

Committee report

Committee	LICENSING SUB COMMITTEE
Date	23 APRIL 2018
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR RED FUNNEL GROUP, RED FUNNEL TERMINAL, STEAM COFFEE COMPANY, FOUNTAIN YARD, WEST COWES, ISLE OF WIGHT, PO31 7AR
Report of	THE HEAD OF PLACE

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 27 February 2018 for Red Funnel Terminal, Steam Coffee Company, Fountain Yard, West Cowes, Isle of Wight, PO31 7AR (Appendix A).
3. Any person may make representations in respect of the application during the consultation period and if these are not resolved the licensing authority must hold a hearing to determine the application.

CONSULTATION

4. 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.
5. The application for a premises licence was received on 27 February 2018. 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 27 March 2018.
6. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	No Representation made
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
Police	Conditions agreed with applicant
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made

7. Originally the applicant requested a terminal hour of 05:00 during the period of the IW Festival and for the duration of Cowes Week. In consultation with the police the applicant has removed these hours from the application. The requested hours are now Monday – Saturday 09:00 to 23:00 hours and Sunday 10:00 hours to 23:00 hours. Other conditions that have been agreed can be found at Appendix B.

Other Persons

8. Two valid representations have been received from other persons (Appendix C), these relate to all four of the licensing objectives.
9. It is the view of Cowes Town Council that if this licence is granted the potential for crime and disorder is increased, particularly at times when large events are taking place.
10. They are also concerned that with the main terminal building having been reconfigured to accommodate a new coffee bar that space is limited. They fear that public safety could be compromised and public nuisance could also occur if people entering the terminal to purchase alcohol spill out of the terminal into the surrounding area creating a nuisance from noise and littering.
11. Objections were also raised by the Town Council in respect of the extended hours originally proposed for Cowes Week and the IW Festival. However these times have now been removed from the application.
12. The representation submitted by the Town Council was considered and a response was provided to the town clerk. This can be found at Appendix D. These comments were considered but in light of the fact that there remained an outstanding representation from a member of the public the clerk advised that members wish their representation to stand.
13. Mrs Rogerson a local resident has submitted a representation which raises concerns in respect of all four licensing objectives. It is her view that alcohol being sold inside the small terminal building, combined with the high footfall of passengers, will create congestion and this will ultimately lead to nuisance from noise and anti-social behaviour

in the surrounding area by people in drink. Mrs Rogerson lives in close proximity to the terminal.

14. Mrs Rogerson also raises concerns in respect of public safety, specifically in relation to people being permitted to consume alcohol in the gangway while waiting to board the Red Jet whilst others are disembarking. She also states that if required to use the emergency route from the gangway along the public landing pontoon, there are no safety barriers in place to stop anyone falling into the sea, especially if they've been drinking.
15. Concerns around lighting have also been raised as Mrs Rogerson perceives there to be a lack of lighting along the arcade walkway.
16. Further concerns were raised in respect of the proposed extended hours for events such as Cowes Week and the IW Festival which have now been removed from the application. Also whether or not there is a need for the premises to be licensed given the proximity of other licensed premises.
17. Mrs Rogerson has provided photographs to show the proximity of the terminal to her home and also to highlight her concerns over the lighting issue along the arcade walkway. These photographs can be found at Appendix E.
18. Mrs Rogerson's concerns have been considered and further information was sought from the applicant in order to provide answers to some of her queries. A response was sent to her for consideration this can be found at Appendix F.
19. Having considered these comments Mrs Rogerson provided further comments and these can be found at Appendix G.
20. During the writing of this report I had reason to contact representatives of the applicant on several occasions in order to answer various queries. Information has been collated from several individuals. On 10 April 2018, the Terminal Operations Manager, Mr David Warner emailed a response to a query and advised that on a day to day basis the Steam Café will close at 19:30 hours and these times are only likely to be extended when events are being held such as Round the Island Race, IW Festival and Cowes Week.
21. Mr Warner suggests that the hours may be extended on approximately fifteen to eighteen occasions per year.
22. Following receipt of this information both objectors were contacted and were asked to consider the information and advise whether or not it had any bearing on their representation.
23. Mrs Rogerson considered the information but her view remains that because customers of Red Funnel including families with young children have no choice but to enter the terminal building, they should be protected from having to potentially witness drunken and aggressive behaviour particularly during times of busy events.
24. Cowes Town Council has responded stating that the information has been considered but their representation stands.

25. Copies of the emails sent to Cowes Town Council and Mrs Rogerson, along with their replies can be found at Appendix H.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

27. The 28 day consultation period ended on 27 March 2018. 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

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

29. 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.

30. Public nuisance

- 2.15 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.

- 2.16 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.

31. Determining actions that are appropriate for the promotion of the licensing objectives

9.44 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. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

32. 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. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed 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.

Implications under the Crime and Disorder Act 1998

33. 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

34. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
35. There are two 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.

36. 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.
37. 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	3.1
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	All

EQUALITY AND DIVERSITY

38. 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).
39. 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

40. With regard to Option 1: To grant the licence as per the application may result in the decision being appealed by those persons that have made representations.
41. 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.
42. 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

43. The concerns raised by both objectors in respect of the extended hours requested for large scale events have now been resolved as these hours have now been removed from the application. The hours requested are now Monday – Saturday 09:00 – 23:00 & Sunday 10:00 – 23:00 hours.
38. The Police have proposed 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.
44. The applicant agrees that it is not their intention to encourage people into the terminal to buy alcohol. A licence (if granted) would simply allow waiting passengers to purchase an alcoholic drink prior to boarding the Red Jet if they so wished. The foot traffic

passing through the terminal is unlikely to increase in any way just because the premises are licensed to sell alcohol.

45. In relation to the concerns around issues of congestion, the Terminal Operations Manager Mr David Warner states that Steam Café was relocated in October 2017. The Christmas period is a peak period for Red Funnel and so they have experienced large volumes of passengers where queuing is required outside of the terminal. However this is only a very minor percentage of all sailings across the year and they are generally during “rush hour” for commuters (06:00 – 07:30) and therefore prior to the time when licensable activities would be taking place.
46. With regard to concerns raised in respect of alcohol being consumed in the gangway of the terminal, the consumption of alcohol is not a licensable activity. At present there is nothing to stop persons consuming alcohol whilst waiting to board the Red Jet that they may have purchased elsewhere. The applicant has stated that there have been no reported incidents involving drunk passengers within the past twelve months and that the majority of customers arrive within 10 minutes to sailing and therefore waiting time at the terminal is minimal.
47. In relation to the point above, the Terminal Operations Manager, Mr David Warner has since confirmed that two incidents of drunken behaviour have occurred in Fountain Yard in the past twelve months. However neither of these incidents was caused by Red Funnel customers. He has also confirmed that Mrs Rogerson is correct and that there have been instances on the gangway that have required police involvement. However, he states that this has not been as a result of customers purchasing alcohol from Red Funnel and is not always relevant to customers who are intoxicated.
48. Mr Warner states that “Red Funnel has a vested interest to not sell alcohol to those persons who they believe would pose a threat to their customers, staff and business.”
49. Also in relation to this point the applicant confirms that external security patrol the terminal at busy times and when large scale events are being held on the island their hours are extended to reflect this.
50. In respect of health & safety concerns regarding the lack of a safety barrier along the public pontoon. This is an existing issue that has no bearing on whether or not alcohol is being sold from the terminal. Many people consume alcohol at licensed premises in the town and then travel back to the mainland without incident.
51. In respect of lighting, Mr Warner states that Red Funnel own the yard with regard to the ‘ground’, however the surrounding properties and walkways are not owned by them. He states that individuals own the property rights to the direct areas outside of their own properties and if lighting is an issue then residents are responsible for this. Island Roads have confirmed that this area does not form part of the highways network.
52. The issues raised in points 7-9 of Mrs Rogerson’s representation are not relevant to this application. The proximity of her premises and existing issues that she currently experiences have no bearing on this application as at present no licensable activities are taking place. Objections to the grant of a premises licence must be relevant to the licensing objectives and must show how the objectives will be undermined specifically as a result of the licensable activity taking place.

53. In relation to point 12 of Mrs Rogerson's objection, the right of the applicant to apply for a premises licence must not be prejudiced because of a perceived lack of police resources.
54. 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.
55. 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:
- The Prevention of Crime and Disorder
 - The Prevention of Public Nuisance
 - Public Safety
 - The Protection of Children from Harm

RECOMMENDATION

56. It is recommended that a licence be granted as per the application with any additional conditions that the Sub-Committee deem reasonable and proportionate to promote the licensing objectives.

APPENDICES ATTACHED

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

[Appendix A1](#) Plan of premises

[Appendix B](#) Agreed Police conditions

[Appendix C](#) Valid representations received

[Appendix D](#) Email response to Cowes Town Council

[Appendix E](#) Photographs provided by Mrs Rogerson

[Appendix F](#) Email response to Mrs Rogerson

[Appendix G](#) Further comments from Mrs Rogerson

[Appendix H](#) Email to objectors and responses received re general hours of operation.

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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