



Purpose: For Decision

# Committee report

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| Committee     | <b>LICENSING SUB COMMITTEE</b>  |
| Date          | <b>MONDAY 30 JANUARY 2023</b>   |
| Title         | <b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR MR CONSTANTIN BALAN, 49 HIGH STREET, RYDE, ISLE OF WIGHT, PO33 2RE</b> |
| Report Author | <b>COLIN ROWLAND<br/>DIRECTOR OF NEIGHBOURHOODS</b>   |

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## BACKGROUND

1. A premises licence issued under section 18 of the Licensing Act 2003 authorises the use of premises for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
2. An application for a premises licence was submitted to the licensing authority on 6 December 2022, by Mr Constantin Balin. (Appendix 1).
3. Any person may make representations in respect of the application during the consultation period and if these are not resolved the licensing authority must hold a hearing to determine the application.

## CONSULTATION

4. The Licensing Act 2003 prescribes a twenty-eight day consultation period, commencing the day after the application has been correctly served. The applicant is required to submit a copy of the application to Responsible Authorities as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
5. The application for a premises licence was received on 6 December 2022. The application was advertised in the Observer, at the premises and on the Council's website. The consultation period ended on 4 January 2023.

6. The application proposes to permit the following licensable activities and timings:

| <b>Licensable Activity</b> | <b>Days and Times</b>                                    |
|----------------------------|--|
| Sale of Alcohol            | Sunday to Thursday 11:00 to 23:00 hrs                    |
|                            | Friday to Saturday 11:00 to 23:30 hrs                    |
|                            | Non Std Timings (New Year's Eve only) 11:00 to 00:30 hrs |
| Live Music                 | Friday to Saturday 23:00 to 00:00 hrs                    |
|                            | Non Std Timings (New Year's Eve only) 23:00 to 00:30 hrs |
| Late Night Refreshment     | Friday to Saturday 23:00 to 00:00 hours                  |
|                            | Non Std Timings (New Year's Eve only) 23:00 to 00:30 hrs |

The hours that the business is proposed to remain open to the public extend to 30 minutes past the proposed hours for the latest licensable activity as per the table above. This would be 23:30 hours (Sunday to Thursday), 00:30 hours (Friday to Saturday) and 01:00 (New Year's Eve only).

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

Responsible Authorities

|                           |                                      |
|---------------------------|--------------------------------------|
| Children's Services       | No Representation made               |
| Fire and Rescue Service   | No Representation made               |
| Trading Standards Service | No Representation made               |
| Planning Services         | No Representation made               |
| NHS                       | No Representation made               |
| Licensing Authority       | No Representation made               |
| Immigration Enforcement   | No Representation made               |
| Environmental Health      | Conditions Agreed with the Applicant |
| Police                    | Conditions Agreed with the Applicant |

With reference to all conditions agreed between the applicant, Police and Environmental Health please refer to Appendix 2 for full details. The inclusion of these conditions should the Licensing Sub Committee determine to grant the Premises Licence with conditions agreed would look to promote all four of the Licensing Objectives.

## Other Persons

8. Five (5) valid representations had been received from other persons relating to the licensing objectives of:
- Prevention of public nuisance
  - Prevention of Crime and Disorder

Following ongoing discussions between the Licensing Authority, applicant and other persons, two of the five valid representations have been withdrawn, therefore three remain outstanding. Please refer to Appendix 3 of the report for details of the remaining representations.

## 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 4 January 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

11. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
12. 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
  - must be precise and enforceable;
  - must be unambiguous and clear in what they intend to achieve;
  - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
  - must be tailored to the individual type, location and characteristics of the premises and events concerned;
  - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
  - should not replicate offences set out in the 2003 Act or other legislation;
  - should be proportionate, justifiable and be capable of being met;
  - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
  - should be written in a prescriptive format.

- 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.
- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 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.
- 2.21 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.

- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 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.
- 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.
- 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

13. 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

14. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
15. 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.

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".

16. 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.

17. 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                                  | 2.3 – 2.6                                   |
| Paragraph 3  | Licensable Activities                                 | 3.1   |
| Paragraph 4  | Integration of Strategies and Other Legislation       | All   |
| Paragraph 5  | Approach to Licensing Applications                    | All   |
| Paragraph 6  | Major Events and the Isle of Wight County Council Act | N/A   |
| Paragraph 7  | Cumulative Impact                                     | N/A   |
| Paragraph 8  | Representations, Reviews, and Appeals                 | 8.1 – 8.6<br>8.11 – 8.15                    |
| Paragraph 9  | Enforcement   | N/A   |
| Paragraph 10 | Operating Schedules                                   | 10.1 – 10.4,<br>10.7, 10.9,<br>10.12, 10.26 |

## EQUALITY AND DIVERSITY

18. 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).
19. There is no requirement for an equality impact assessment to be carried out.

## OPTIONS

- Option 1: Grant the licence as per the application.
- Option 2: Grant the licence as per the application with any modifications to the proposed hours and/or 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

20. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of nuisance and disorder arising from customers 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.
21. 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.
22. 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

23. Section 9.38 of the national guidance states:  
*In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*
  - *the steps that are appropriate to promote the licensing objectives;*
  - *the representations (including supporting information) presented by all the parties;*
  - *this Guidance;*
  - *its own statement of licensing policy.*
24. Comments submitted by other persons during the consultation period have stated that the location to which the application relates to, inclusive of the hours of operation is not compatible with the activities and timings that are being proposed within the application. Concerns have been raised in that the the area already has anti-social tendencies and that the granting of the premises licence would have a negative impact on the area, inclusive of nearby residents and customers/clients of nearby businesses.
25. Section 1.17 of the Revised Guidance under Section 182 of the Licensing Act 2003 states that each application must be considered on its own merits and in accordance with the licensing authorities' statement of licensing policy. Section 7.1 of the local authorities licensing policy states that the licensing authority will not take 'need' into account for a particular type of premises on the Isle of Wight when considering a licence application. This is a matter for planning development control and market forces. During the consultation period no concerns in relation to the cumulative impact that the licence may have on the area (if granted) were raised by the planning department of the Council, therefore concerns raised stating that the granting of the licence would be detrimental to the location to which it related to is not a relevant factor that can be considered in determining the application.
26. Comments submitted have also cited that the granting of the licence, specifically with the activity of the sale of alcohol would lead to inappropriate



behaviour and an increase in noise levels, thus affecting lives of nearby residents.

27. A condition has been agreed between the applicant and Environmental Health which will require the licence holder (should the licence be granted) to ensure that any regulated entertainment (i.e., live and/or recorded music) to be barely audible at the nearest noise sensitive premises. This condition has been agreed and will form part of the licence (if granted) in order to promote the licensing objective for the prevention of public nuisance. For full details of this condition please refer to Appendix 2 of the report.
28. With regards to the potential for inappropriate behaviour, inclusive of noise levels from any persons whilst on the premises or within the immediate vicinity of the premises, the licence holder would have a duty to ensure that such behaviour or inappropriate noise levels are avoided and deterred. By allowing disorderly conduct on the premises the licence holder would be committing an offence in accordance with Section 140 of the Licensing Act 2003, therefore should this occur, appropriate and proportionate enforcement action would be considered and taken.
29. In order to promote the licensing objective for the prevention of crime and disorder the applicant has agreed with the Police to install and retain images via a CCTV system which could be a further deterrent with regards to inappropriate behaviour occurring on or within the immediate vicinity of the premises. This condition will form part of the licence (if granted). For full details of this condition please refer to Appendix 2 of the report.
30. In relation to an individual's behaviour once they have left the immediate vicinity of the licenced premises, section 1.16 of the Revised Guidance under Section 182 of the Licensing Act 2003 states that the licence holder cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, therefore it is for the individual(s) in question to be responsible for their own actions and behaviour once they have left the immediate vicinity of the premises.
31. The responsible authorities, particularly the Environmental Health department and the Police who view applications specifically from a nuisance and crime and disorder perspective have considered the application and agreed conditions with the applicant which they feel will uphold and promote the licensing objectives for the Prevention of Public Nuisance and Prevention of Crime and Disorder, therefore the Sub-Committee may feel that these conditions are appropriate and proportionate should they determine to grant the licence.
32. The applicant has stated that the business model is to take a food led approach with food and alcohol to be served via table service only. From a noise level perspective in relation to regulated entertainment, the applicant has also stated that in line with other businesses that they have managed previously, their intention is for any entertainment in the form of live/or recorded music to compliment the dining experience and not to cause a nuisance.
33. In accordance with the Live Music Act 2012, the playing of live and/or recorded music between the hours of 08:00 and 23:00 when there are less

than 500 persons present and when the activity for the sale of alcohol is not deemed a licensable activity. If the above pre requisites are in place, then the activity of playing live and/or recorded music is deregulated. With this in mind the only consideration that the Sub- Committee can apply with regards to this activity would be between the hours of 23:00 and 00:00 Friday to Saturday and between the hours of 23:00 and 00:30 on New Year's Eve.

34. The sub-committee must have regard to all of the representations made and the evidence it hears as well as the national guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
35. The Committee should determine the application in accordance with section 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

36. Option 1: Grant the licence as per application with conditions agreed between the applicant, Environmental Health and Police

### APPENDICES ATTACHED

- Appendix 1 Application for a premises licence under section 17 of the Licensing Act 2003
- Appendix 2 Agreed conditions between applicant, Environmental Health and Police
- Appendix 3 Representations submitted by Other Persons and communications with Licensing Authority

### BACKGROUND PAPERS

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

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