



PAPER B

Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	29 FEBRUARY 2016
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR TRADEWINDS CAFÉ, DUNROAMIN BEACH, LAKE, ISLE OF WIGHT, PO36 8JT
Report of	HEAD OF PLANNING AND HOUSING SERVICES

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 12 January 2016 for Tradewinds Cafe, Dunroamin Beach, Lake (Appendix A).
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. Any person may make representations in respect of the application during the consultation period. As representations have been received objecting to the grant of the licence and these have not been resolved informally, a hearing must be held for the sub-committee to consider the concerns raised and determine the application.

CONSULTATION

5. 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.
6. The application for a premises licence was received on 12 January 2016. 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 9 February 2016.

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

Responsible Authorities

Children's Services	No Representation made
Licensing Authority	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
Environmental Health	No Representation made
Police	Representation made

8. Police have agreed conditions with the applicant that will form part of the operating schedule and therefore be attached to the licence if it is granted. These can be found at Appendix B.

Other Persons

9. Three valid representations have been received from other persons in objection to the granting of the licence in relation to the following licensing objectives: prevention of public nuisance and prevention of crime and disorder.
10. There are concerns that:
- a lack of toilet facilities could lead to nuisance/disorder
 - antisocial behaviour/disorder will occur
 - nuisance will be caused from litter in the area
11. The full representations can be found at Appendix C.
12. Fifteen representations have been received from other persons in support of granting the application. It is believed that allowing the café to offer alcohol as part of their business will enhance the area and based on the owners' history and involvement with other licensed premises, the supporters have confidence that the operation will be responsibly and effectively managed to ensure the objectives are promoted. The full representations can be found at Appendix D.
13. Following receipt of the representations, the applicant has provided comments which were provided to the other persons that are objecting. The comments can be found at Appendix E.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

15. The 28 day consultation period ended on 9 February 2016. 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.

- 2.16 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.
 - 2.20 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 – 9.4, 9.9 – 9.15, 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.
- 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 and/or disorder, 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 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 no modifications could be made to the operating schedule to address the concerns and that such action is proportionate. This decision could be appealed by the applicant.

EVALUATION

32. The concerns raised by other persons are that:
 - a lack of toilet facilities could lead to nuisance/disorder
 - antisocial behaviour/disorder will occur
 - nuisance will be caused from litter in the area
33. The sub-committee need to consider whether they believe the concerns raised by other persons will be likely outcomes of the grant of this licence application.
34. One other person has commented that the area does not need another licensed café. It should be noted that the sub-committee cannot take into consideration whether the area 'needs' another premises selling alcohol. There is no current special policy in place on the island in relation to the cumulative impact of licensed premises and therefore this is a matter that would be dealt with under Planning legislation and market/industry demand.
35. With regard to the lack of toilet facilities, as an unlicensed café providing food and 'soft' drinks, the applicant has found no problems with their customers using the public toilets provided nearby. There is no intention to run the premises as a bar and the premises will remain as a café. If the premises are to remain food-led, then it is unlikely antisocial behaviour will occur by way of people urinating in a public place.
36. It should be noted that such behaviour is an offence and people are responsible for their own behaviour when they leave the premises. As well as this, there is no requirement under the Act for licensees to provide toilet facilities.
37. In relation to the concern of antisocial behaviour occurring, Police are the responsible authority that would consider this risk during the consultation period. They have agreed the conditions that they believe are appropriate to promote the licensing objectives with the applicant and have no further concerns.
38. Cafés predominantly attract those who wish to purchase teas/coffees or a meal. The applicant has stated that they are proposing to sell alcohol until 23:00hrs to allow them to provide supper nights on occasions and that there is no intention to run a bar. It is therefore unlikely that the people who have been in attendance at the premises will engage in antisocial behaviour.
39. There are numerous cafés/restaurants on esplanades around the island and the licensing department is not aware of any antisocial behaviour occurring as a result of such premises offering alcohol for sale.
40. With regard to nuisance arising from litter in the vicinity of the premises, the applicant has confirmed in their comments that they ensure the area is free of litter; if there is debris in the area, it would therefore be most likely from other members of the public using the area. It is unlikely that adding alcohol products to the range of drinks already available would lead to an increase in litter and it is in the applicant's interest to maintain the immediate vicinity of their premises and keep it free of litter.

41. 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.
42. 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

43. 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](#) Conditions agreed between Police and the applicant

[Appendix C](#) Representations received from other persons in objection to the application

[Appendix D](#) Representations received from other persons in support of the application

[Appendix E](#) Comments received from the applicant

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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