



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	WEDNESDAY 9 AUGUST 2023
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR ISLAND LIFE CRAFT ALE HOUSE, 1A CLARENCE ROAD, EAST COWES, ISLE OF WIGHT, PO32 6EP
Report Author	COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS

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 June 2023, by Mr Glenn Johnson. for Island Life Craft Ale House, 1A 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. The proposed licensable activity which is included within the application is that of sale of alcohol only. The proposed timings for this activity are as follows:

Monday to Thursday – 12:00 to 23:00 hours
Friday to Saturday – 12:00 to 23:30 hours
Sunday – 12:00 to 22:30 hours
4. 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

5. 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.

6. The consultation period ended on 18 July 2023.
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	Response received – no representation
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	Agreed conditions with Applicant
Police	Agreed conditions with Applicant

8. For full details of conditions agreed between the applicant and Environmental Health which propose to further safeguard the licensing objective for the Prevention of Public Nuisance, please refer to Appendix 2 of the report.
9. For full details of conditions agreed between the applicant and Police, which propose to further safeguard the licencing objective for the Prevention of Crime and Disorder, please refer to Appendix 3 of the report.

Other Persons

10. Three representations have been received from other persons, one in support of the application and two against.
11. As part of the consultation process the applicant, after reviewing the two objections opposing the application supplied a response which was forwarded to all objectors. This can be found at Appendix 4 of the report.
12. Following these communications and after having regards to the proposed conditions submitted by Environmental Health, the outstanding point within one of the objections is deemed not to be relevant, therefore one relevant representation opposing the application remains, this relating to the licensing objective for the Prevention of Public Nuisance.
13. East Cowes Town Council (ECTC) have submitted a response in support of the application, with the agreement that the applicant includes measures to mitigate the risk of noise nuisance. Conditions submitted by Environmental Health (please see Appendix 2) have been shared with ECTC which have

satisfied their initial requirement with regards to the mitigation of noise nuisance. Please refer to Appendix 5 of the report for full details.

14. Thea Thomas has made representations (Appendix 6) against the grant of a licence on the grounds that the perceived increase in noise from inside the premises will be likely to cause noise disturbance to residents within properties either above or directly to the side of the business premises.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

16. 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

17. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
18. 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

19. 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

20. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
21. 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".

22. 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.
23. 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
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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

24. 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).
25. 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

26. 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.

27. 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.
28. 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

29. 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.*
30. Proportionate conditions have been agreed between the applicant and two responsible authorities, these being the Police and Environmental Health. Should the licence be granted then these conditions will be forming part of the premises licence.
31. In order to attempt to address concerns relating to noise disturbance from inside the premises itself, the applicant has agreed to carry out works to the inside of the business premises in order to soundproof the inner structure, which in theory will then minimise any noise disturbance to residential properties above or directly to the side of the business premises.
32. Details of works relating to the soundproofing of the premises will need to be proposed and agreed with the Licensing Authority in the first instance as per the agreed condition which can be found at Appendix 2 of the report.
33. A further measure that have been proposed and agreed by the applicant via way of condition and of which will look to reduce the risk of noise disturbance to nearby residents from customers of the premises, include the prevention of drinking vessels from being taken outside. This would prove effective in deterring customers from remaining outside for prolonged periods of time when smoking for example.
34. An addition condition which would also be implemented should the licence be granted would be that of prominent signage to request customers to respect the needs of local residents when entering and leaving the premises. This as will the prevention of drinking vessels from being taken outside of the premises look to promote and uphold the objective for the Prevention of Public Nuisance.
35. 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.

36. 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

37. Option 2: Grant the licence as per the application and with agreed conditions between the applicant, Police and Environmental Health.

APPENDICES ATTACHED

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

Appendix 2 Agreed Environmental Health conditions.

Appendix 3 Agreed Police conditions

Appendix 4 Applicant's response to concerns raised.

Appendix 5 Representation from East Cowes Town Council

Appendix 6 Representation from Thea Thomas

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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