlikely outcomes.
55. Following the grant of a licence, if there are problems of non-compliance or concerns that the licensing objectives are not being upheld, the licence could be brought back before the sub-committee for consideration at a review.
56. If the sub-committee believe it may be a likely outcome however that the objectives would be compromised if the licence is granted, they need to consider if any further proportionate modifications would ensure the objectives are upheld.

57. 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.
58. The sub-committee should determine the application in accordance with section 35 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

59. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005. It is recommended that the licence application is granted.

APPENDICES ATTACHED

[Appendix A](#) Current Premises Licence for Haven Hall

[Appendix B](#) Application for variation of the premises licence under section 34 of the Licensing Act 2003

[Appendix C](#) Proposed Operating Schedule following agreed amendments with responsible authorities

[Appendix D](#) Representations received from other persons

[Appendix E](#) Additional representations expanding on traffic nuisance from Mr Cooper

[Appendix F](#) Additional representations from Environmental Health

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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