



PAPER B

Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	21 AUGUST 2015
Title	TO DETERMINE A REVIEW OF THE PREMISES LICENCE UNDER SECTION 51 OF THE LICENSING ACT 2003 FOR THE BEACHSIDE CLUB, FORT WARDEN ROAD, TOTLAND BAY, ISLE OF WIGHT, PO39 0DA.
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BACKGROUND

1. At any stage following the grant of a premises licence, a responsible authority or other person may apply to the licensing authority for a review of the licence on the grounds that one or more of the four licensing objectives is not being upheld.
2. The proceedings set out in the 2003 Act for reviewing premises licence or club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
3. Hampshire Constabulary (as a responsible authority under the Licensing Act 2003) have applied for a review of the premises licence for the The Beachside Club (Appendix A) under Section 51 of the Licensing Act 2003 in relation to the licensing objectives –
 - The Prevention of Crime and Disorder
 - The Prevention of Public Nuisance
 - Protection of Children from Harm
4. The police have supplied various numbered documents (sub-appendices) which expand on the information contained within their comprehensive application for review. The documents provide the Sub Committee with as much information as possible in order for them to determine the application. The licence holder was given a copy of these documents at the earliest opportunity.
5. The Beachside Club is situated in Fort Warden Road, Colwell Bay. It is part of the Beachside Bungalows holiday complex. The licence holders are Mr Rodney Hopkins and Mrs Pauline Hopkins and the Designated Premises Supervisor (DPS) is Mr Patrick Bayliss.

6. Prior to the Licensing Act 2003, there was a liquor licence in place for the Beachside Club permitting the sale of alcohol from 10am to 11pm (Sunday mid-day to 10.30pm), with conditions restricting the sale of alcohol to members of the club and their bona fide guests, managers and staff and members of similar clubs.
7. On 24 June 2005, during the transitional period under the Licensing Act 2003, Mr and Mrs Hopkins applied to convert the existing licence and at the same time applied to vary the licence to permit the sale or supply of alcohol and provide recorded music at any time 24 hours a day, late night refreshment between 11pm and 5am, and to carry on other licensable activities between mid-day and midnight, and for the premises to be open for up to 24 hours a day.
8. In the application the premises was described as a small clubhouse and bar for nominated members, within the grounds of the Beachside Bungalows holiday complex consisting of 30 units. It was stated that the nearest residential neighbours are more than 200 feet away to the north (61m) and more than 500 feet elsewhere (152m).
9. It was also stated that the club was not open to the general public, is on private property, that it was not advertised and not adjoining any road or public right of way.
10. The premises licence was granted on 18 August 2005 with conditions consistent with the steps proposed by Mr Hopkins in the operating schedule to uphold the licensing objectives (Appendix B).
11. Mr Hopkins was initially the Designated Premises Supervisor and remained so until it was varied to John Findlay from Feb 2011 to Oct 2012, Paul Hopkins from Oct 2012 to Sept 2013 and Patrick Bayliss from Sept 2013 to present.
12. The police have become increasingly concerned at the poor standards of management at the premises and the seemingly lax attitude of the DPS towards the promotion of the licensing objectives. Attempts to work informally with the licence holder and DPS have not improved standards. It was suggested to the licence holder that he submit a minor variation to improve the conditions of the licence, but no such application was forthcoming and the police have therefore applied for the licence to be reviewed.

CONSULTATION

13. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the review application has been correctly served. The licensing authority is required to advertise the application at or on the premises and at the Council offices.
14. This review application was received on 9 July 2015. The application was advertised at the premises, at the Council offices and on the Council's web site. The consultation period ended on 6 August 2015.

15. The outcome of the consultation in respect of this review application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	Representation made (Appendix C)
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
NHS	Comment only – no representation
Licensing Authority	Representation made (Appendix C)

Other Persons

16. Eight valid representations have been received from other persons. Of these, three are in support of the review (Appendix D) and five are in support of the premises (Appendix E). The Licensing Act (Hearings) Regulations 2005 requires the local authority to give copies of relevant representations to the licence holder. A further representation in support of the review was also received, however the person making the representation requested for their name to be withheld, but did not provide reasons for the request. The Section 182 Guidance states that it is only in exceptional circumstances that the authority should consider withholding personal details, therefore this particular representation has not been included within the appendices, but will be made available to all parties should justifiable reasons be supplied prior to the hearing.

The representations relate to:

- Public Nuisance – loud noise from music and from patrons outside, frequent shouting and swearing, litter around the area from bottles and cans.
- Public Safety – glasses being thrown, weapons, threats being made
- Crime and Disorder – fighting, things taken from garden, lack of control or care from staff.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

18. The 28 day consultation period ended on 6 July 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 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.
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. 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.
22. 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.
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.
- 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 11pm and 8am. 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.
- 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 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 – 2019 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	All
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.3 – 9.6, 9.9 – 9.15, 9.17

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

31. The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- Option 1: To retain the licence in its current form.
- Option 2: To modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition) for example, by reducing the hours of opening or by requiring door supervisors at particular times.
- Option 3: To exclude a licensable activity from the scope of the licence.
- Option 4: To remove the designated premises supervisor, for example, if it is considered that the problems are the result of poor management.
- Option 5: To suspend the licence for a period not exceeding three months.
- Option 6: To revoke the licence.

RISK MANAGEMENT

32. With regard to Option 1: To retain the existing permitted hours and licence conditions would allow licensable activities to continue in their current form. This may not be appropriate to address the problems that have been identified at the premises and could result in an appeal by the police as the applicant for review or any of the other persons who have made a representation.
33. With regard to Option 2: Modifying the conditions of the licence may assist in upholding the licensing objectives, but could impact on the manner in which the licence holder conducts his business and may have financial implications for the licence holder, particularly if the reduction in hours proposed by the police are imposed. This could be appealed by the licence holders.

34. With regard to Option 3: Members may wish to consider excluding a particular licensable activity, which may address issues in respect of adverse impact on the licensing objectives. This course of action may impact on the manner in which the licence holder conducts his business and may also have financial implications. This could result in an appeal by the licence holders.
35. With regard to Option 4: Members may wish to remove the DPS to enable better management of the premises, should they deem this to be an appropriate course of action. The licence holders would then not be able to sell or supply alcohol until a suitable replacement DPS was found.
36. With regard to Options 5 and 6: The suspension or revocation of the licence would have an obvious impact on the livelihood of the licence holders, and could result in an appeal by them.

EVALUATION

37. It has become apparent that, over the years, the club has not been operated at all times in the way it was originally intended. It would appear that several of what were previously short-term holiday bungalows have become longer-term residences and therefore persons staying or living there have become more affected by activities at the club than in previous years.
38. Although there have not been a great number of complaints made to either Environmental Health or the Licensing Department since the premises licence was first granted, it has become clear that over the past year, despite a short period of improvement in standards of management at the premises, that management of the premises has become lax and the licensing objectives have not always been upheld.
39. The police have requested that the DPS be removed. Licensing authorities should be alive to the possibility that the removal and replacement of the DPS may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
40. Equally it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the DPS may be an inadequate response to the problems presented.
41. The DPS, by his own admission, appears to have little or no interest in the running of the premises or in upholding the licensing objectives, other than his own financial gain. There is evidence to suggest that the DPS is not competent in carrying out this role. It could be said that, if there was strong management control to ensure that the club is operated in the way it was originally intended, and the existing conditions were complied with and licensing objectives upheld, the Committee may feel that such a drastic reduction in hours would not be necessary.
42. The police have requested amendments to the existing conditions and recommended additional conditions they wish to see attached to the licence in

order to promote the licensing objectives. Condition 9 of the licence could be removed as it is covered by other legislation.

43. It should be noted that the police have, in their application, requested more of a reduction in hours than those they originally proposed to the licence holder in their supporting documentation (Appendix A - 33). They are now requesting that the Committee reduce the hours for the sale of alcohol to 22:30hrs and the hours of closing to 23:00hrs. The Committee should decide whether the suggested conditions and the reduction in hours are an appropriate and proportionate response to address the problems that have been identified.
44. Environmental Health have also proposed a 'barely audible' condition relating to music noise. The Committee should decide whether to impose this condition for the prevention of public nuisance, rather than to remove live and recorded music from the licence, as suggested by the police. If imposed at a review hearing, the condition would be enforceable at all times live or recorded music is provided.
45. The Committee should determine the application in accordance with section 52 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
46. 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.
47. 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.
48. In deciding which of their powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

RECOMMENDATION

49. It is officers' recommendation that Option 2 AND Option 4 be adopted, i.e. that the Designated Premises Supervisor be removed to enable better management of the premises, and also that changes to the existing conditions recommended by the police be imposed on the licence, so far as they are consistent with the Committee's decision regarding any reduction in hours.

APPENDICES ATTACHED

[Appendix A](#) Application for review of the premises licence under section 51 of the Licensing Act 2003 and supporting documentation.

[Appendix B](#) Copy of the current licence for the premises

[Appendix C](#) Representations received from responsible authorities - Environmental Health and Licensing Authority

[Appendix D](#) Representations in support of the review

[Appendix E](#) Representations in support of the premises

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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