



Purpose: For Decision

# Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>FRIDAY 28 APRIL 2023</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR LANDGUARD HOLIDAY PARK, LANDGUARD MANOR ROAD, SHANKLIN, ISLE OF WIGHT, PO37 7PJ.</b>
Report Author	<b>DIRECTOR OF NEIGHBOURHOODS</b>

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## 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. A copy of the current premises licence of which relates to Landguard Holiday Park can be found at Appendix 1 of the report.
3. An application for variation of the premises licence was submitted to the licensing authority on 10 March 2023 by Poppleston Allen (on behalf of Park Resorts Ltd). The application can be found at Appendix 2 of the report.
4. To summarise, the applicant proposes via the variation application process to:
  - Enable the authorisation of 'off-premises' sale of alcohol between 10am and midnight daily,
  - Amend current timings for the activities of indoors plays, indoor performance of dance and indoor live music, enabling these activities to take place from 10am to midnight daily (to be one hour earlier each day and one minute later than existing authorisations).
  - Amend current timings for the activity of late night refreshment, enabling this activity to take place between 23:00 hours and 00:00 hours daily. (to be one minute later than the existing authorisation).
  - To amend current timings relating to the opening hours of the premises from 8am to 12.30am the following day (noted to be 2 hours earlier and 31 minutes later than the existing authorisation).

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 received on 10 March 2023. The application was advertised in the Isle of Wight County Press, at the premises and on the Council’s website. The consultation period ended on 8 April 2023.
8. 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 – no representation

9. Four of the nine Responsible Authorities as per the above table formally responded as part of the consultation exercise. The lead authority for the Licensing Objective for the Prevention of Public Nuisance (Environmental Health) returned a response during the consultation of “no adverse comment”, with a detailed account of their reasoning for this response (Appendix 3).
10. From a Crime and Disorder perspective, the Police are considered to be the lead authority with regards to this matter. Their representation and reasons given for not raising concerns are found at Appendix 4 to the report.

### Other Persons

11. Fourteen 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
12. Certain comments submitted by persons who wish to raise concerns with regards to the proposals contained within the application are not deemed relevant when considering the comments against one or more of the four licensing objectives and therefore these cannot be considered when determining this application. These include, but are not limited to, the age and perceived vulnerability of persons living within the vicinity of the licensed premises and that there are already a sufficient amount of licensed premises within the surrounding area that permit the sale of alcohol via “off sales”. More detailed explanations as to why these and other points that can not be considered when determining the application, are found in Appendix 5.
  13. From a crime and disorder perspective, concerns have been raised with regards to the proposed extension in timings and the ability to carry out off sales for the licensable activity for the sale of alcohol. Concerns in relation to these proposals have been raised that should these proposals be permitted then levels of anti-social behaviour from persons frequenting the licensed premises will increase, both within the licenced premises and surrounding areas.
  14. From a public nuisance perspective, concerns have been raised in that the extension in timings for the licensable activities such as live music will increase the likelihood of noise disturbance from regulated entertainment as well as from increased noise from persons frequenting the licensed premises and immediate area within the holiday park.
  15. All persons submitting representations were responded to via email in which the Licensing Officer supplied further guidance and information explaining what points of each representation could be considered and what could not, with reasons. These communications resulted in four of the fourteen representations being withdrawn, leaving ten that could not be resolved.
  16. To summarise, many of the representations that remain unresolved have stated that the current levels of noise disturbance and anti-social behaviour are already adversely impacting on their lives and that this adverse impact will likely increase, should the proposals contained within the variation application be permitted.

#### FINANCIAL/BUDGET IMPLICATIONS

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

#### LEGAL IMPLICATIONS

18. The 28-day consultation period ended on 8 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

19. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
20. 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

21. 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

22. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
23. 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”.

24. 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.
25. 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

26. 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).

27. There is no requirement for an equality impact assessment to be carried out.

### OPTIONS

- Option 1: Grant the proposed variation to the existing premises 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

28. With regard to Option 1: To grant the proposed variation 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.
29. 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.
30. 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

31. 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.*
32. During the consultation period, representations have been received which look to oppose the timings and activities that fall outside of the proposals outlined within the variation application that is to be determined. The Licensing Sub Committee must be clear in that the determination that they come to in relation to the variation application is based upon the proposals within the application only, as this is the only detail that is being determined. An existing premises licence is in place which authorises the



licence holder to be able to carry out certain activities and timings already. To summarise, the only timings and activities that the Sub Committee must have regard to when coming to a determination is:

- the 'off-premises' sale of alcohol between 10am and midnight daily,
  - for indoor plays, indoor performance of dance and indoor live music to take place from 10am to midnight daily (noted to be one hour earlier each day and one minute later than existing each night),
  - for late night refreshment to be permitted from 11pm to midnight daily (noted to be one minute later than existing),
  - for the opening hours to be permitted from 8am to 12.30am the following day (noted to be 2 hours earlier and 31 minutes later than existing)
33. Concerns have been raised that oppose the proposal for the licensed premises to be open until 00:30 hours as it is believed that activities that take place up until this point are likely to cause further noise disturbance to nearby residents. Through communications to those persons that have raised concerns in relation to this matter, it has been explained that any licensable activities such as the sale of alcohol or regulated entertainment will not be permitted to continue up until 00:30 hours. The cessation of such activities will be 00:00 hours with a 30-minute period following this in order to enable the licence holder and associated staff to implement a "drinking up time" which will also potentially help to promote a gradual dispersal of persons that are still frequenting the licensed premises at this time. The implementation of a period such as this is widely recognised, in particular by the Police and Licensing Authority, to assist in avoiding large groups of persons present leaving all at once at the end of the evening which could potentially result in higher levels of noise and disturbance to nearby residents and businesses.
34. Further concerns have been raised that this is a residential area and the grant of the variation to the existing licence will lead to an increase in noise and anti-social behavioural issues. It has been further stated that the existing authorisations within the current premises licence and how they are managed already has an adverse impact on nearby residents with regards to disturbance from music and people noise as well as instances of anti-social behaviour. In considering these written concerns, within the 28-day consultation period, the Licensing Authority sought the views of the Police and Environmental Health with regards to any matters that had been reported to these authorities, specifically with regards to noise nuisance and anti-social behaviour as these authorities would be responsible in the first instance to look to investigate allegations of these types, should they have been reported. Environmental Health have stated that the last allegation of noise disturbance emanating from the licence premises was received in the spring period of 2016 and that there has been no reported allegations or incidents since this date. The Police have stated that there have been no reported allegations or incidents of anti-social behaviour that have been connected to the licenced premises since 2019.
35. Other representations received have stated that the proposal to permit off sales within the existing premises licence is not needed due to various other licenced premises within the area already having authorisations to do so. Point 14.19 of the Section 182 Guidance for the Licensing Act 2003 states that the "need" concerns commercial demand and that this is a matter for the Planning Authority and market. No concerns have been received or formally submitted by the Planning Authority

during the consultation exercise in relation to this matter. The guidance also goes further to state that the determination of “need” is not a matter for a Licensing Authority in discharging its licensing functions or for its statement of licensing policy.

36. Other concerns state that allowing off sales will encourage persons frequenting the licensed premises within Landguard Holiday Park to purchase alcohol from the site and consume it within the surrounding area, away from the licenced premises which in turn will likely increase the levels of anti-social behaviour by those persons that have purchased alcohol from the premises. Referring to point 1.16 of the Section 182 Guidance to the Licensing Act 2003, it states that conditions 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. With this statement in mind the licence holder and any relevant staff that are responsible for customers behaviours within the immediate vicinity can assist in reducing the potential risk of noise nuisance and anti-social behaviour from customers through effective management. Examples of such include appropriate and clear signage at specific locations (i.e., entrances and exits) reminding customers to respect the needs of nearby residents and businesses, taking decisions to refuse to serve customer(s) due to levels of intoxication and the use of SIA personnel to manage and deter signs of anti-social behaviour. Although these and other measure may be appropriate at times, the licence holder and relevant staff are not responsible once the customer(s) leaves the immediate area of the licenced premises. At this stage the customer’s behaviour and how they conduct themselves is a matter for their own responsibility.
37. Further points that have been raised within the various representations received include the impact that the granting of the variation will have on the monetary value of residential properties within the vicinity of the licenced premises and that consideration should be taken into account with regards to the age and demographics of persons living within the vicinity of the licenced premises. These two points are unable to be considered due to not being directly relevant to one or more of the four licensing objectives.
38. 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.
39. 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

40. Option 1: Grant the proposed variation to the existing premises licence as per the application.

## APPENDICES ATTACHED

Appendix 1 - Existing Premises Licence Ref 044042

Appendix 2 - Variation Application

Appendix 3 - Environmental Health Representation

Appendix 4 - Police Representation

Appendix 5 - Representations from Other Persons

## 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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