



# Committee report

Committee      **LICENSING SUB COMMITTEE**

Date            **9 NOVEMBER 2017**

Title            **TO DETERMINE AN APPLICATION FOR THE VARIATION OF THE PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR NEWCLOSE COUNTY CRICKET GROUND, NEWCLOSE PARK, BLACKWATER ROAD, NEWPORT, ISLE OF WIGHT, PO30 3BE**

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**HEAD OF PLACE**

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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 13 September 2017 for Newclose County Cricket Ground, Newclose Park, Blackwater Road, Newport, Isle of Wight, PO30 3BE. This can be found at Appendix B of the report.
6. The application seeks to extend the hours within the pavilion for the sale of alcohol to midnight on Fridays and to commence from 11:00 hours and finish at 23:00 hours on Sundays. The extension of hours for Live and Recorded Music within the pavilion until midnight on Fridays and Saturdays has also been applied for. The application seeks to add Late Night Refreshment to the licence to allow for hot drinks to be provided on Fridays and Saturdays until midnight. The applicant has also sought the permission for Late Night Refreshment, Live Music, Recorded Music and the sale of alcohol from the

start of hours on New Year's Eve until 01:00 hours on New Year's Day. As part of the application, all conditions as detailed in Annex 2 of the current licence are proposed to be replaced with the conditions as set out in Section M of the application. The application also seeks to update the plans attached to the current licence to show the marquee, which forms part of the current licensed premises.

## 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 13 September 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 11 October 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	Conditions agreed with applicant

10. Conditions relating to the installation and maintenance of a CCTV system and the recording of reported incidents and refusals of sale relating to alcohol have been agreed between the Police and the applicant. Please see Appendix C for details.

### Other Persons

11. Four valid representations had been received from other persons. Concerns have been raised in relation to all four licensing objectives. Details of these representations, including further communications are attached at Appendix D.

## FINANCIAL/BUDGET IMPLICATIONS

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

## LEGAL IMPLICATIONS

13. The 28 day consultation period ended on 11 October 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.
14. 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.
15. 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.
16. 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.

17. 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

18. 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

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

21. 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.
22. 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

23. 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).
24. 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 appropriate and proportional to promote the licensing objectives.
- Option 4: Refuse the whole or part of the application.

## RISK MANAGEMENT

25. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the potential risk of associated nuisance and disorder that may arise from the increase in hours for the licensable activities of live and recorded music and the sale of alcohol; 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.
26. With regard to Option 2: The risk of nuisance and disorder being evident as a result of the increase in hours with regards to music and provision of alcohol 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.
27. 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

28. The Police have proposed 3 conditions to the licence which have been agreed by the applicant. Should the committee deem these to be appropriate and proportionate, they may wish to add these to the licence, should the variation be granted.

29. Representations have been raised with regards to the way in which the premises has been previously managed. The processes and procedures of those that have historically been involved with the management of the premises, particularly as regards the premises licence at the time, cannot be considered when determining the current application.
30. Concerns in relation to the licensing objective for the Prevention of Crime and Disorder infer that the need for Security Industry Authority (SIA) staff indicates that those using the premises would be more likely to cause nuisance and disorder.

A further concern is that the increase in licensing hours, specifically for the sale of alcohol will lead to an increased risk of public misbehaviour.

The use of SIA licensed door staff, when deemed appropriate, could also prevent or reduce the risk of crime and disorder and public nuisance from taking place. Irrespective of the operating hours, in line with best practice, the use of SIA staff proves to be an effective method of reducing occurrences of nuisance and crime and disorder within licenced premises. The applicant has stated within their operating schedule that they will use SIA staff. The assessment to determine the need of SIA staff will include factors such as the type of event, the duration of licensable activities and the number, age and character of those attending.

There have been no concerns raised in relation to this by the Police and a condition covering this requirement can be added to the licence, if the variation is granted.

31. Concerns have also been raised with regards to the licensing objective of Public Safety, with regard to the use of glassware or bottles and the ability to carry and smash these elsewhere such as in the premises car park. Concerns have also been raised that the extension of opening hours will increase the amount of traffic using the road adjacent to the premises and that vehicles exiting onto an unlit road when exiting the premises at night would cause a public safety issue. Processes to prevent premises users from taking glassware away from the premises would include the use of SIA door staff to monitor users when exiting the pavilion or marquee. To further promote the objective of Public Safety in relation to the concerns raised, the premises use polycarbonate vessels which reduce the risk of breakage and potential harm to others. In relation to increased traffic and vehicles exiting onto an unlit road, this is not something that can be considered when determining the current application. Concerns raised need to be evaluated and be given appropriate weighting and addressed by way of conditions, should the committee deem it to be necessary.
32. Further concerns in relation to the objective for the Prevention of Public Nuisance state that noise that may cause a nuisance from within the marquee structure has been addressed by the applicant but noise emanating from elsewhere within the premises, for example the pavilion has not. Concerns have also been raised that the risk of nuisance would be increased if the limitations for events that are permitted within the marquee and for live or recorded music within the pavilion are removed. The applicant has agreed to

ensure that prominent and clear notices are displayed; requesting premises users to respect the needs of local residents when leaving the premises and this can be added as a condition to the licence, if the variation is granted. The amount of events that are permitted within the marquee were previously determined as part of Newclose Cricket Ground's planning application. This limitation would therefore remain and be enforceable in accordance with the relevant planning regulations. Should the committee grant the licence as per application, including the removal of condition 12 of the current licence which relates to the amount of times live or recorded music is permitted within the pavilion, the licence holder would be able to provide live or recorded music between the times of

23:00 hours and the closing time of the premises. The Live Music Act 2012 deregulated live and recorded music between the hours of 08:00 hours and 23:00 hours, therefore during these times the licence holder is able to play music without the need for authorisation as long as the activity of the sale of alcohol is permitted at the same time. Should there be complaints received with regards to alleged noise nuisance from the provision of music then these will be investigated in accordance with the Regulatory Services Enforcement Policy.

33. Concerns raised in relation to the objective for the Protection of Children from Harm include the lack of detail in relation to whether children are supervised or not within the bar area of the premises. It is for the licence holder and those responsible for the day to day management of the premises to determine whether children should be supervised at all times within the bar area. Conditions should be added to a licence if they are deemed appropriate and proportionate, therefore if there are robust management practices in place to promote one or more of the licensing objectives, conditions would not necessarily be justifiable.
34. 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.
35. The Committee should determine the application in accordance with section 34 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

36. Vary the licence as per the application with any additional conditions that the Sub-Committee deem appropriate and proportional to promote the licensing objectives.



## APPENDICES ATTACHED

Appendix A – Current Premises Licence for Newclose County Cricket Ground

Appendix B – Variation Application and associated site plans

Appendix C – Agreed Conditions – Police

Appendix D – Other Persons' Representations

## 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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**LICENSING SUB-COMMITTEE/LICENSING COMMITTEE REPORT AUTHOR'S CHECKLIST**

Title of Report : <b>APPLICATION FOR</b>	Place Y, N or N/A in the box below
• Can the decision be taken under delegated powers by :	
• The relevant portfolio holder?	N
• An Officer?	N
• Has the decision appeared on the forward plan?	n/a
• Has the relevant Select Committee had the opportunity to consider the issue?	n/a
• Does the Director's Group need the opportunity to discuss the report?	n/a
• If so, insert the date of the meeting where the report was considered?	n/a
• Has the portfolio holder approved the report?	n/a
• Has sufficient consultation taken place?	Y
• Is the consultation set out and evaluated in the report?	Y
• If the recommendation is not consistent with the outcome of consultation, are reasons given?	n/a
• Can an elected Member (or member of the public) with no previous knowledge of the report see sufficient background information (which can include reference to previous reports) to allow them to understand the issue?	Y
• Does the report identify what strategic or policy aim is achieved or contributed to by the decision?	n/a
• Are all reasonable options identified and appraised?	Y
• Is there additional risk management information that needs to be set out?	N
• Has specialist advice been taken for the following:	
• Financial?	n/a
• Legal?	n/a
• Personnel?	n/a
• Other?	N
• Is the cost associated with the decision fully set out and the source of any funding identified?	n/a
• Have the following been considered and explained (where necessary) in the report:	
• Human Rights issues?	Y
• Crime and Disorder issues?	Y
• Is risk management properly addressed?	Y
• Are all background papers listed and available?	Y
• Is the implementation date clearly identified?	n/a
• If the report is confidential or exempt is the reason for the confidentiality or exemption clearly identified?	n/a
• Are there clear recommendations with reasons?	n/a
• Are the report author and contact officer clearly identified?	Y
• Report and appendices reviewed by the Principal/Senior Licensing Officer? (Signature)	
• Report and appendices reviewed by the Regulatory Services Manager/Head of Planning and Regulatory Services? (Signature)	