



# PAPER B

Purpose: For Decision

## Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>25 JANUARY 2016</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR THE 1<sup>ST</sup> FLOOR, 4 CHAIN LANE, NEWPORT, ISLE OF WIGHT, PO30 5QA.</b>
Report of	<b>CHIEF EXECUTIVE</b>

---

### 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 by Mr Adam Radestock on 1 December 2015, for The 1<sup>st</sup> Floor, 4 Chain Lane, Newport, Isle of Wight, PO30 5QA (Appendix A).
3. The premises to which this application relates is the first floor of the existing premises known as Rocket Ronnies. A plan of The 1<sup>st</sup> Floor can be found at Appendix B.
4. A plan showing the location of the premises can be found at Appendix C.
5. Rocket Ronnies is a snooker/pool hall run by Mr Ronnie Keates; he is the leaseholder of the premises.
6. Currently both floors are licensed under a premises licence held by Mr Keates. If Mr Radestock's application is successful, Mr Keates intends to submit a minor variation application to alter the plan on his licence so that the premises licence for Rocket Ronnies relates only to the ground floor.
7. The premises to be known as The 1<sup>st</sup> Floor has a separate entrance/exit.
8. Toilets are being installed on the first floor of the premises as previously there were none. Mr Keates has confirmed that they are near completion. This will ensure a complete segregation of customers to each of the two premises.
9. 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.

10. 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

11. 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.
12. The application for a premises licence was received on 1 December 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 29 December 2015.
13. During the consultation period, an administrative error occurred in that the application was not copied to Newport Parish Council as would normally be the case. This error was not identified until 4 January 2016.
14. Legal advice was sought and the applicant was informed of the error. The applicant stated that he was happy for the parish council to comment on the application despite the consultation period having ended.
15. Regulations made under the Act in respect of premises licence applications do not require parish councils to be served as they are not a responsible authority.
16. The Isle of Wight Council's Statement of Licensing Policy January 2014 - January 2019 makes no statement to the effect that parish councils will be notified.
17. There has been no breach of regulations or policy in respect of this oversight.
18. The outcome of the consultation in respect of this application is as follows:

### Responsible Authorities

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

19. The Environmental Health department recommended a condition that requires a Noise Management Plan to be submitted and approved by the Licensing Authority prior to any licensable activities taking place. A copy of their memo can be found at Appendix D. The applicant has agreed to this condition being attached to the licence if granted.
20. The Fire and Rescue Service have objected to this application as they have been unable to contact the applicant in order to arrange for a fire safety inspection to be carried out.
21. The fire officer has raised concerns that after having viewed the premises from the outside, the means of escape and exit facilities from the first floor do not appear satisfactory. A copy of the representation from the Fire and Rescue Service can be found at Appendix E.
22. The Planning department has not made representations to the application but have provided a copy of the existing planning permissions for the building (Appendix F).
23. Advice has been sought from the planning department; it is their view that the activities being proposed by the applicant fall outside of the "ancillary social facilities" as referred to in condition 2 on TCP/18730E/M/8269.
24. The applicant has been informed that he is required to make an application to the planning department.
25. The police have produced a list of conditions that they would like attached to the premises licence if granted. A copy of this list can be found at Appendix G. The applicant has agreed to all of the conditions proposed.

#### Other Persons

26. One valid representation has been received from other persons (Appendix H) relating to the licensing objectives:
  - Prevention of public nuisance
  - Prevention of crime and disorder
27. Mr Robbins is concerned at the potential for an increase in noise nuisance and anti-social behaviour in the area. Mr Robbins states that he is already disturbed regularly from music coming from the premises and from customers standing outside during and after hours. He fears that the grant of a further licence will exacerbate the situation for residents.
28. After considering the application, Newport Parish Council have raised no objection to a licence being granted provided the conditions that have been agreed between the applicant, Environmental Health and the police are attached to the licence and enforced by officers.

#### FINANCIAL/BUDGET IMPLICATIONS

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

## LEGAL IMPLICATIONS

30. The 28 day consultation period ended on 29 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

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

32. 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.

33. 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.
34. 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.

## 35. 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.

## 36. 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.

### Implications under the Crime and Disorder Act 1998

37. 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

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

39. 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”.

40. 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.
41. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2014 – 2017 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	All
Paragraph 5	Approach to Licensing Applications	All
Paragraph 6	Cumulative Effect	N/A
Paragraph 7	Representations, Reviews, and Appeals	7.1, 7.2, 7.8 – 7.11
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.1 - 9.6, 9.9 – 9.15

## EQUALITY AND DIVERSITY

42. 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).
43. 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

44. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance arising from regulated entertainment, and associated nuisance from customers 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.
45. 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.
46. 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

47. With regard to the information provided by the Planning department, the planning regime and the licensing regime are dealt with under separate statute and it is for anyone involved in the provision of licensable activities to satisfy himself that the relevant consents are in place. The applicant has been informed of the requirement to obtain planning permission for his proposed usage of the first floor of the premises.
48. Paragraph 9.44 of the S.182 Guidance provides that “Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also



applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.”

49. There is nothing in this paragraph which requires an application for planning permission to be submitted simultaneously and furthermore paragraphs 13.57 & 13.58 of the guidance confirm that “planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.
50. The applicant has been holding events under the authority of the premises licence held by Mr Keates since March 2015.
51. Environmental Health records show that in the past twelve months a total of six noise complaints have been received.
52. All of these complaints were made by separate individuals. However, none of the complaints have been substantiated by Environmental Health Officers and therefore it is not possible to say if a nuisance did occur and if so which premises was responsible.
53. It is the view of the Environmental Health department that the condition that has been proposed by them and accepted by the applicant is sufficient to address the nuisance concerns raised by Mr Robbins.
54. With regard to the concerns raised by Mr Robbins in respect of the perceived lack of police monitoring of the area and the lack of lighting or CCTV, these are not issues that the applicant can be held accountable for.
55. At the time of writing this report, the representation from the Fire and Rescue Service remains outstanding.
56. If Members are minded to grant a licence, consideration must be given to imposing a condition to prevent licensable activities taking place until such a time as the fire officer is satisfied.
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 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

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

## APPENDICES ATTACHED

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

[Appendix B](#) Plan of the premises

[Appendix C](#) Plan showing location of premises

[Appendix D](#) Environmental Health agreed condition

[Appendix E](#) Representation from Fire & Rescue Service

[Appendix F](#) Copy of existing planning permission for premises

[Appendix G](#) Copy of agreed police conditions

[Appendix H](#) Representation from Mr Robbins

## 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>

Contact Point: Andrea Bull, Licensing Officer, ☎ 823159 ext. 6126  
e-mail [andrea.bull@iow.gov.uk](mailto:andrea.bull@iow.gov.uk)

JOHN METCALFE  
Chief Executive