



Committee report

Committee	LICENSING SUB COMMITTEE
Date	21 SEPTEMBER 2018
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR THE NOODLE POT, 91A ST JAMES STREET, NEWPORT, ISLE OF WIGHT, PO30 1LB
Report Author	TREVOR PUGH - INTERIM DIRECTOR OF NEIGHBOURHOODS

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 (Appendix A) was submitted to the licensing authority on 26 July 2018 for The Noodle Pot, 91a St James Street, Newport, Isle of Wight, PO30 1LB.
3. The application seeks to permit the licensable activity for the provision of late night refreshment between the hours of 23:00 and 05:00 all year round.
4. 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

5. 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
6. The application for a premises licence was received on 26 July 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 24 August 2018.

7. 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	Representation made
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made

The Police have agreed certain conditions with the applicant (Appendix B) which looks to promote the licensing objectives. Discussions between the applicant and the Police relating to the deployment times for SIA staff as well as the times relating to the hours of operation have not been agreed. The police have proposed that SIA staff is deployed from 23:00 hours and that operating times cease at 01:30 hours (Friday and Saturday) and 00:00 hours (Monday to Thursday). The applicant has suggested that they are willing to deploy SIA from 01:00 hours and to cease operating at 03:30 hours. For the full Police representation please refer to Appendix C of the report.

Other Persons

8. Three valid representations have been received from other persons relating to the licensing objectives:
- Prevention of public nuisance
 - Prevention of crime and disorder
 - Public safety

From a public safety point of view the potential spillages that food and other products may cause while customers queue outside has been raised, whilst from a crime and disorder/public nuisance perspective the congregation of customers into the early hours causing noise as well as the potential for violence following late night drinking amongst customers has been raised. For the full representation submitted by other persons please refer to Appendix D of the report.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

10. The 28 day consultation period ended on 24 August 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

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

12. 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.

13. 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.

2.17 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.

14. 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.

15. 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.

16. 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

17. 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

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

19. 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.

20. 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.

21. 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 – 9.3, 9.7, 9.8, 9.15 – 9.17

EQUALITY AND DIVERSITY

22. 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).
23. 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 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

24. 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.

EVALUATION

25. Concerns have been raised by the Police in relation to the applicants request to trade until 05:00 hours. The suggested times of 01:30 hours on a Friday & Saturday and 00:00 hours, Sunday to Thursday put forward by the Police, have not been accepted by the applicant. The applicant has instead proposed a reduction in hours from 05:00 to 03:30 hours which the Police have not agreed to. It is the view of the Police that by permitting the trading hours to continue past 01:30 and 00:00 hours respectively would encourage persons to remain within or make their way back into the town centre, increasing the potential for disorder and nuisance to take place. Similar concerns have also been raised by other parties in relation to these points. It has been noted that public transport from the town centre is still operating between the times of 02.00 and 03.15 on Fridays and Saturdays and 23:20 and 00:40, Sunday to Thursday.
26. The applicant has agreed to the installation of a CCTV system covering the area surrounding the premises and has suggested the deployment of SIA staff from 01:00 hours to address the concerns of disorder and nuisance raised by the Police. With regards to SIA staff the Police have requested that SIA be present from 23:00 hours instead of the 01:00 timing proposed by the applicant. A condition (Appendix C) has been proposed by the Police in relation to the deployment of SIA staff. Should the committee deem this to be appropriate and proportionate, they may wish to add this condition to the licence, should it be granted.
27. The applicant, in support of his application has indicated that other premises within the town centre have premise licences in place which permit similar trading hours to which they are applying for. The committee must be aware though that due to another premises already having similar activities and times to a new application, it should not automatically mean that these are granted. Each application must be considered on its own merits, taking into account the location and characteristics of the premises in question.
28. Concerns raised by other parties also include the congregation of persons in a narrow footway outside the premises which could potentially lead to disturbances through customers being under the influence of alcohol. Concerns relating to litter and spillages of food resulting in customers slipping on the highway has also been raised. The applicant has agreed to certain conditions (Appendix B) with regards to CCTV, the use of SIA staff, a recognised queuing system and an illuminated area for customers which look to address these concerns. Should the committee deem these to be appropriate and proportionate, they may wish to add these conditions to the licence, should it be granted.

29. 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.
30. 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

31. Officers recommend that the Committee adopt Option 2, and grant the licence with the conditions agreed with the police and any other terms and conditions that the 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](#) Agreed Conditions between the applicant and Police

[Appendix C](#) Police Representation

[Appendix D](#) Representations by Other Persons

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>

Contact Point: Shane Batchelor, Licensing Officer, ☎ 823159 ext 6152
Shane.batchelor@iow.gov.uk

JOHN METCALFE
Deputy Managing Director