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Monitoring Officer
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Agenda

Name of meeting	LICENSING SUB COMMITTEE
Date	FRIDAY 19 MAY 2023
Time	10.00 AM
Venue	COUNCIL CHAMBER, COUNTY HALL, NEWPORT, ISLE OF WIGHT
Members of the committee	Cllrs G Peace, I Ward and J Bacon

Democratic Services Officer: Sarah MacDonald
democratic.services@iow.gov.uk

1. **Apologies and Changes to Membership (if any)**

To note any changes in membership of the Committee made in accordance with Part 4B paragraph 5 of the council's Constitution.

2. **Minutes** (Pages 5 - 6)

To confirm as a true record the Minutes of the meeting held on 28 April 2023.

3. **Declarations of Interest**

To invite Members to declare any interest they might have in the matters on the agenda.

4. **Urgent Business**

To consider any matters which, in the Chairman's opinion, are urgent.



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5. **Report of the Director of Neighbourhoods**

- (a) Application for Variation of the Premises Licence at The Garden, 48 High Street, Cowes, IW (Pages 7 - 58)

CHRISTOPHER POTTER
Monitoring Officer
Thursday, 11 May 2023

Interests

If there is a matter on this agenda which may relate to an interest you or your partner or spouse has or one you have disclosed in your register of interests, you must declare your interest before the matter is discussed or when your interest becomes apparent. If the matter relates to an interest in your register of pecuniary interests then you must take no part in its consideration and you must leave the room for that item. Should you wish to participate as a member of the public to express your views where public speaking is allowed under the Council's normal procedures, then you will need to seek a dispensation to do so. Dispensations are considered by the Monitoring Officer following the submission of a written request. Dispensations may take up to 2 weeks to be granted.

Members are reminded that it is a requirement of the Code of Conduct that they should also keep their written Register of Interests up to date. Any changes to the interests recorded on that form should be made as soon as reasonably practicable, and within 28 days of the change. A change would be necessary if, for example, your employment changes, you move house or acquire any new property or land.

If you require more guidance on the Code of Conduct or are unsure whether you need to record an interest on the written register you should take advice from the Monitoring Officer – Christopher Potter on (01983) 821000, email christopher.potter@iow.gov.uk, or Deputy Monitoring Officer - Justin Thorne on (01983) 821000, email justin.thorne@iow.gov.uk.

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Minutes

Name of meeting	LICENSING SUB COMMITTEE
Date and Time	FRIDAY 28 APRIL 2023 COMMENCING AT 10.00 AM
Venue	COUNCIL CHAMBER, COUNTY HALL, NEWPORT, ISLE OF WIGHT
Present	Cllr G Peace (Chairman), J Bacon and J Jones-Evans
Also Present	Shane Batchelor, Regan Matthews, Kevin Winchcombe, Mark Wootton
Also Present (Virtual)	Ben Gard

25. **Apologies and Changes to Membership (if any)**

None

26. **Minutes**

RESOLVED:

THAT the minutes of the meeting held on 27 February 2023 be approved.

27. **Declarations of Interest**

There were no Declarations of Interest

28. **Urgent Business**

There were no items of Urgent Business

29. **Report of the Director of Neighbourhoods**

30. **To Consider a Variation to the Premises Licence at Landguard Holiday Park, Landguard Manor Road, Shanklin, IW**

The Licensing Officer presented the report and summarised the application. There had been 14 representations and four had since been withdrawn. The outstanding representations related to the perceived anti-social behaviour associated with off-sales from the premises and an increase in noise disturbance from the increase in hours for live and recorded music.

There had been no adverse comments either from the police or Environmental Health. The provisions of the Live Music Act 2012 which allowed live and recorded music to take place in certain circumstances without a licence were noted.

The Applicant's representative explained that the application was primarily to 'tidy up' the licence with additional hours for plays and performances of dance and 'off sales' of alcohol which would permit guests to drink on the terrace or back at their caravans, and to provide an extra 30 minutes drinking up time to allow for a staggered dispersal. Some of the activities could be provided without a licence under other legislation, however it was believed it was important to include them on the licence to make clear what could be provided.

None of the objectors attended to expand on their representations.

The Committee retired to private session to consider their decision, and upon reconvening it was

RESOLVED:

THAT upon receiving the report of the licensing section, oral and/or written evidence from the applicant, responsible authorities and other persons, and having regard to the Guidance issued under s182 of the Licensing Act 2003 and the Isle of Wight Council's Statement of Licensing Policy 2014 – 2019, the sub-committee hereby:

Grant the licence in accordance with the application, subject (only) to those conditions proposed by the applicant within the operating schedule and also subject to the mandatory conditions specified in the Licensing Act 2003.

In reaching the above decision the sub-committee have had regard to the Human Rights Act 1998, and in particular Article 1 of the First Protocol, Article 8 and Article 6. The sub-committee consider this decision is proportionate and appropriate for the promotion of the four licensing objectives under the Licensing Act 2003.

There is a right of appeal to the Magistrates Court if anyone is dissatisfied with this decision and any appeal must be made within 21 days of the date of notification.

CHAIRMAN



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	19 MAY 2023
Title	TO DETERMINE AN APPLICATION FOR THE VARIATION OF A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR THE GARDEN, 48 HIGH STREET, COWES, ISLE OF WIGHT, PO31 7RR.
Report Author	COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS

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. 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.
3. An application for a variation to the premises licence for The Garden, 48 High Street, Cowes, Isle of Wight, P031 7RR was submitted to the licensing authority on 22 March 2023 - Appendix 1.
4. A copy of the current licence can be found at Appendix 2
5. The premises is a restaurant/café located in Cowes High Street.
6. The applicant is applying to update the plan of the premises to incorporate the first floor and the rear garden of the premises and to show the area to the front of the premises which is now subject to a Pavement licence under the Business and Planning Act 2020. The plan can be found at Appendix 3.
7. Initially an application was made under section 41A for a minor variation to the licence to effect these changes. However, officers from the Environmental Health department advised that two noise complaints had been made to the department since February 2023 and consequently it would have been necessary for the licensing authority to reject the application.

8. The applicant was informed of this during a meeting at the premises with the licensing officer and an officer from the Environmental Health department and advised that a full variation would be required to make the changes.
9. He subsequently withdrew the minor variation application and made the application that is being determined today.
10. There are no changes being in sought in relation to timings or activities.

CONSULTATION

11. 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.
12. The application for a variation of the premises licence was received on 22 March 2023. The application was advertised in the Observer on 24 March 2023, at the premises and on the Council's website. The consultation period ended on 19 April 2023.
13. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	Representation made conditions recommended
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
Police	No Representation made
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made

Environmental Health Department

14. An officer from the Environmental Health department has recommended four conditions which can be found at Appendix 4.
15. The officer originally recommended a condition restricting use of the garden area between 09:00 and 20:00 hours Sunday to Thursday and until 21:00 hours

Friday and Saturday. These hours were revised following discussions with the applicant to the hours shown in the condition below but currently this has not been agreed.

16. This condition is as follows:
The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:
Sunday-Thursday –09:00 until 21:00hrs
Fri/Saturday –09:00 until 22:00hrs
17. The applicant has indicated during discussions that he would be agreeable to conditioning the hours of use of the garden if the terminal hour could be extended until 22:00 hours during the summer months (July & August), as this would allow them to provide two sittings from 18:00 – 20:00 & 20:00- 22:00 hours.
18. This proposal was discussed with the EH officer who stated that he was concerned at such a lengthy period of extension, as the potential for nuisance to be caused was at its greatest at this time of year. He stated that he would possibly be willing to discuss a 22:00 terminal hour for the duration of the summer holidays (6 weeks) with his line manager, if the applicant would agree to this, but when this was put forward the applicant rejected this and indicated his wish to have this matter determined by the licensing sub committee.
19. In considering this application and the formulation of these conditions the officer has carried out a noise assessment and a venue risk assessment, this report and the results can be found at Appendix 5.

Other Persons

20. Five (5) representations were received by 'other persons' during the consultation period. Four (4) of these were in support of the application and one (1) was an objection on the grounds of :
 - Prevention of public nuisance
21. Mr & Mrs Wood-Jenkins have made representations in respect of noise nuisance in the form of music and people noise which they state emanates from the rear garden of the premises. They state this disturbs local residents, particularly those who reside in the flats directly behind the premises.
22. Concerns have also been raised in respect of disturbance that has previously been caused on one occasion when a private party was held on the first floor under the authorisation of a temporary event notice. A copy of Mr & Mrs Wood Jenkins representation can be found at Appendix 6.
23. The proposed Environmental Health conditions were forwarded to Mr & Mrs Wood-Jenkins who replied that it would be encouraging if these conditions were to be agreed.

24. However, during negotiations it wasn't possible for agreement to be reached in respect of condition 1 and Mr & Mrs Wood-Jenkins were subsequently advised that only three of the four conditions had been agreed. They were asked to confirm if on this basis they wished their representation to remain. They replied that they would like their concerns and that of the other residents of the flats noted.
25. Please note that whilst reference has been made to other residents having concerns, no other representations were received during the consultation period and therefore this comment cannot be given additional weight simply because of the reference to other persons also being affected. Copies of these communications can be found at Appendix 7.
26. The representations received in support of the application can be found at Appendix 8.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

28. The 28-day consultation period ended on 19 April 2023. 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

29. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
30. 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.

31. 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 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. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). 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. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.18 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.

2.19 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.

2.21 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.

32. 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.

33. 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.

34. 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

35. 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

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

37. 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".

38. 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.
39. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2019 – 2024 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	4.1 – 4.8
Paragraph 5	Approach to Licensing Applications	5.1 – 5.4 & 5.7

Paragraph 6	Major Events & Isle of Wight County Council Act	N/A
Paragraph 7	Cumulative Impact	N/A
Paragraph 8	Representations, Review, Appeals & Complaints	8.1 – 8.6, 8.11 – 8.15
Paragraph 9	Enforcement	N/A
Paragraph 10	Operating Schedules	10.1 & 10.2, 10.9 – 10.16
Paragraph 11	Data Protection	All
Paragraph 12	Related Documents	All

EQUALITY AND DIVERSITY

40. 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).
41. 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 proportionate to promote the licensing objectives.
- Option 3: Refuse the whole or part of the application.

RISK MANAGEMENT

42. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance being caused to local residents from the customers using the garden of the venue; 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.
43. With regard to Option 2: The risk of 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.

44. 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

45. Regulations made under the Licensing Act 2003 require a premises licence to show a plan of the premises. This plan must show the extent of and the boundary of the premises. Currently the plan on the existing premises licence for The Garden is not compliant as it does not show the first floor or the garden area, hence the reason for this application.
46. Whilst currently there are no licensable activities taking place in the rear garden (as consumption is not a licensable activity), it does form part of the premises and the use of this area has the potential to undermine the licensing objectives in relation to the prevention of public nuisance. The use of this area does therefore need to be considered in the same way as the use of a beer garden in a public house.
47. The basis for the objection to this application is noise nuisance from people using the garden and from music being played in the garden or from the first floor of the premises during private functions.
48. The objector states that music has on occasion been intrusive and there are two recorded complaints on our database to support this claim. One of these complaints was received in February 2023 when a private party was taking place under the authorisation of a Temporary Event Notice (TEN).
49. The other complaint cited concerns in relation to the continued use of the garden, the noise of which is most pronounced during periods of warm weather. This included suggestions of the noise from recorded music and people noise being intrusive from the internal parts of the complainant's property. The complaint was received in Feb 2022 following a TEN but the log sheets were not returned given the adverse weather thereafter. However, further concerns have been raised regarding the potential for further noise disturbance on the return of warmer weather.
50. The applicant maintains that the music played throughout the premises (with the exception of the private party referred to above), goes through one system, and therefore the levels being played inside are the same as the levels outside, which he states is background level only.
51. The Live Music Act disapplies live music related conditions if the following criteria are satisfied:
- *There is a premises licence or club premises certificate in place permitting 'on sales';*
 - *The premises are open for the sale or supply of alcohol for consumption on the premises;*

- *Live or recorded music is taking place between 8am and 11pm;*
- *If the live music is amplified or recorded, the audience consists of no more than 500 people*

52. It is therefore not possible for conditions to be applied in relation to the playing of music before 11pm, although the Environmental Health department maintain their powers under the Environmental Protection Act 1990.
53. Members are asked to note that the premises is located in a high street location and in comparison to other high street venues the activities that take place are relatively low key. However, given the proximity of the nearest residents there is a potential for nuisance to be caused from people noise and the needs of these residents need to be balanced against the rights of the applicant to run his business.
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 35 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

It is the view of the Licensing department that the application should be granted in accordance with Option 2.

APPENDICES ATTACHED

Appendix 1 - Application for a variation of a premises licence under section 34 of the Licensing Act 2003

Appendix 2 - Current premises licence

Appendix 3 - Plan showing the first floor, rear garden and area to the front of the premises

Appendix 4 Conditions recommended by Environmental Health Department

Appendix 5 Noise assessment carried out by Environmental Health Department

Appendix 6 Objection from Mr & Mrs Wood-Jenkins

Appendix 7 Communications with Mr & Mrs Wood-Jenkins

Appendix 8 Letters/Emails from local residents supporting the application

BACKGROUND PAPERS

Isle of Wight Council Licensing Authority Statement of Licensing Policy 2019 – 2024. <https://iwc.iow.gov.uk/azservices/documents/1226-Approved-Licensing-policy-2019-24.pdf>

Contact Point: Andrea Bull, Licensing Officer, ☎ 823159 ext 6126, e-mail Andrea.bull@iow.gov.uk

COLIN ROWLAND
Director of Neighbourhoods

Application to vary a premises licence under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We Mr Jack Anselm

(Insert name(s) of applicant)

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number

22/00701/LAPNEW

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description

The Garden
48 High Street
Cowes
Isle of Wight
PO31 7RR

Post town

Cowes

Postcode

PO31 7RR

Telephone number at premises (if any)

Non-domestic rateable value of premises

£10,000

Part 2 – Applicant details

Daytime contact telephone number

E-mail address (optional)

Current postal address if different from premises address

Post town

Postcode

Part 3 - Variation

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible?

Yes

No

If not, from what date do you want the variation to take effect?

DD	MM	YYYY

Please describe briefly the nature of the proposed variation (Please see guidance note 1)
To amend the plan of the premises to include the first floor, rear garden and to show the area to the front of the premises to be used for outside consumption under a pavement licence.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:

Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment

Please tick all that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

Sale by retail of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 6)			Will the performance of a play take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 3)		
Tue					
Wed			<u>State any seasonal variations for performing plays</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 6)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 3)		
Tue					
Wed			<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 6)			<u>Please give further details</u> (please read guidance note 3)
Day	Start	Finish	
Mon			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 4)
Tue			
Wed			
Thur			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 5)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 6)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 3)		
Tue					
Wed			<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

E

Live music Standard days and timings (please read guidance note 6)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue					
Wed			<u>State any seasonal variations for the performance of live music</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 6)			Will the playing of recorded music take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3)		
Mon					
Tue					
Wed			<u>State any seasonal variations for the playing of recorded music</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

G

Performances of dance Standard days and timings (please read guidance note 6)			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 3)		
Tue					
Wed			State any seasonal variations for the performance of dance (please read guidance note 4)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat					
Sun					

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 6)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	Will this entertainment take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			Please give further details here (please read guidance note 3)		
Wed					
Thur			State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g) (please read guidance note 4)		
Fri					
Sat			Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sun					

I

Late night refreshment Standard days and timings (please read guidance note 6)			<u>Will the provision of late night refreshment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 3)		
Tue					
Wed			<u>State any seasonal variations for the provision of late night refreshment</u> (please read guidance note 4)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 6)			Will the supply of alcohol be for consumption – please tick (please read guidance note 7)	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<p><u>State any seasonal variations for the supply of alcohol</u> (please read guidance note 4)</p> <p>No changes to current hours</p> <p><u>Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</u> (please read guidance note 5)</p>		
Mon					
Tue					
Wed					
Thur					
Fri					
Sat					
Sun					

K

<p>Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8).</p>

L

Hours premises are open to the public Standard days and timings (please read guidance note 6)			State any seasonal variations (please read guidance note 4) No changes to current hours
Day	Start	Finish	
Mon			Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 5)
Tue			
Wed			
Thur			
Fri			
Sat			
Sun			

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

None

Please tick as appropriate

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

M

Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 9)

All existing conditions to remain.

b) The prevention of crime and disorder

All existing conditions to remain.

c) Public safety

All existing conditions to remain.

d) The prevention of public nuisance

All existing conditions to remain.

e) The protection of children from harm

All existing conditions to remain.

Checklist:

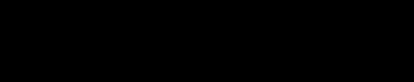
Please tick to indicate agreement

- I have made or enclosed payment of the fee.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I understand that I must now advertise my application.
- I have enclosed the premises licence or relevant part of it or explanation.
- I understand that if I do not comply with the above requirements my application will be rejected.

IT IS AN OFFENCE, LIABLE ON SUMMARY CONVICTION TO A FINE NOT EXCEEDING LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.

Part 5 – Signatures (please read guidance note 10)

Signature of applicant (the current premises licence holder) or applicant’s solicitor or other duly authorised agent (please read guidance note 11). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	22/03/2023
Capacity	Licence Holder

Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant’s solicitor or other authorised agent (please read guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 13)

Post town	Post code
Telephone number (if any)	
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)	

Notes for Guidance

1. Describe the premises. For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies, you must include a description of where the place will be and its proximity to the premises.
2. Where taking place in a building or other structure please tick as appropriate (indoors may include a tent).
3. For example state type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.
4. For example (but not exclusively), where the activity will occur on additional days during the summer months.
5. For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.
6. Please give timings in 24 hour clock (e.g. 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.
7. If you wish people to be able to consume alcohol on the premises, please tick 'on the premises'. If you wish people to be able to purchase alcohol to consume away from the premises, please tick 'off the premises'. If you wish people to be able to do both, please tick 'both'.
8. Please give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups or the presence of gaming machines.
9. Please list here steps you will take to promote all four licensing objectives together.
10. The application form must be signed.
11. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
12. Where there is more than one applicant, each of the applicants or their respective agents must sign the application form.
13. This is the address which we shall use to correspond with you about this application.

Legal Requirement

The Isle of Wight Council is the data controller for the personal information you provide on this form. The council's Data Protection Officer can be contacted at dpo@iow.gov.uk. You can contact the council by phone on 01983 821000, or by writing to us at County Hall, High Street, Newport, IW PO30 1UD.

Your information will be used to allow the Council to process your application. In accordance with Data Protection law, the legal basis for this is for the performance of a task carried out in exercise of official authority. Your information will be shared with other council departments relevant external bodies for the purposes of processing your application.

We will keep your personal data for 6 years or as long as we are required to do so under relevant legislation or in accordance with our operational requirements. You can view our retention schedule on our website www.iwight.com.

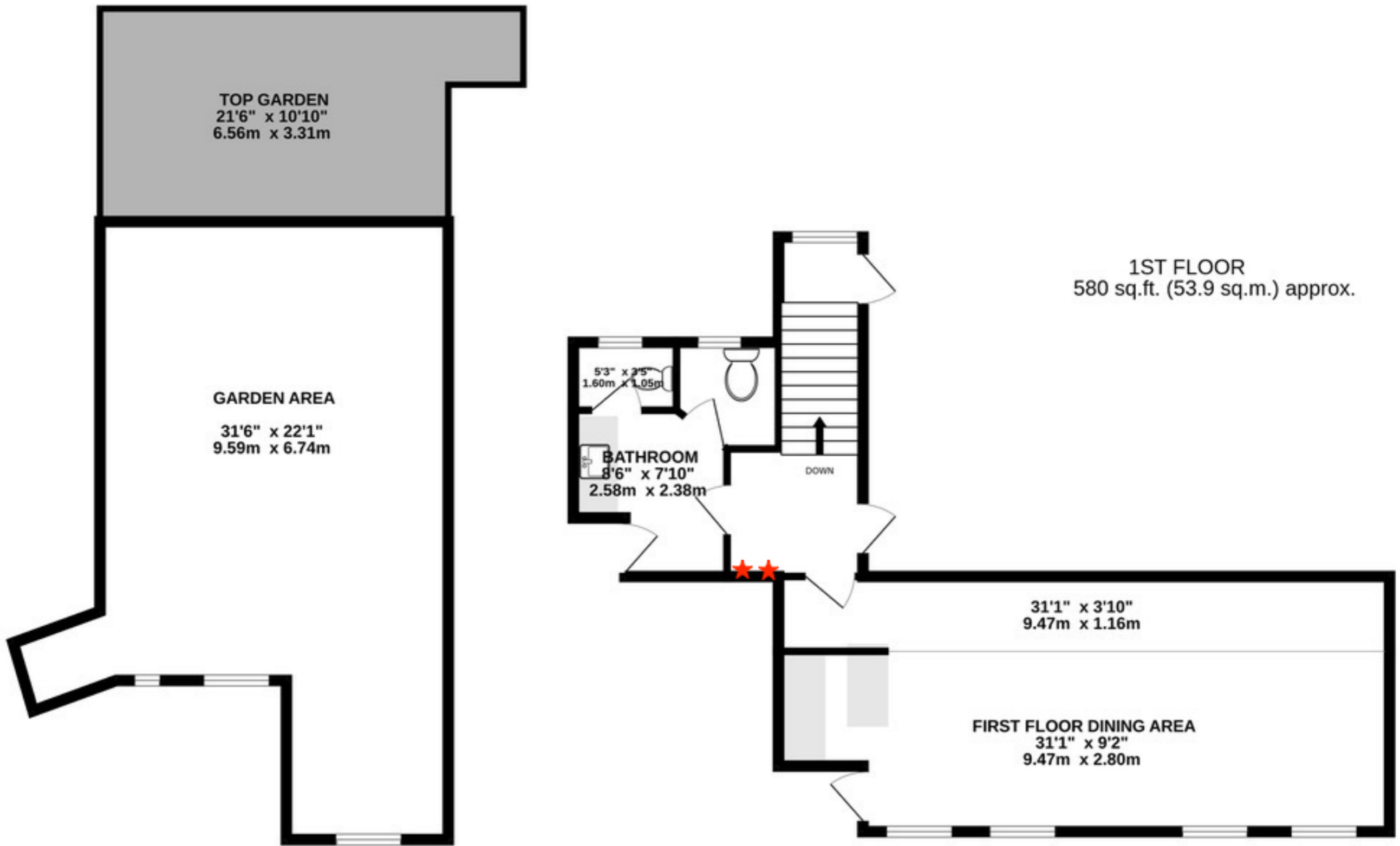
For further details on how your information is used; how we maintain the security of your information; and your rights, including how to access information we hold on you, and how to complain if you have any concerns about how your personal details are processed, please visit www.iwight.com or email dpo@iow.gov.uk

Annex 2

Conditions consistent with the operating schedule

1. The number of door supervisors to be engaged on any occasion shall be determined by the licence holder, taking into account such factors as the nature and duration of licensable activities proposed, the number, age and character of persons likely to attend, and any known risks to impact on the promotion of the licensing objectives. The licence holder shall make a written record of the number of door supervisors to be engaged and the factors taken into account by the licence holder. Any such record shall be produced to a police officer or authorised officer of the local authority on reasonable request.
2. A CCTV system shall be installed, maintained and must be in operation at all times that the premises are open to the public. Recorded images must:
 - a) be of sufficient clarity to allow personal identification
 - b) display the correct time and date of the recording, which shall be checked regularly for accuracy taking account of GMT and BST.
 - c) provide coverage of:
 - i. every public entrance or exit
 - ii. every area where alcohol is sold or displayed for sale and
 - iii. any other location deemed appropriate by the Police or Licensing Authority.
 - d) be retained for a period of at least 30 days
 - e) be produced for a police officer or an authorised officer of the local authority to review on request and
 - f) be exported to removable media (e.g. CD/DVD/USB device) if requested by a police officer or an authorised officer of the local authority.
3. A member of staff capable of operating the CCTV system shall be present at all times the premises are open to the public and shall have access to the system to enable images to be reviewed and/or produced upon request.
4. No person will be permitted to take or remove alcoholic or other drinks from the premises in open containers
5. All persons engaged in the sale of alcohol shall receive training or instruction to prevent the sale to anyone who is drunk or apparently under the age of 18 years. Such training will also include the details of the Premises Licence as well as its conditions. Staff members shall receive such training on induction, also at intervals not greater than one year apart. A record shall be made of:
 - the date the training or instruction was delivered,
 - its content, and
 - the names of the members of staff who received it.The record shall be produced to a police officer or an authorised officer from the local authority on reasonable request.
6. A written record shall be made of every incident of crime and disorder taking place on the premises, to include any action taken by staff. Every entry in the record shall be signed and dated by the person making it. This record shall be produced to a police officer or an authorised officer of the local authority on reasonable request.
7. The Challenge 21 scheme will be adopted at the point(s) of sale of alcohol.

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LICENSE

TOTAL FLOOR AREA : 1075 sq.ft. (99.9 sq.m.) approx.

Whilst every attempt has been made to ensure the accuracy of the floorplan contained here, measurements of doors, windows, rooms and any other items are approximate and no responsibility is taken for any error, omission or mis-statement. This plan is for illustrative purposes only and should be used as such by any prospective purchaser. The services, systems and appliances shown have not been tested and no guarantee as to their operability or efficiency can be given.
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From: Power, Daniel
Sent: 19 April 2023 12:02
To: Licensing Bull, Andrea
Cc: Captain Takeout
Subject: Environmental Health, Consideration of Premises Licence Full Variation - 23/00321/LAPVAR

Afternoon Team,

23/00321/LAPVAR

Application for a Premises Licence Full Variation – The Garden, High Street, Cowes, PO31 7RR

I've reviewed the above application which includes formalising the use of the outside parts as well as the upper floor of the aforesaid premises, whilst considering the potential effect in respect of the promotion of key licensing objectives, most notably, the prevention of public nuisance. I understand the application does not include any amendments to the hours of licensable activity.

You'll note that I had previously, objected to a Minor Variation Application referenced **23/00243/LAPVAM**, which I understand was withdrawn by the applicant, as a result of the Environmental Health Department receiving several noise complaints concerning the aforementioned premises (**23/00321/COMNOI & 23/00492/COMNOI**), accordingly, I had considered it necessary to assess the complaints received, so as to determine whether the use of the outdoor parts/first floor potentially undermine the prevention of public nuisance objective.

To date, I've undertaken several subjective assessments in respect of the noise from the outdoor garden parts, these occurred on 17th & 31st March 2023, during the latter observation, I had intended to make use of sound level monitoring equipment to review the general ambient noise levels whilst located within close proximity to neighbouring residential receptors at Crown Court, Sun Hill, Cowes, PO31 7HZ.

However, the monitoring was unsuccessful given a party was in flow at a neighbouring residential dwelling at the time. The people noise/recorded music would have undermined the reading at this time. In response, I had arranged a follow up assessment on 14th April 2023, however, the weather conditions were considered as likely to impede any assessment. Consequently, whilst I appreciate the use of the garden may have been at limited capacity given the time of year and variable weather conditions during my subjective assessment's and I plan to make use of sound level monitoring shortly, I consider it appropriate to condition the use of the external licensable areas as a result of this application.

In determining it appropriate to offer conditions, I've undertaken a premises risk assessment with reference to the application, this is in line with the 'Good Practice Guide on the Control of Noise from Places of Entertainment' - Institute of Acoustics & Institute of Licensing (December 2016) You'll note that as a result of applying the conditions outlined below, the risk, in this case of noise disturbance, is reduced. However, the conditions, have been considered necessary as a result of sensitive residential receptors being susceptible to sharp variations in patron noise as the evening progresses.

Accordingly, as a means of ensuring the promotion of key licensing objectives, most notably, the prevention of public nuisance I've suggested the following conditions are added;

Proposed Conditions;

1. ***The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

Sunday-Thursday –09:00 until 21:00hrs

Fri/Saturday –09:00 until 22:00hrs

2. ***The use of the external area referred to as the 'upper garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

09:00 until 21:00hrs Daily

- 3. The service of food and drink intended for consumption on the outside parts of the premises, is to occur where patrons are seated at tables.**
- 4. Signs shall be prominently displayed in the outside areas reminding patrons there are residents living nearby and instructing them to respect the neighbours and to conduct their behaviour accordingly.**

I've discussed the proposed conditions with the applicant and whilst Mr Anselm has suggested agreeing to Conditions 2 to 4, the applicant is concerned by the potential for Condition 1 to impede trade, accordingly, I offered to vary the times above from my initial suggestion of; **Sunday – Thursday 09:00 until 20:00hrs & Friday/Saturday 09:00 until 21:00hrs**. However, any further variation from the amended Condition 1 in my opinion disrupts a balance between promoting business activity and protecting local residents from noise disturbance. Please note that I've copied the applicant into my discussions as a means of confirming our call, whilst Mr Anselm is welcome to comment on any inaccuracies in my formal response to the licensing authority.

Accordingly, whilst its unfortunate that I've been not been able to agree upon the proposed conditions in their entirety and thus, I'm prepared to attend any subsequent committee to advocate these, I consider this necessary to achieve an appropriate balance between what is considered the reasonable use of the high street i.e. a degree of customer noise emanating from hospitality venues and ensuring neighbouring residential receptors are provided a degree of protection in respect of noise control.

Kind Regards

Dan

Daniel Power | Regulatory Officer | Regulatory & Community Safety Services
Isle of Wight Council | County Hall | High Street | Newport | Isle of Wight | PO30 1UD
Email: Daniel.Power@iow.gov.uk Web: www.iow.gov.uk

Memo

To Licensing - Andrea Bull, Senior Licensing Officer
From Daniel Power, Regulatory Officer (Environmental Health)
Date 9th May 2023

Application Reference - 23/00321/LAPVAR
Environmental Health Reference - 23/00566/CONSUL

Proposal - Application for a Premises Licence Full Variation

Location - The Garden, High Street, Cowes, PO31 7RR

Further to my representation on behalf of the Environmental Health Department, submitted to the Licensing Authority on 19th April 2023, I wish to disclose additional information which I have considered pertinent with reference to the aforementioned application.

I enclose my initial submission which includes an accompanying venue risk assessment, indicating the proposed variation posed a medium risk in respect of the continued promotion of key licensing activities, most notably the prevention of public nuisance. Moreover, the increased risk rating, was considered as necessitating the addition of conditions to the existing premises licence to mitigate the impact of noise emissions associated with the formal use of the garden area in particular.

Previous Noise complaint history

The Environmental Health Department have received two complaints with reference to alleged noise nuisance associated with activities including loud music and patron noise originating from The Garden, High Street, Cowes, PO31 7RR. A summary of each is provided here:

1. **23/00321/COMNOI** – The complainant cited concerns regarding loud music and patron noise. The latter issue was described as particularly disrupting as the evening progressed and was said to have had the effect of causing disruption to the resident in their attempts to sleep and achieve rest within their property.

The complaint was received on 19th February 2023, whilst the resident referred to an event which had occurred on 4/5th February 2023, during which music noise levels and the associated noise of patrons were described as intrusive by the resident. The event described was associated with the use of a Temporary Event Notice referenced **23/00076/LATENL**.

The complainant did not return diary sheets indicating further disturbance following the department's initial intervention, however, the complainant had cited the adverse weather restricting the use of the outside parts. Nevertheless, the complainant sought to reiterate the extent of the disturbance associated with recorded music and patron noise during the use of the garden in more accommodating weather conditions.

2. **23/00492/COMNOI** – The department were notified of a further complaint on 10th March 2023, indicating the sporadic use of the premises rear garden caused significant disturbance, whilst the playing of recorded music during the day from this location had the effect of impeding the use of the neighbouring resident's garden.

The department have not received the complainant's returned diary sheets; however, the complainant had advised at the time of the complaint, that whilst the sporadic use of the garden in colder weather caused disruption, during warmer weather its impact is exacerbated.

In respect of the complaints received, I've considered it necessary to provide an approximate location of their immediate proximity. Figure 1 highlights the distance between the licensed premises and the noise sensitive receptors.

Figure 1 – Aerial map of High Street/ Crown Court, Cowes



Locations 1 & 2 relate to noise sensitive receptors located at Crown Court, Sun Hill, Cowes, PO31 7HZ

The areas highlighted are situated approximately 25 metres from the lower rear garden parts of the licensed premises referred to as The Garden, High Street, Cowes, PO31 7RR.

Noise Monitoring

You'll note that my representation included reference to conditioning the hours of use in respect of the premise's outdoor parts, this was considered necessary given the limited 'distance transmission path' between the source and residential receptors and as a result of the limited attenuation available, considering the outdoor setting, to address the sharp variations in patron noise as the evening progresses and the existing ambient noise levels local to the high street, decrease.

To confirm, I recommended the following conditions in respect of the hours of use, following my initial discussion with the applicant:

- 1. The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***
Sunday-Thursday –09:00 until 21:00hrs
Fri/Saturday –09:00 until 22:00hrs
- 2. The use of the external area referred to as the 'upper garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***
09:00 until 21:00hrs Daily

Given the limited use of the outdoor parts at present, I considered it necessary to review the ambient noise levels during a weekday evening between 21:00 and 22:00hrs . The reason for monitoring was to compare the

existing ambient noise levels in the absence of the premises external parts operating at full capacity with the projected noise levels during their use (residual levels).

At this point it is necessary to stress that there is no widely agreed assessment procedure for the assessment of noise from patrons in beer gardens. However, a comparison is necessary in order to review the impact of patron noise in respect of the existing ambient noise levels.

The monitoring occurred on Thursday 4th May 2023 between 21:00 and 22:00hrs. Furthermore, a breakdown of the monitored noise levels is provided via **Table 1**.

Table 1 – Ambient Noise Assessment between 21:00 -22:00hrs

Date	Time	Location of Monitoring	LAeq.15mins	LA90	Highest LAmax (Obtained externally)
04/05/2023	21:05-21:20hrs	Land between 10 & 11 Crown Court, Sun Hill, Cowes, PO31 7HZ	39.8dB(A)	36.7dB(A)	58dB(A) <i>Distant car horn</i>
04/05/2023	21:25-21:40hrs	Land neighbouring 1 Crown Court, Sun Hill, Cowes, PO31 7HZ	40dB(A)	36.8dB(A)	58.4dB(A) <i>Nearby vehicle movement</i>

The above noise parameters are described below:

LAeq

The LAeq is essentially an average noise level. More specifically, it shows the equivalent amount of energy in a given period for a fluctuating source as if it were a steady continuous noise level.

LA90

The LA90 is used to give an accurate approximation to the background noise level.

LAmx

The LAmx shows the highest noise level reached in a given time period.

The aforementioned ambient levels outlined via **Table 2** suggest that despite the residential area to the rear of the licenced premises being located within close proximity of a high street, the ambient noise levels are fairly low and consistent with a Quiet Residential Area characterised at approximately 40dB(A) (*Noise Awareness, 2023*).

Accordingly, whilst an expectation of commercial noise within close proximity of the high street is reasonable, its worth noting its likely impact given the existing ambient noise levels obtained, particularly after 21:00hrs during a weekday.

As a means of assisting with a comparison here, I've made use of voice sound pressure level data, this is provided via **Table 2**.

Table 2 – Voice Sound Pressure Level (SPL)

Activity	Sound pressure Level dB(A) 1m (SPL)
Raised conversation	70-80dB(A)

Source: Handbook of Noise Control, 2nd ed. McGraw Hill, 1979

Scenario **Table 3 & 4** outlined on page 4 provide an assessment in respect of the additional noise source (Patron Noise) further to the existing ambient noise levels in their absence. Its worth noting that the associated

noise levels will differ as a consequence of the varying eventualities which may influence noise levels at any one time, these include but are not limited to the capacity of the outdoor space, whether patrons are seated as opposed to standing and the manner/behaviour of the patrons in attendance.

Table 3 - Scenario A – 70dB

Capacity	Distance Attenuation Calculation (25m)	Projected Noise levels @ NSRs LAeq	Excess over Ambient (Weekday) (Location B)
1 Table	70 (SPL) – 20xlog (r (25-Distance)) – 8dB	34dB(A)	- 6dB
6 Tables (70+10log(6))	77.8(SPL) – 20xlog (r (25-Distance)) – 8dB	41.8dB(A)	+1.8dB
8 Tables (70+10log(8))	79(SPL) – 20xlog (r (25-Distance)) – 8dB	43dB(A)	+3dB

Table 4 - Scenario B – 80dB(A)

Capacity	Distance Attenuation Calculation (25m)	Projected Noise levels @ NSRs LAeq	Excess over Ambient (Weekday) (Location B)
1 Table	80 (SPL) – 20xlog (r (25-Distance)) – 8dB	44dB(A)	+4dB
6 Tables (80+10log(6))	86 (SPL) – 20xlog (r (25-Distance)) – 8dB	50dB(A)	+10dB
8 Tables (80+10log(8))	89 (SPL) – 20xlog (r (25-Distance)) – 8dB	53dB(A)	+13dB

Accordingly, as opposed to assessing whether the projected noise levels (Patron noise) are likely to amount to a nuisance from the neighbouring noise sensitive receptors, I've assessed their potential perceptibility as well as its impact of the existing acoustic environment. In doing so, I've applied a distance attenuation of 25 metres between the source and receptor.

At a minimum its likely that as the evening progresses and the residual noise levels (in the absence of patron noise) generally reduce, the associated noise activity from the licensed premises will be clearly perceptible from the nearest residential receptors.

It's worth pointing out that the noise levels associated with the use of the garden will ebb and flow, nevertheless, sharp variations in patron noise closer to that reflected in Scenario B, which is considered a worse case scenario are likely to cause noise disturbance in the absence of suitable conditions.

In assessing the acoustic profile of the identified noise source, the intermittent nature of these variations in patron noise will only serve to increase annoyance.

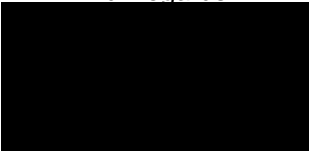
Conclusion

Consequently, the offering of conditions by the Environmental Health Department, seek to promote the public nuisance objective and mitigate the likelihood of noise disturbance. These efforts simultaneously attempt to establish a balance between ensuring the premises may take advantage of the outdoor parts with a reasonable expectation of commercial noise whilst ensuring this is not at the detriment of local residents.

Therefore, I consider the approach to be consistent with Paragraph 2.5 of the local authority's Statement of Licensing Policy 2019-24.

Should you require any further information please do not hesitate to contact me on 823000 Internal: Ext 6047.

Kind Regards



Daniel Power
Regulatory Officer

Enclo. 1) Environmental Health Representation (19.04.2023)
2) Venue Risk Assessment

Bull, Andrea

From: Power, Daniel
Sent: 19 April 2023 12:02
To: Licensing; Bull, Andrea
Cc: Captain Takeout
Subject: Environmental Health, Consideration of Premises Licence Full Variation - 23/00321/LAPVAR
Attachments: Venue Risk Assessment - The Garden - 23 00321 LAPVA.pdf

Afternoon Team,

23/00321/LAPVAR

Application for a Premises Licence Full Variation – The Garden, High Street, Cowes, PO31 7RR

I've reviewed the above application which includes formalising the use of the outside parts as well as the upper floor of the aforesaid premises, whilst considering the potential effect in respect of the promotion of key licensing objectives, most notably, the prevention of public nuisance. I understand the application does not include any amendments to the hours of licensable activity.

You'll note that I had previously, objected to a Minor Variation Application referenced **23/00243/LAPVAM**, which I understand was withdrawn by the applicant, as a result of the Environmental Health Department receiving several noise complaints concerning the aforementioned premises (**23/00321/COMNOI & 23/00492/COMNOI**), accordingly, I had considered it necessary to assess the complaints received, so as to determine whether the use of the outdoor parts/first floor potentially undermine the prevention of public nuisance objective.

To date, I've undertaken several subjective assessments in respect of the noise from the outdoor garden parts, these occurred on 17th & 31st March 2023, during the latter observation, I had intended to make use of sound level monitoring equipment to review the general ambient noise levels whilst located within close proximity to neighbouring residential receptors at Crown Court, Sun Hill, Cowes, PO31 7HZ.

However, the monitoring was unsuccessful given a party was in flow at a neighbouring residential dwelling at the time. The people noise/recorded music would have undermined the reading at this time. In response, I had arranged a follow up assessment on 14th April 2023, however, the weather conditions were considered as likely to impede any assessment. Consequently, whilst I appreciate the use of the garden may have been at limited capacity given the time of year and variable weather conditions during my subjective assessment's and I plan to make use of sound level monitoring shortly, I consider it appropriate to condition the use of the external licensable areas as a result of this application.

In determining it appropriate to offer conditions, I've undertaken a premises risk assessment with reference to the application, this is in line with the 'Good Practice Guide on the Control of Noise from Places of Entertainment' - Institute of Acoustics & Institute of Licensing (December 2016) You'll note that as a result of applying the conditions outlined below, the risk, in this case of noise disturbance, is reduced. However, the conditions, have been considered necessary as a result of sensitive residential receptors being susceptible to sharp variations in patron noise as the evening progresses.

Accordingly, as a means of ensuring the promotion of key licensing objectives, most notably, the prevention of public nuisance I've suggested the following conditions are added;

Proposed Conditions;

1. ***The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

Sunday-Thursday –09:00 until 21:00hrs

Fri/Saturday –09:00 until 22:00hrs

2. ***The use of the external area referred to as the 'upper garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

09:00 until 21:00hrs Daily

- 3. The service of food and drink intended for consumption on the outside parts of the premises, is to occur where patrons are seated at tables.**

- 4. Signs shall be prominently displayed in the outside areas reminding patrons there are residents living nearby and instructing them to respect the neighbours and to conduct their behaviour accordingly.**

I've discussed the proposed conditions with the applicant and whilst Mr Anselm has suggested agreeing to Conditions 2 to 4, the applicant is concerned by the potential for Condition 1 to impede trade, accordingly, I offered to vary the times above from my initial suggestion of; **Sunday – Thursday 09:00 until 20:00hrs & Friday/Saturday 09:00 until 21:00hrs**. However, any further variation from the amended Condition 1 in my opinion disrupts a balance between promoting business activity and protecting local residents from noise disturbance. Please note that I've copied the applicant into my discussions as a means of confirming our call, whilst Mr Anselm is welcome to comment on any inaccuracies in my formal response to the licensing authority.

Accordingly, whilst its unfortunate that I've been not been able to agree upon the proposed conditions in their entirety and thus, I'm prepared to attend any subsequent committee to advocate these, I consider this necessary to achieve an appropriate balance between what is considered the reasonable use of the high street i.e. a degree of customer noise emanating from hospitality venues and ensuring neighbouring residential receptors are provided a degree of protection in respect of noise control.

Kind Regards


Dan

Daniel Power | Regulatory Officer | Regulatory & Community Safety Services
Isle of Wight Council | County Hall | High Street | Newport | Isle of Wight | PO30 1UD
Email: [REDACTED] Web: www.iow.gov.uk
Telephone: 01983 823000 Internal: [REDACTED]

Please note that I am away from the office on Tuesdays attending training.

Venue Risk Assessment

Captain Pizza (The Garden) High Street, Cowes, PO31 7RR
Application for a Premises Licence Full Variation – 23/00321/LAPVA

Criteria	Risk Rating	Premises Rating	Comments
Number of events per year			
<ul style="list-style-type: none"> < 1 event per week < 30 events per year Weekly, or more frequently 	0 3 6	0	Limited use of Temporary Event Notices, licensable trading hours are as follows; Mon – Sat 09:00-23:00hrs, Sun 09:00-22:30hrs.
Time of event			
<ul style="list-style-type: none"> Up to 20:00 hrs Up to 23:00 hrs After 23:00 hrs 	0 3 6	3	The risk is considered medium given the hours of use in respect of the outdoor parts have been conditioned. See proposed condition 1 & 2.
Noise sensitive receptors			
<ul style="list-style-type: none"> None in close proximity One, or more, in close proximity (up to 50 metres) Structurally adjoining 	0 3 6	3	The rear garden parts are overlooked by noise sensitive receptors at High Street and Crown Court, Sun Hill, PO31 7HZ.
Venue sound insulation performance			
<ul style="list-style-type: none"> Purpose built - robust sound insulation performance Average – not purpose built but structurally sound Poor – weak sound insulation performance 	0 3 6	6	Outdoor setting provides limited attenuation. Neighbouring residential receptors are susceptible to noise disturbance associated with sharp variations in patron noise as the evening progresses.
Confidence in management			
<ul style="list-style-type: none"> High – well-prepared NMP, no or very few noise complaints Moderate - informal controls in place, few complaints Low - no controls, poor compliance history, history of complaints 	0 3 6	3	The department have received several complaints in respect of noise disturbance associated with the use of the garden/ first floor parts. (See 23/00321/COMNOI & 23/00492/COMNOI).
Total			
Risk rating			
	<10 10-20 20+	15	Medium risk associated with the application; risk lowered by way of the proposed conditions 1 & 4 collectively. Any amendments here are likely to vary the risk matrix score.

Source - Venue Risk Assessment - 'Good Practice Guide on the Control of Noise from Places of Entertainment' - Institute of Acoustics & Institute of Licensing, December 2016

From: Jane Wood-Jenkina

Date: 13 April 2023 at 10:17:02 BST

Subject: The Garden noise issues

To whom it may concern,

I have already been in contact with Daniel Power regarding noise issues coming for The Garden, High Street, Cowes and thought it was best to reiterate my concerns to you.

Since the garden opened, there has been a huge amount of noise, to local residents, particularly in Crown Court which backs onto the garden. This is where we reside.

The noise is in the form of music and chatting and laughing. The music is piped into the garden all day long and all evening, usually quite loudly. They also occasionally host private parties upstairs and when that happens the music is very loud. It appears to come from the upstairs function room, which in turn makes the talking and laughing even louder. I suspect the windows must be open during these events because the noise levels are louder than ever. When people sit in the garden the talking and laughing gets louder, depending on how many people are in the garden area and it's usually louder the later it is.

The music is the main issue, but like I've said, we also hear constant talking and laughing when, weather permitting, people are in the garden. It feels like our neighbours are constantly hosting a party! With this in mind, this is how the residents feel after the winter, hearing it through closed windows, goodness knows how it will be during the summer when windows are open and everyone is outside.

Since The Garden put in permission to extend their licence, they have actually 'stopped' playing all music. I can't help but feel cynical that this is a ploy to have their permission passed and once permission has been passed the music will resume.

Please don't base your assessment on the noise levels now, as they are not a true reflection on how they have been since last Autumn.

My husband and I individually, have been in to complain and without a shadow of doubt felt our complaints were met with disinterest. This was proven to be the case as nothing changed.

We are delighted to have found this lovely house in Cowes and can't believe how lucky we are to have a roof garden overlooking the sea. Our neighbours are friendly and kind. The neighbourhood of Cowes is delightful, but I can not reiterate enough if the garden is permitted to pipe music continually all day and evening and host evening cocktail parties, the peace and quiet will be ruined for many of the local residents in the vicinity.

My husband and I are thrilled to have a lovely cafe like the Garden, close by and in fact love and try and support all local business's. I have realised with The Garden that when they have had no music playing it made no difference to how busy they were. In fact each time we have been since they stopped playing music, they were extremely busy.

The music is one form of concern but I also want to reiterate that when people are outside we hear the ongoing laughter and chatting from the garden area and there is no doubt the later it gets, the

louder people get.

Regards

Jane & Deryck Wood-Jenkins

Hi Andrea,

Thank you for the quick update.

I forwarded your message to the residents of crown court wats ap group and we all feel exactly the same regarding our concerns and want to have them noted.

It has also been pointed out, that the closing times stated are rather late considering it is likely to take an hour for guests to finish their drinks and go inside. Therefore an hour earlier closing time would be more favourable. There is no doubt the later people are out side drinking the noisier and louder they become.

Also everyone would like me to stress about the music, which was ongoing and very loud, before application was submitted.

Many thanks Andrea.
Jane

Sent from my iPhone

> On 28 Apr 2023, at 19:15, Bull, Andrea <Andrea.Bull@iow.gov.uk> wrote:

>

> Dear Mr & Mrs Wood-Jenkins

>

> Thank you for your reply. I just wanted to email to update you on the current situation as since my last email to you several further conversations have taken place.

>

> Currently conditions 2 -4 have been agreed by the applicant. Condition 1 remains outstanding and the applicant has indicated that he would like a hearing to finally determine this issue as a proposed compromise has been rejected. A meeting of the Licensing Sub Committee will therefore be taking place on 19 May but in the meantime I need confirmation from you asap whether or not your representation still stands given that not all of the conditions proposed by the Environmental Health department have been agreed.

>

> Proposed Conditions;

>

> 1. The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:

>

> Sunday-Thursday -09:00 until 21:00hrs

> Fri/Saturday -09:00 until 22:00hrs

>

> 2. The use of the external area referred to as the 'upper garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:

>

> 09:00 until 21:00hrs Daily

>

> 3. The service of food and drink intended for consumption on the outside parts of the premises, is to occur where patrons are seated at tables.

>
>
> 4. Signs shall be prominently displayed in the outside areas reminding patrons there are residents living nearby and instructing them to respect the neighbours and to conduct their behaviour accordingly.
>
> I look forward to hearing from you.
>
> Kind regards
>
>
> Andrea Bull | Senior Licensing Officer | Regulatory Services | Isle of
> Wight Council | County Hall | Newport | Isle of Wight PO30 1UD
> Tel: (01983) 823159 (x6126) |
> Email: andrea.bull@iow.gov.uk | Web: www.iwight.com Please note my
> working hours are Monday - Wednesday 08:00 - 17:30hrs & Thursday and Friday 09:00 - 14:00
hours.
>
>
>
> -----Original Message-----
> From: Jane Wood-Jenkina
> Sent: 27 April 2023 07:24
> To: Bull, Andrea <Andrea.Bull@iow.gov.uk>
> Subject: The garden
>
> This email originated from outside of the organisation. Do not click
> links or open attachments unless you recognise the sender and know the
> content is safe. Further information can be found
> <https://wightnet.iow.gov.uk/wightnetcontent/cybersecurity/>
>
>
> Dear Andrea,
>
> That all sounds encouraging giving the residents hope that we will not be disturbed as we have
been since last Autumn.
> The one thing I would like to add to that is the volume of their music. When visiting the garden I
see they still pipe music into the outside garden area, but on a very low volume. This is not the
volume we are used to before the application, when the volume was continually loud. Is it possible
to add reference to the level of volume (very low) so that the residents cannot hear it?
>
> Many thanks
> Jane & Deryck Wood-Jenkins
>
> Sent from my iPhone

Letter of support 1

From: Jessica McCracken
Sent: 27 March 2023 19:29
To: Belcher, Shirley <
Subject: The Garden

Hi Shirley

As a Bath Rd resident I would like to pledge my support for the wonderful contribution 'The Garden' has brought to our community. It's brasserie and garden have brought so much to our town and we are lucky to have such entrepreneurs here in the island.

Best

Jessica McCracken

Letter of support 2

Customer Details

Name: Mr Charles Simpson

Address: Not Available

Comment Details

Commenter Type: Member of the Public

Stance: Customer made comments in support of the Licensing Application

Comment Reasons:

Comment:27/03/2023 6:42 PM I recently had the pleasure of dining at The Garden restaurant -

From the moment I walked in, I was struck by the quiet, relaxing atmosphere of the rear outside space, which really added to the overall enjoyment of my meal.

Not only was the food amazing, but I was also impressed by the restaurant's commitment to supporting the local community.

The staff were all friendly and attentive, and it was clear that they took pride in their work. I later learned that many of the staff members were local residents who had been employed by The Garden, providing jobs and economic opportunities in the area.

In addition to providing jobs, The Garden also sources its ingredients from local producers and suppliers, which not only supports local businesses but also ensures that the food is of the highest quality and freshness.

Overall, it's clear that they're not just focused on creating an amazing dining experience, but also on making a positive impact on the community.

Letter of support 3

Isle of Wight Council
Licensing Section
County Hall
High Street
Newport
PO30 1UD

28 MAR 2023

With regard to the variation of premises licence for the Garden, 48 High Street, Cowes, PO31 7RR, my wife and I would like to very much support this application and do so on a number of fronts.

Firstly, we feel vibrant additions to Cowes that enhancing the town landscape need to be encouraged and supported. There are way too many towns on the island that are dying on their feet, we don't want Cowes, that has such an important role to play in respect of islands tourism industry, to be one of them.

Secondly, and perhaps more importantly, there are very few, if any, cafes or restaurants in Cowes, that offer a secure outdoor garden environment to relax in away from the hustle and bustle of the main high street. This is very important from a health and well being perspective. The spread of Covid has not gone away, and the psyche of such places are so important for people's emotional and spiritual well-being.

My wife and I hope you are able to approve this licensing application.

Your,

W H & CM Bromwich, [REDACTED]
[REDACTED]

**RE: THE GARDEN, 48 HIGH STREET, COWES, ISLE OF WIGHT,
PO31 7RR**

We would very much like to praise and support this local business.

Due to immune system health issues my fiancée is unable to go inside any venues so this outdoor space has been an absolute saviour and one of the only suitable places for us and anyone else in a similar situation to enjoy a safe, calm outdoor space.

There are large heated parasols, very soft music playing, beautiful plants and a water feature that provides a very calm, quiet environment, the staff are all so lovely and help to maintain this atmosphere where people of all ages can meet for a quiet chat during a meal. We have been there many times day and late at night and have never noticed excessive noise of any kind whatsoever. The Garden is a credit to Cowes.

[REDACTED]
Mr. A. L. Wood-Robinson
[REDACTED]
[REDACTED]

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