



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	FRIDAY 18 AUGUST 2023
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR LAZY WAVE CAFÉ, 2A ESPLANADE, SHANKLIN, ISLE OF WIGHT, PO37 6BN
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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 22 June 2023, by Mrs Rae Rawlins. For Lazy Wave Café, 2A Esplanade, Shanklin, Isle of Wight, PO37 6BN. 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 Sunday – 10:00 to 21:00 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 25 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	Response received – no representation but measures to uphold objectives submitted. These measures have been addressed by conditions agreed with Police Authority (See Appendix 2)
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	Agreed conditions with Applicant

8. 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 2 of the report.
9. Trading Standards as part of the consultation process have requested that should the licence be granted, the applicant ensures that staff training includes and covers guidance in relation to underage sales as well as a refusal register be in place, should staff need to refuse customers in respect of the sale of alcohol. This request can be found at Appendix 3 of the report.
10. These measures have been addressed by way of conditions that have been agreed between the applicant and the Police Authority and will form part of the licence, should it be granted.

Other Persons

11. Thirteen (13) representations have been received from other persons. Following communications during the consultation period between other persons and the Licensing Authority, one (1) representation has subsequently been withdrawn, leaving twelve (12) remaining. Please refer to Appendix 5 of the report for full details. Those representations opposing the application relate to one or more of the following four licensing objectives:
 - Prevention of public nuisance

- Prevention of crime and disorder
 - Protection of children from harm
 - Public safety
12. Concerns have been raised in that by permitting the licensable activity for the sale of alcohol to take place, noise from customers that frequent the premises will cause nuisance to nearby residents. Elements of anti-social behaviour and criminal damage are also factors that have been raised, should alcohol sales be permitted on the premises.
13. Further factors that have been raised and of which other persons believe should be taken into consideration when determining this application include:
- A lack of toilet facilities within the immediate vicinity
 - The potential for an increase in littering
 - That the business is located near to residential properties
 - There are a sufficient amount of licenced premises within the immediate area.
 - There will be an increased level in traffic, impacting on residential parking provision
 - The nearby slipway will at times be blocked, impacting of emergency services accessing the beach area when required and impacting on public safety in general.
14. Following concerns raised within the representations received, specifically through noise nuisance, Environmental Health were asked to elaborate on their initial response to the application which stated, “no adverse comment”. A more detailed response, inclusive of the factors that the department has taken into consideration when coming to the decision of not raising objections or concerns with regards to the proposed licensable activities that form part of the application, can be found at Appendix 4 of the report. Further to this response, further details have been supported by Environmental Health to further elaborate on the reasons for their initial response of no adverse comments. Please refer to Appendix 7 of the report for details of this response.
15. As part of the consultation exercise, an outline of the concerns raised were also shared with the applicant. In response to this the applicant has submitted a response, detailing their intentions in relation to the activities proposed within the application and how the business would look to manage the day to day operations of the business, should the licence be granted, the applicant’s response can be found at Appendix 6 of the report.
16. Following receipt of the detailed response from Environmental Health and the response from the applicant, these were forwarded to all other persons who had raised concerns during the consultation period. As stated earlier on in the report, this resulted in one representation from an other person being withdrawn, leaving twelve (12) remaining.

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 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

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 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 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.
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. Conditions have been agreed between the applicant and the Police Authority in order to uphold and promote the Licensing Objectives for the Prevention of Crime and Disorder. For example, the requirement for an age verification policy of “Challenge 25” and the requirement for documented staff training in relation to the refusal of underage persons as well as intoxicated persons will support the aim of minimising any anti-social behaviour or noise nuisance through persons that may frequent the premises in order to consume alcoholic beverages.
33. Further to the above measures, CCTV will also be operational, and images will be retained for a minimum of 28 days in order for authorised officers to review footage should this be required in order to investigate any instance or allegations relating to anti-social behaviour or disorder whilst customers are on the premises. Should the licence be granted then these conditions as well as others detailed within Appendix 2 of the report will be attached to the licence.
34. Nearby residents have raised concerns within representations relating to the impact that noise disturbance from customers will have when sitting within the outside area associated with the business premises. Environmental Health, the lead authority for the Licensing Objective for the Prevention of public Nuisance have not raised any concerns in relation to this matter. The Sub Committee must have regard, in that people noise is not deemed a licensable activity and therefore cannot be controlled or conditioned via way of a premises licence, nor can a premises licence be refused or granted based upon this matter.
35. The proximity of a licenced premises to areas such as residential dwellings cannot look to prohibit the proposed activities on the basis that residential properties are nearby or that there are already enough licensed premises within the immediate vicinity. Need is not a factor that can be considered or determined within the powers of the Licensing Act 2003 Legislation. As part of the consultation exercise, Environmental Health the lead authority for the objective for the Prevention of Public Nuisance, have reviewed the application

and have no adverse comments to make in relation to the proposed activities and timings. Should the licence be granted, and noise complaints be received, then Environmental Health will be able to exercise powers under the Environmental Protection Act 1990 should they feel it is appropriate to do so with regards to any noise or anti-social behaviour concerns that may be reported to them and proven to be associated with the business premises in question.

36. Concerns have also been raised in that by permitting the sale of alcohol and extending the current business hours from 18:00 to 21:00, a potential outcome of the granting of the licence will be an increase in the amount of litter generated by the premises, therefore undermining the Licensing Objective for the Prevention of Public Nuisance. The Sub Committee must have regard in that there is already a business premises in the form of a café operating within the location to which the application relates to. With this in mind the Sub Committee must give appropriate weighting to the application in that do they believe that the likely outcome of the granting of the licence with proposed activities and timings will undermine the above objective to an extent as to reuse part or all of the licensing application.
37. Further concerns that have been raised include the lack of toilet provision within the immediate vicinity of the premise. The provision of toilets facilities cannot be taken into account when determining the licensing application as the control of such is not regulated by powers contained within the Licensing Act 2003 legislation. The requirement for such provision is controlled and regulated by powers that Environmental Health have at their disposal and therefore should this be of concern then this department will look to address and seek compliance with any justified matters in relation to this aspect.
38. Concerns have also been raised in that the slipway, adjacent to the business premises will become obstructed by customers of the business premises, should the licence be granted, in that persons would potentially impede emergency vehicles from accessing the beach area, should they need to. Further points have also been raised in that, other mechanical equipment, including but not limited to jet skis accessing the beach area may impact members of the public from a public safety perspective. The business premises has allocated seating that customers will be required to sit on that does not impede access to or from the slipway. It must also be stated that persons in their own right must have responsibility for their own safety and therefore the business premises, should the licence be granted cannot be responsible for the safety of persons once they have left the immediate vicinity of the business premises. The Licensing Sub Committee but give appropriate weighting as to the likelihood of this scenario and to what degree it would undermine one or more of the four Licensing Objectives before making a determination with regards to this raised concern.
39. One further concern raised as part of the consultation process included the potential for the increase in traffic and the inability for nearby residents to access their vehicles due to customers of the business parking in areas to which would impede those residents who have vehicles within the vicinity of the premises to where proposed licensable activities would take place. Should this be a likely outcome of the granting of the licence, the matter would be for

Parking Services department of the Local Authority to address and enforce and therefore the Licensing Sub Committee can not look to take this into account when determining the current application.

40. 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.
41. 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

42. Option 2: Grant the licence as per the application and with agreed conditions between the applicant and Police Authority.

APPENDICES ATTACHED

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

Appendix 2 Agreed Police conditions

Appendix 3 Trading Standards response

Appendix 4 Environmental Health response

Appendix 5 Representations from other persons

Appendix 6 Applicant response to concerns raised

Appendix 7 Additional response for Environmental Health

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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