

To Andrea Bull, Senior Licensing Officer
From Mark Wootton, Senior EHP
Date 6 February 2023
Subject Licensing Act 2003 ("The Act")
Application for a Grant of Premises Licence
Bettys Door, 5 Clarence Road, East Cowes, Isle of Wight PO32 6EP

Memo

By virtue of Section 13 (4)(c) and 13 (4)(e), Environmental Health is a responsible authority and may make representations to the Licensing Authority over applications for Premises Licences.

Background

The applicant seeks consent for the sale of alcohol between the hours of 11am and 4pm seven days a week, with extensions until 8.30pm on Christmas Eve, New Years' Eve and during Cowes Week. The premises will be open to the public until 4.30pm daily and until 9pm during the proposed seasonal variations. It is noted that no licence is sought in respect of any regulated entertainment.

Environmental Health initially submitted a 'no adverse comment' but welcome the opportunity to have reviewed the situation further following the receipt of objections. I understand that residential premises are joined to the applicant's premises.

I have reviewed the property file for the café and note that we have not received any complaints relating to noise and/or odour from the café. After discussion with an objector, I understand that neighbours are adversely affected by both noise and odour from the existing use and have been since it commenced however, I must stress that environmental health have not initiated any nuisance investigation or witnessed any of the alleged problems. Discussions suggest that there may be poor sound insulation between the café and flat above.

In such cases it would be normal to have an element of noise transfer between the two uses and there are many instances where commercial food establishments coexist with residential premises above without unreasonable noise or odour disturbance. It should also be borne in mind that any absence of proper sound insulation between properties is a matter for the landlord to address and improvements to sound insulation cannot be required through the statutory nuisance regime (ref: R (on the application of Vella) v Lambeth London Borough Council, 14 November 2005 (High Court)). Furthermore, under noise nuisance legislation, given the commercial nature of the café, a legal defence against any formal nuisance action of 'best practicable means' might be available.

Application

Environmental Health do not consider that the licensable activities, if granted, would have an unreasonable effect on the licensing objective of the prevention of public nuisance. The supply of alcohol until 4pm daily is unlikely to have any public nuisance impact over and above any noise currently associated with the use. Evening alcohol sales will be limited to approximately 11 occasions a year and will cease at 8.30pm. Any existing noise and odour problems can be investigated separately in relation to statutory nuisance under the Environmental Protection Act 1990.

Taking all of the above into consideration and having regard to the Licensing Authority's guidance issued to applicants and its *Statement of Licensing Policy 2019- 2024*, environmental health maintains their position and does not object to the granting of any licence for alcohol sales on the grounds of the prevention of public nuisance.

Many thanks for consulting this section.

Mark Wootton - Senior Environmental Health Practitioner