



Committee report

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| Committee | LICENSING SUB COMMITTEE |
| Date | 22 JANUARY 2018 |
| Title | TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE MADE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR WELLOW ALPACA STUD, MAIN ROAD, WELLOW, YARMOUTH, ISLE OF WIGHT |
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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 6 November 2017 by Michelle Payne for West Wight Alpaca Stud, Main Road, Wellow, Yarmouth, Isle of Wight. (Appendix A).
3. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the application has been correctly served. 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 and if these are valid and cannot be resolved by negotiation the licensing authority must hold a hearing to determine the application.

CONSULTATION

5. The application for a premises licence was received on 6 November 2017. The notice was not immediately displayed in the required manner at the premises, therefore this was corrected and the consultation period was restarted from 22 November to finish on 20 December 2017. The notice was placed in the County Press and on the council's website.

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

Responsible Authorities

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| Children's Services | No Representation made |
| Licensing Authority | No Representation made |
| Fire and Rescue Service | No Representation made |
| Trading Standards | No Representation made |
| Planning Services | No Representation made |
| NHS | No Representation made |
| Environmental Health | Representation made |
| Police | Representation made |
| Home Office Immigration | No Representation made |

7. Police have agreed conditions with the applicant that will form part of the operating schedule and will be attached to the licence if it is granted. The police have also requested that the sale of alcohol be taken back by 30 minutes to finish at 9pm, to give customers a 30 minute wind down period. The applicant has agreed to this. The police comments can be found at Appendix B.
8. Environmental Health have requested that a condition be attached to the licence to prevent public nuisance. This can also be found at Appendix B.

Other Persons

9. A letter of objection has been received, signed by five people from three nearby properties (Mr & Mrs Neary, Mr & Mrs Chambers and Ms Scott) which relates to the licensing objective of the prevention of public nuisance. A further email has been received from Mr Hall which raises a concern of public nuisance. These can be found at Appendix C.
10. As to the objections raised, much of what is contained within the letters of objection relates to planning matters which have already been decided or which are outside the remit of the licensing committee, or which relate to other premises and these should be disregarded. The main points of concern appear to be;
- noise from people socialising outside until 10pm in the summer months,
 - disturbance to sleep
 - disturbance from additional traffic
11. The objections were forwarded to the applicant for comment. Mrs Payne's response is 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 20 December 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.

National Guidance

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

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. 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. 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. 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.

- 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.
17. 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.

18. 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.

19. 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

20. 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

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

22. 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".

23. 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.

24. 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:

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| Paragraph 2 | Licensing Objectives | 2.5 |
| Paragraph 4 | Integration of Strategies and Other Legislation | 4.5, 4.6, 4.8 |
| Paragraph 5 | Approach to Licensing Applications | All |
| Paragraph 7 | Representations, Reviews, and Appeals and Complaints | 7.2, 7.8 – 7.11 |
| Paragraph 9 | Operating Schedules | 9.9, 9.11- 9.13 |

EQUALITY AND DIVERSITY

25. 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).
26. 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

27. 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 and disorder from the customers of the event; 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.

28. 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.
29. 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

30. In evaluating the objections, the Committee must focus on those matters which relate only to the likely effect of the grant of a licence on the licensing objectives. Some of the comments raised by the objectors relate to planning matters which have already been determined, such as the times the applicant is able to operate the business.
31. Mr & Mrs Neary (and others) are concerned over noise from people socialising outside until 10pm in the summer months. The closing time of the premises is 9.30pm, and the applicant has agreed to finish the sale of alcohol at 9pm. In addition, after 5.30pm alcohol will only be able to be consumed outside in the covered area which is away from residential properties, and not in the area to the side of the building. It is believed that this will alleviate noise disturbance from people outside (although it should be noted that people could still sit outside until 9.30pm as they currently do without an alcoholic drink).
32. Mr & Mrs Neary (and others) are also concerned over disturbance to sleep. As the premises closes at 9.30pm it is not believed that this will be a likely outcome of the grant of a premises licence.
33. Mr Hall has stated that the selling of alcohol will generate additional traffic and disturbance to neighbouring properties, but has not expanded on his reasons for this. The premises can already operate as a tourist attraction with a café/restaurant, which of course generates a certain volume of traffic. Customers can currently bring their own alcohol to the premises as it does not constitute a sale and therefore does not require a licence. A licence would simply allow alcohol to be sold rather than brought along by customers. It is therefore officers' opinion that a licence to sell alcohol would not create any additional traffic.
34. Taking all the above into account it is officers' opinion that the grant of a premises licence would not have any additional impact on the licensing objectives and must therefore recommend to the Committee that a licence is granted.
35. 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.

36. 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

37. 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.

APPENDICES ATTACHED

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

[Appendix B](#) Representations received from responsible authorities

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

[Appendix D](#) Comments received from 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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