



Committee report

Committee	LICENSING SUB COMMITTEE
Date	27 SEPTEMBER 2017
Title	TO DETERMINE AN APPLICATION FOR THE VARIATION OF THE PREMISES LICENCE/REVIEW OF THE PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR SAINSBURY'S, FOXES ROAD, NEWPORT, ISLE OF WIGHT, PO30 5ZB
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BACKGROUND

1. Under section 34 of the Licensing Act 2003, a premises licence holder may apply to vary the licence to add licensable activities or alter the times for such activities, or to remove conditions, where this cannot be done by way of a minor variation.
2. 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.
3. 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.
4. A copy of the current licence can be found at Appendix A
5. An application for variation of the premises licence was submitted to the licensing authority on 27 July 2017 for Sainsbury's, Foxes Road, Newport, Isle of Wight, PO30 5ZB. This can be found at Appendix B of the report.
6. The application seeks to extend the hours for the sale of alcohol to 24 hours to allow for online sales. With regard to online sales it should be noted that the "sale" takes place when alcohol products are appropriated to the sales contract (i.e. when the alcohol is taken from the shelves and allocated to the order)

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 variation of the premises licence was received on 27 July 2017. 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 25 August 2017.
9. 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

10. Modifications to the proposed hours for the sale of alcohol have been agreed between the Police and the applicant. Please see detail below:
 - Alcohol sales for consumption off the premises that occur between 2300 and 0600 are to be for online sales for delivery. This part of this condition does not apply during the Seasonal Periods.
 - Alcohol sales for consumption off the premises that occur between 2400 and 0600 during the Seasonal Periods are to be for online sales for delivery.

For the purpose of this condition, the "Seasonal Periods" means the period from and including 10 December to 6 January each year and the period from and including the Monday prior to Good Friday up to and including Sunday following Easter Monday each year.

11. There are an additional three conditions that the Police would like to be added to the licence in relation to the delivery of alcohol and staff training. Please see Appendix C for detail of the Police Representation

Other Persons

12. One valid representation had been received from other persons but this has since been withdrawn.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

14. The 28 day consultation period ended on 25 August 2017. 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.

15. 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.

16. 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.

17. 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.

18. 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.

10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

Implications under the Crime and Disorder Act 1998

19. 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

20. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
21. 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".

22. 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.
23. 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	7.1 – 7.3, 7.8 – 7.11

Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.1 – 9.4,9.8,9.16 – 9.17

EQUALITY AND DIVERSITY

24. 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).
25. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

- Option 1 Vary the licence as per the application.
- Option 2: Vary 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

26. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of alcohol being delivered to customers who are already drunk and intoxicated, including the potential risk of associated nuisance and disorder as a result; 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.
27. With regard to Option 2: The risk of nuisance and disorder being evident as a result of the delivery 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.
28. 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

29. The Police have proposed 3 conditions to the licence which have not been agreed by the applicant. It is therefore for the Licensing Sub Committee to make a decision with regard to these.
30. There are no current restrictions on the licence in relation to the delivery of online sales which are permitted for 24 hours per day. The proposed variation is to extend the hours to allow for online sales. It is not part of the variation to propose any changes with regards to the provision of deliveries and it should be noted that this is not an application for review of the current licence.
31. The Sub Committee can therefore only consider the impact of the changes within the proposed variation application.
32. 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.
33. The Committee should determine the application in accordance with section 35 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

34. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

APPENDICES ATTACHED

[Appendix A](#) - Current Premises Licence for Sainsbury's

[Appendix B](#) - Variation Application

[Appendix C](#) - Police Representation

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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