

Memo

To Licensing, Mr Shane Batchelor, Licensing Officer
From Daniel Power, Regulatory Officer (Environmental Health)
Date 8th August 2023

Your Ref - 23/00974/LAPNEW

Proposal - New Premises Licence Application
Location - The Lazy Wave, 2A Esplanade, Shanklin, PO37 6BN

The Environmental Health Department considered the application for a premises licence in respect of The Lazy Wave on 28th June 2023. In response, the responsible authority primarily concerned with the promotion of key licensing objectives including the prevention of public nuisance and public safety, did not have any adverse comments in respect of the application.

The Revised Guidance issued under s182 of The Licensing Act 2003, advises that each application must be considered on its own merits. With this in mind regard for the following considerations were had:

- The premises noise complaint history
- The proposed hours and scope of licensable activity
- The proximity to commercial/residential receptors
- The venues sound insulation performance and/or the use of any external areas
- Confidence in management

In this instance, it is noted that the use of outdoor parts as outlined within the associated plan of the premises accompanying the application, have occurred for some time whilst the applicant has run the premises since 2021, furthermore, on review of the department's case management system, I am unaware of any formal nuisance complaints having been received.

I note the application may provide the premises with the capacity to undertake licensable activity until 21:00hrs, nevertheless, I am unaware of any existing restrictions limiting the premises hours of trade with reference to non-licensable activities. Furthermore, whilst the premises typically trades until 18:00hrs, the applicant has advised that during the summer holiday's the premises has traded until approximately 20:00hrs, where custom remains steady, and until 21:00hrs during previous Shanklin Regatta events.

On reviewing the representations received, I note a consensus in respect of concerns regarding the premises outdoor setting and the limited offering of sound insulation, whilst I consider these concerns to be justified, noting the proposed premises proximity to residential dwellings. The hours of proposed activity are considered reasonable and thus, limit the potential disturbance associated with sharp variations in patron noise as the evening progresses, whilst ambient noise levels inevitably reduce.

Accordingly, the application appears to satisfy Part 10.10 of the local authority's Statement of Licensing Policy (2019-2024) given the applicant does not intend on trading during what are considered more sensitive hours, typically between 23:00 and 08:00hrs.

Further to the consideration of patron noise, I have assessed the premises intended music offer given the close proximity of the premises to residential dwellings, consequently, I understand the premises music offer is unlikely to vary from its current offering, with music provided at a background level and thus, ancillary to the consumption of food and drink.

It's worth noting that the intended hours of licensable activity occur within the hours of de-regulation as provided by way of The Live Music Act 2012. Accordingly, as specified via Part 16.5 of the Revised Guidance issued

under s182 of The Licensing Act 2003, the provision of live and recorded music between the hours of 08:00 and 23:00hrs are not considered licensable. With this in mind, any proposed conditions with reference to noise control would be considered unenforceable during the hours the premises intends to provide licensable activity.

In addition to the previous discussion in respect of the premises intending to trade during what are considered non-sensitive hours, the department have considered the term 'Convention' and what is typically referred to as the general use of an area. On this occasion, I consider it reasonable to expect a degree of noise associated with commercial activity within an area of mixed commercial and residential use, particularly during the hours applied. In addition, the application is in keeping with the character of the area, considering the existing premises licences within close proximity on the esplanade.

At this point, it is necessary to consider confidence in management, accordingly, having discussed matters in respect of the premises limited complaint history over this period, I've no grounds to suggest confidence is low.

Therefore, there are no pressing concerns in respect of the premises potentially undermining the Prevention of Public Nuisance Objective and/or the Public Safety objective. However, as pointed out via Part 2.18 of the Revised Guidance issued under s182 of The Licensing Act 2003, it is worth noting that there are more suitable provisions in other legislation, namely by way of the Statutory Nuisance regime via the Environmental Protection Act 1990, which adequately protect those living in the area of the premises in the event of a complaint of disturbance. With this in mind, were noise disturbance alleged, neighbouring residents have the capacity to request that the department investigate here.

Similar to matters relating to the subsequent investigation of noise complaints, whilst ensuring the application undertaken by way of The Licensing Act 2003, does not have the effect of duplicating other statutory requirements. I note the comments received by way of representations against the application, also refer to the unavailability of customer toilets at the premises.

In respect of customer toilets, I understand the Local Government (Miscellaneous Provisions) Act 1976 has not been applied by the Isle of Wight Council. With regards to sanitary facilities for staff, all workplaces require staff toilet(s) to comply with the Workplace (Health Safety and Welfare) Regulations 1992. With this in mind, I ask that the proprietor contacts the Business Regulation and Public Protection Team (Environmental Health) at their earliest convenience to advise of its existing plans for staff access to sanitary facilities. Contact may be had via email EH@iow.gov.uk or via telephone on 01983 82300.

However, from a licensing perspective, the premises will be required to ensure that customers are making appropriate use of neighbouring toilets to avoid any suggestion of behaviour that may be considered to undermine the prevention of crime and disorder objective.

In summary, having considered the premises noise complaint history to date, the proposed hours of licensable activity, the existing general use of the area as well as the current confidence in management and the enforcement tools available in the event of disturbance, the department does not have any adverse comments in respect of this application.

Furthermore, the department has not considered it appropriate to recommend any specific conditions on this occasion owing to Part 1.16 of The Revised Guidance issued under s182 of The Licensing Act 2003, which states that licence conditions must be precise and enforceable and should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation.

Yours sincerely



Daniel Power
Regulatory Officer