



## Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>8 JANUARY 2016</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR CARDAMON LOUNGE, 44 HIGH STREET, CARISBROOKE, ISLE OF WIGHT, PO30 1NR.</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 17 November 2015 for Cardamon Lounge, 44 High Street, Carisbrooke, Isle of Wight, PO30 1NR.
3. 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.
4. The applicant, Mr Kennedy, amended his application on 26 November 2015. The amended application can be found at Appendix A.
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. These premises were previously licensed between 2010 and February of this year. The licence permitted the sale of alcohol with a table meal and for consumption off the premises from 08:00hrs to 22:00hrs (Monday to Thursday), 23:00hrs (Friday and Saturday) and until 21:00hrs (Sunday).

### 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 17 November 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 15 December 2015.
9. 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
NHS	No Representation made
Licensing Authority	No Representation made
Police	Representations made

10. The Police have agreed amendments to the proposed hours for activities. The proposed operating schedule can be found at Appendix B.
11. The conditions that have been agreed between the Police and the applicant can be found at Appendix C.

Other Persons

12. 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. The concerns raised in the objections are in relation to:
- The proposed hours for licensable activities
  - Alcohol being sold for consumption off the premises
  - Alcohol being sold to customers that are not having a table meal
  - Noise nuisance from people leaving the premises and from people smoking outside
  - Nuisance from smells

FINANCIAL/BUDGET IMPLICATIONS

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

## LEGAL IMPLICATIONS

15. The 28 day consultation period ended on 15 December 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

16. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
17. 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.
18. 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.
  - 2.17 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.

## 19. Determining what actions are appropriate for the promotion of the licensing objectives

9.43 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.

## 20. 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.

## 21. 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.

### Implications under the Crime and Disorder Act 1998

22. 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

23. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
24. 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”.

25. 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.
26. 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	9.1 – 9.6, 9.9 – 9.17

## EQUALITY AND DIVERSITY

27. 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).
28. There is no requirement for an equality impact assessment to be carried out.

## OPTIONS

- Option 1: Grant the licence as per the application (with the final version of the proposed operating schedule including conditions agreed between the applicant and Police).
- 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

29. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance occurring from the proposed activities, 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.
30. 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.
31. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, they must be satisfied that the proposed activities will compromise the licensing objectives and no amendments to the operating

schedule could be made to resolve this. This decision could be appealed by all parties.

## EVALUATION

32. The concerns raised by a local resident and the Parish Council are in relation to:
- The proposed hours for licensable activities
  - Alcohol being sold for consumption off the premises
  - Alcohol being sold to customers that are not having a table meal
  - Noise from people leaving the premises and from people smoking outside
  - Nuisance from smells
33. There are concerns regarding the proposed hours for licensable activities. The hours have been reduced following amendment to the original application. However, concerns remain that the objectives could be compromised by activities taking place at these times.
34. The majority of licensed premises are permitted to sell alcohol until at least 23:00hrs during weekdays and many are licensed until midnight over the weekends. It may be worth noting that a nearby restaurant is licensed until midnight 7 days a week and no complaints have been received in respect of these premises. It could therefore be deduced that it is unlikely these activities at these times would compromise the licensing objectives. It should however also be noted, that the application should be considered on its individual merits along with the objections received and if the sub-committee do believe the activities would compromise the objectives, they will need to consider whether any steps could be taken to resolve these concerns.
35. The sub-committee should be aware that the proposal for regulated entertainment has been withdrawn. If a licence is granted permitting the sale of alcohol, legislation now allows live and recorded music to be provided until 23:00hrs without the need for it being included on the licence. If nuisance arises as a result of any such entertainment, an application for review can be submitted by a responsible authority or any other person to require that it is regulated.
36. The previous licence issued for these premises permitted alcohol to be sold for consumption off the premises. Frequently, restaurants request this to be included in the licence to allow people to take home the alcoholic beverages they have not finished with their meal.
37. The Parish Council have concerns about this being permitted under the licence that has been applied for. The sub-committee will need to consider whether the likely impact of this would compromise the licensing objectives. Officers are not aware of premises that have had problems as a result of customers being able to remove alcohol from licensed premises. It should be noted that there is a nearby convenience store that is licensed to sell alcohol until 23:00hrs for consumption off the premises and a public house that is permitted to sell alcohol until 01:00hrs for consumption on and off the

premises. It is likely that customers only intending to purchase alcohol would go to one of these premises, where the likelihood is that the alcohol will be cheaper and there will be a more extensive range of products.

38. With regard to alcohol being sold for customers who are not having a table meal, the majority of licences do not include this restriction on the basis that licence holders wish to have the flexibility to allow people to have a drink without having to purchase a meal. If licensed premises are food-led, they do not tend to attract customers who only wish to have a drink. However, if the sub-committee believe that allowing the public to drink at these premises without a meal could impact on the licensing objectives, they may wish to include a requirement that "No alcohol shall be sold for consumption on the premises except when ancillary to food purchased for consumption on the premises."
39. Concerns have been raised that nuisance will be caused by customers smoking outside the premises and when they leave the premises. The local resident has included in their representations that they have already experienced some noise from people leaving the premises.
40. The Police have requested that the applicant designate a smoking area and required that no more than 5 people use this area at any one time and the applicant has agreed to this measure. If the sub-committee believe further conditions are required to ensure the objectives are promoted, they must ensure that such conditions are proportionate and appropriate.
41. With regard to nuisance from smells, the sub-committee may only consider the impact of late night refreshment as a licensable activity, which is proposed to take place between 23:00hrs and midnight on Fridays and Saturdays. The sub-committee will need to take into consideration the fact that the premises can operate during the day until 23:00hrs without the need for a licence.
42. The national guidance states:  
In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
  - the steps that are appropriate to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy.
43. 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:
  - The Prevention of Crime and Disorder
  - The Prevention of Public Nuisance
  - Public Safety
  - The Protection of Children from Harm

## RECOMMENDATION

44. 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](#) Final version of the proposed operating schedule

[Appendix C](#) Conditions agreed between the applicant and Police

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

## 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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