



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	MONDAY 27 FEBRUARY 2023
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR BETTY'S DOOR, 5 CLARENCE ROAD, EAST COWES, ISLE OF WIGHT, PO32 6EP
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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 19 December 2022, by Conny's Ltd. for Betty's Door, 5 Clarence Road, East Cowes, Isle of Wight, PO32 6EP. A copy of the application and plans associated with the application can be found at Appendix 1.
3. Betty's Door is a café/coffee shop run by Mr Aiden Jones and his partner Victoria Rowland-Powell. The premises opened approximately 3 months ago and Mr Jones now seeks to add alcohol to his current food and drink offering.
4. The proposed licensable activities and timings are: the sale of alcohol each day from 11am until 4.30pm with extended hours until 8.30pm on Christmas Eve, New Years' Eve and during Cowes Week.
5. 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

6. 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.

7. The application for a premises licence was originally received on 19 December 2022.
8. The consultation period commenced but the applicant failed to advertise the application in a local newspaper within the required timescale and it was therefore necessary for the consultation to start again.
9. The consultation period restarted on 3 January 2023. The application was advertised in the Observer on 6 January, at the premises and on the Council's website. The consultation period ended on 31 January 2023.
10. 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	Response received – no representation
Trading Standards Service	Response received – no representation
Planning Services	No Representation made
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made
Environmental Health	Response received – no representation
Police	Response received – conditions agreed see Appendix 2

11. The Environmental Health department returned a response during the consultation of 'no adverse comment'. Further comments were requested from the officer following representations made by other persons and these comments can be found at Appendix 3.

Other Persons

12. Five representations have been received from other persons which relate to the licensing objectives of:
 - Prevention of public nuisance
 - Protection of children from harm
 - Public safety
 - Prevention of crime and disorder
13. Some issues/comments made by the objectors are not relevant to the licensing objectives and therefore cannot be considered when

determining this application. These have been struck through in the relevant appendix.

14. Lynn Lister has made representations (Appendix 4) against the grant of a licence on the grounds of public nuisance and the protection of children from harm. She claims that to serve alcohol where young children are present in such a confined space to be unreasonable & unsafe and that the risk of public nuisance will increase by the grant of this licence
15. Thea Thomas has made representations (Appendix 5) against the grant of a licence on the grounds of public nuisance in respect of a perceived increase in noise from the premises in what she deems to be a primarily residential area.
16. East Cowes Town Council have made representations (Appendix 6) against the grant of a licence on the grounds that they perceive there to be a likelihood of noise and nuisance from patrons gathering on the pavement outside the premises.
17. Queries were also raised as to the accuracy of the plan submitted with the application regarding an additional fire exit. This was queried with the applicant and he confirmed that there is a door between the premises and ground floor hallway of the residential premises above which acts as an additional fire escape for both the residents and for customers alike. An additional plan was sent in and published alongside the application.
18. Tracy Reardon has made representations under each of the licensing objectives (Appendix 7). Ms Reardon states that to grant a licence could lead to crime and disorderly behaviour from people congregating on the pavement outside the premises which may cause an obstruction and impact on public safety. She also states that children may be subject to hearing foul language, breathing in smoke, and witnessing disorderly conduct.
19. Ms Reardon raises noise concerns stating that the buildings surrounding the premises are old and are not sufficiently sound proofed to prevent noise nuisance from customers who may cause a nuisance after consuming alcohol. She also claims that there is an increased fire risk as a result of people consuming alcohol on the premises.
20. As a result of the queries raised in respect of the fire escapes and following receipt of the representations, a site visit was arranged in order to confirm the plans accuracy and to discuss the representations received with the applicant. This took place on Friday 20 January 2023.
21. The plan was confirmed as accurate, and the applicant was advised of the representations made. Having considered the representations received at that time he provided a written response to each.
22. The objectors were subsequently emailed by the Licensing department. They were advised that only matters relating to the licensing objectives can be considered and issues regarding use of the building or suitability of the area are not relevant to the application. The licensing objectives are:
 - Prevention of public nuisance
 - Protection of children from harm

- Public safety
 - Prevention of crime and disorder
23. The emails sent also contained the applicant's response to each of their specific objections, along with the list of agreed police conditions. They were also advised that the Environmental Health department had responded to the consultation with no adverse comment, and on this basis the recommendation of the department would be to grant the application with the agreed conditions.
 24. These communications have been added to each of the individual representations made and can be found at the corresponding appendix.
 25. Each of the objectors were asked to consider the applicant's response and the additional information and to advise if their objections still stood.
 26. Lynn Lister, Thea Thomas, East Cowes Town Council & Tracy Reardon have responded to say that their representations remain.
 27. On the last day of the consultation period, Mr Priddle made representations (Appendix 8), stating that as the tenant of the residential property above, that he and his family experience noise nuisance as a result of the poor sound proofing between the premises and states that they are regularly disturbed by the activities of the business.
 28. Mr Priddle was sent the agreed conditions and was advised that his comments had been forwarded to the Environmental Health department requesting that they consider the comments made and provide the Licensing department with their thoughts.
 29. Mr Wootton, Senior Environmental Health Practitioner who originally considered the application provided a response. This can be found at Appendix 3.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

31. The 28-day consultation period ended on 31 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

32. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
33. 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.

2.15 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

34. 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

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

37. 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.
38. 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 8.11 – 8.15
Paragraph 9	Enforcement	N/A
Paragraph 10	Operating Schedules	10.1 – 10.4, 10.7, 10.9, 10.12, 10.26

EQUALITY AND DIVERSITY

39. 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).

40. 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

41. With regard to Option 1: To grant the licence as per the application may not adequately address the concerns raised by the objectors if the Sub-Committee deem these to be a likely outcome. The decision not to address the concerns raised may subsequently be appealed by those parties who have made representations.
42. With regard to Option 2: The concerns raised 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.
43. 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

44. 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.*
45. Concerns have been raised that this is a residential area and the grant of a licence will lead to noise issues. The premises are located at the commercial end of Clarence Road and is surrounded by other commercial premises including another licensed café and a private members club.
46. The applicant has confirmed that there are no plans to change the premises from a café stating “we would like to reiterate what we are proposing and applying for is the ability to serve alcohol in the café during the daytime. We

have only requested to be able to do this until the latest of 4pm daily on our license. Our landlords also set strict rules on not allowing us to open in the evenings apart from twice a month if we had their permission, however we are not applying for our licence to cover this therefore in these instances there would be no alcohol served so these concerns would also be irrelevant. Whilst we appreciate the objector has these concerns, we are not sure where the idea of a wine bar/ale house has come from, it is purely unfounded claims.”

47. Mr Jones has confirmed that no alcohol would be permitted outside and that as a café he'd like to offer customers a glass of wine with their lunch. The nature of the premises is such that customers do not frequent the premises for long periods of time unlike a social club or pub. Generally, customers will order and consume their food and drink and then leave. There is no congregating outside, and therefore the risk of noise nuisance or children being subjected to witnessing anti social behaviour are not considered to be a likely consequence of the granting of a licence.
48. Another objector states that it is their view that to serve alcohol where young children are present in such a confined space is unreasonable & unsafe. There are three other licensed cafes in East Cowes one located only metres away along with a number of family friendly pubs. In addition, many national chain family restaurants hold alcohol licences.
49. Responsible authorities have raised no objections to the application. In relation to the fire safety concerns, Mr Jones has provided a copy of his Fire Safety Risk Assessment which is a 23-page document professionally drawn up by Wight Fire & Security in November 2022.
50. Proportionate conditions have been agreed between the applicant and the police and if the licence is granted then these conditions will be attached.
51. Environmental Health have now considered the application twice having initially viewed the application and returning a 'no adverse comment' response. On receipt of Mr Priddle's representation they were asked to consider the application again in light of the specific concerns raised. The officer's views can be found at Appendix 3 but their position remains that they do not object to the granting of any licence for alcohol sales on the grounds of the prevention of public nuisance.
52. 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.
53. 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

54. Option 1: Grant the licence as per the application.

APPENDICES ATTACHED

Appendix 1 Application for a premises licence under section 17 of the Licensing Act 2003

Appendix 2 Agreed Police conditions

Appendix 3 Comments from the Environmental Health department

Appendix 4 Representation from Lynn Lister

Appendix 5 Representation from Thea Thomas

Appendix 6 Representation from East Cowes Town Council

Appendix 7 Representation from Tracy Reardon

Appendix 8 Representation from David Priddle

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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