



## Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>14 MAY 2015</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR SEAVIEW SELF CATERING HOLIDAYS LTD, SALTERNS ROAD, SEAVIEW, ISLE OF WIGHT</b>
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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 19 March 2015 for Seaview Self Catering Holidays Ltd, Salterns Road, Seaview, Isle of Wight, PO34 5AQ (Appendix A).
3. The applicant is renovating an existing two storey building and wishes to provide a café and bar area serving sandwiches, cakes, tea, coffee and other refreshments. The applicant also wishes to serve alcohol to residents of the holiday park to be consumed on the premises between April and October each year from 10:00 hours and 23:00 hours.
4. A plan of the premises can be found at Appendix B.
5. 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.
6. 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.

### 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 a premises licence was received on 19 March 2015. However the application was not advertised in a local newspaper within the first ten days of the consultation period commencing and for this reason the consultation period was restarted on 31 March 2015.
9. During the consultation, 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 28 April 2015.
10. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

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

Police

11. The applicant has agreed eight conditions that were recommended by the police. A copy of these conditions can be found at Appendix C.

Other Persons

12. 25 valid representations have been received from other persons (Appendix D) relating to the licensing objectives:
  - Prevention of public nuisance
  - Prevention of crime and disorder
  - Protection of children from harm
  - Public safety
13. In respect of the prevention of public nuisance, concerns have been raised from local residents that they will experience severe levels of disturbance from various sources of noise if the licence is granted. Examples that have been given include:
  - noise from people using the decking area particularly during the evening

- noise from the large screen television to be situated on the first floor particularly when football matches or other sporting events are being shown and the windows are open
  - noise from customers behaving in a rowdy manner after consuming alcohol
  - an increase in traffic noise
  - noise from staff when re-arranging chairs on the decking area
14. One resident claims that to grant this licence will transform the “current tranquil and quiet area to a noisy city environment with alcoholic fuelled persons wandering about the sites....until the early hours”.
  15. Concerns have also been raised that the proposed opening hours are excessive. Residents believe that the proposed hours will encourage holiday makers to spend an extensive amount of time consuming alcohol which in turn will increase the likelihood of noise and anti- social behaviour, particularly from persons leaving the site late into the evening.
  16. Residents are concerned that nuisance will be increased by larger numbers of people attending the premises who come from the Pondwell Holiday camp site and from Pondwell bungalows. They state that the applicant also owns the campsite and that guests can access the site from a path which connects the two sites.
  17. Concerns have also been raised that an increase in traffic in the area will create a nuisance. One representation received states that “access to the premises has historically been from the public road at the Salterns/Pond Lane entrance with the access from the Duver entrance limited to a small number of the bungalows. The restriction that had limited the use of the Duver entrance now seems to have been taken away and all traffic to the site is being directed via the Duver entrance. As the owner of the premises immediately next to this entrance it is creating a nuisance which will only increase if the proposed licence is granted.”
  18. Finally in respect of public nuisance, concerns have been raised that the proposals will result in residents experiencing nuisance from light pollution and rubbish.
  19. Miss Meadows, an interested person submitted three photographs which show the proximity of the proposed licensed premises to her property. These can be found at Appendix E.
  20. With regard to crime and disorder, residents have expressed concerns that the grant of this licence will result in an increase in anti-social behaviour and crime disorder in the local area. One representation received states that they are concerned for the “safety of our families and our homes”.
  21. One representation also states that the premises could be a target for break-ins if the licence is granted as the building sits 2 metres away from a public footpath.
  22. In respect of the protection of children from harm and public safety, several concerns have been raised regarding a perceived increase in traffic to and from the site which may pose a threat to children who play in Salterns Road and Pond Lane.

23. With regard to vehicular movement on site concerns have been raised that a new road that has been created through the beach bungalow site will create an additional hazard particularly to children as people have to drive through a children's play area.
24. One representation also makes reference to gas cylinders being stored at the rear of the building in full view of the public footpath. The interested person is concerned that the storing of gas cylinders in this location could be dangerous.

#### FINANCIAL/BUDGET IMPLICATIONS

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

#### LEGAL IMPLICATIONS

26. The 28 day consultation period ended on 28 April 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

27. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
28. 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.
29. 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.

### 30. 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.

### 31. 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

32. 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

33. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
34. 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”.

35. 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.
36. 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 – 7.3, 7.8 – 7.11
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	All

## EQUALITY AND DIVERSITY

37. 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).

38. 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

39. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance arising from licensable activities taking place 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.

40. With regard to Option 2: The risk of crime and disorder or nuisance being attributed to the premises could be reduced by attaching conditions to the licence 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.

41. 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

#### Prevention of Public Nuisance

42. Many concerns have been raised by interested parties in respect of the licensing objective of the Prevention of Public Nuisance. During the consultation period the application was considered by the Environmental Health department. Regard was made to the Licensing Authority's guidance and the Statement of Licensing Policy 2014 – 2019. Having considered all relevant information no representations were made.

43. The Environmental Health department were contacted again on receipt of the representations made by interested parties. They were asked to comment on the concerns raised in respect of potential nuisance from noise from various sources, and nuisance from light and litter.

44. Environmental Health state that the potential for nuisance from the holiday park exists irrespective of the grant of the licence and as such investigations into reports of nuisance would be carried out under the Environmental Protection Act 1990. This is considered to be the most appropriate mechanism for dealing with complaints of nuisance that may not necessarily be associated with the sale of alcohol. These comments can be found at Appendix F.



45. The applicant acknowledges that it is in his interests to limit any risk of noise nuisance in order to ensure that other residents in the holiday bungalows are not disturbed.
46. The applicant has agreed to replace the rear facing openable windows on the first floor of the premises with fixed obscure glass units (with an emergency opening facility). This will afford the residents who live directly behind the premises privacy and will reduce noise breakout.
47. The applicant has also agreed a condition with the police that the use of the outside decking area will cease at 22:00 hours.
48. Members are requested to note that the site will be closed between October and March.
49. In respect of concerns raised that the premises will be open to people staying on Pondwell Holiday camp site and other nearby holiday chalets, the applicant confirms that he no longer owns the Pondwell Holiday campsite or Pondwell bungalows. As a result the boundary/footway between Pondwell Holiday campsite and the Seaview Holidays Ltd site (Salterns Holiday Village) is blocked and there is no longer any access between the two.
50. The applicant also confirms that the term "resident" only applies to people who either own a property within the complex, or rent a property on site. Only these people will be able to purchase alcohol at the café on the production of a key fob to the accommodation.
51. Issues in respect of traffic have also been raised as a source of nuisance. Residents are concerned that an increase in traffic to the site will cause a nuisance.
52. One resident states that "access to the premises has historically been from the public road at the Salterns/Pond Lane entrance with the access from the Duver entrance limited to a small number of the bungalows. The restriction that had limited the use of the Duver entrance now seems to have been taken away and all traffic to the site is being directed via the Duver entrance. As the owner of the premises immediately next to this entrance it is creating a nuisance which will only increase if the proposed licence is granted".
53. Island Roads have confirmed that they are unaware of any restrictions having been in place or removed from this area and state that it would seem that any restriction imposed has been done so within the site.
54. The applicant has confirmed that he has introduced a one-way system on site in order to improve safety.
55. Island Roads also state that "the premises would only be available for the use of the residents on the site, so I cannot see that by approving the licence would generate any more traffic movements to the site, or increase the risk to surrounding neighbours. If anything, by allowing residents to remain on site and use the facilities, this may reduce vehicle movements from the park of those residents who would otherwise have left to find licensed establishments elsewhere".

### Prevention of Crime and Disorder

56. Residents are concerned that the extent of nuisance and crime and disorder that will occur as a result of the grant of this licence will result in the area being transformed into an urban environment.
57. One resident has stated that the grant of this licence will transform the “current tranquil and quiet area to a noisy city environment with alcoholic fuelled persons wandering about the sites...until the early hours”.
58. Another couple state that they are concerned for the “safety of our families and our homes”.
59. Members will need to consider whether or not this is a likely outcome and whether the grant of this licence will lead to an increase in anti-social behaviour and crime and disorder in the area.
60. The police have agreed conditions with the applicant Appendix C. These are considered appropriate to the upholding of the licensing objectives and proportionate to the activities being sought.
61. On receipt of the representations the police were asked to comment further on the concerns raised by residents. A further report has been submitted by them and can be found at Appendix G.
62. The police do not consider that the overall risk of crime and disorder in the local area will be dramatically changed by having an on- site licensed premises.
63. With regard to the comments made that the proposed hours are excessive, they do not consider that the sale of alcohol between 10:00 and 23:00 hours will take the premises into the night time economy as there are other premises in the town centre that are permitted to sell alcohol later than 23:00 hours.
64. Additionally customers may purchase alcohol from an off-licence and consume it on site either inside or outside of their accommodation at any time of the day or night. Guests have been permitted to do this since the site opened and there is no evidence to suggest that this has had a detrimental effect on the local community.

### Public Safety and the Protection of Children from Harm

65. With regard to vehicular movement on site, representations state that a new road has been created through the site which requires people having to drive through a children’s play area.
66. During a joint site visit with a Health and Safety Officer, the applicant confirmed that there is no new road. He has simply implemented a one-way system to improve site safety.
67. There is no specific children’s play area at present (although there are plans to create one). The area mentioned is a large expanse of grass. The entrance road runs adjacent to this and a row of large white concrete planters placed approximately 3.5ft apart creates a border between the road and the grassed area.

68. Further traffic calming measures are being considered on the entrance road. There is also a 5mph speed limit on site along with speed humps on the exit road.
69. Any safety concerns raised regarding traffic movement on public roads to and from the site are matters to be considered by the police and Island Roads, they are not matters to be considered at this meeting.
70. A number of photographs were taken at the site visit; these can be found at Appendix H.
71. In respect of the concerns raised regarding the storage of gas bottles, general guidance recommends that gas bottles, whether full or empty, should be stored upright in a well ventilated place, preferably in the open air away from occupied buildings, boundaries and sources of ignition. A lockable cage is recommended.
72. The applicant has confirmed that the gas bottles are stored safely in a locked cage and are checked regularly.
73. A site visit was carried out by Health and Safety on 22 April 2015 in order to consider specifically the health and safety concerns that had been raised by interested persons.
74. No concerns were raised during the site visit, comments from the officer who attended can be found at Appendix I.
75. 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.
76. 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

77. Members should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005. It is the view of the Licensing Section that based upon the information available at the time of producing this report that Option 2 is appropriate.

## 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](#) Police conditions – agreed with the applicant

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

[Appendix E](#) Photographs submitted by Ms Meadows showing proximity of premises to her property.

[Appendix F](#) Memo from Environmental Health in respect of representations

[Appendix G](#) G31 report from police in respect of representations

[Appendix H](#) Photographs from site visit

[Appendix I](#) Comments from Health and Safety Officer following site visit

## 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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