

# Committee Report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>MONDAY 6 NOVEMBER 2023</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR THE BAY CAFÉ, MADEIRA ROAD, TOTLAND, ISLE OF WIGHT, PO39 0JP.</b>
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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 7 August 2023, by The Wooldridge Partnership, for The Bay Café, Madeira Road, Totland, Totland Bay, Isle of Wight, PO39 0JP. A copy of the application and plans associated with the application can be found at Appendix 1.
3. The Bay Café is an established venue that consists of two storeys on the beach front. The upstairs is used predominantly for dining and the downstairs consists of the kitchen, access to the pier and bathrooms.
4. The application requests that authorisation be granted to allow the supply of alcohol to take place for consumption on and off the premises between 09:00 hours and 23:00 hours each day.
5. The applicant states that the venue will be used mainly for private hire and will have an on-site management team. The main off site sales will be consumed on the surrounding beachfront or through the venue on the connected pier.
6. 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

7. 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.
8. The application for a premises licence was originally received on 7 August 2023. The consultation ran for the required period. However, at the end of the consultation period an administrative error was identified in respect of the blue notice that had been displayed and as a result it was necessary for a new consultation period to commence.
9. The new consultation period commenced on 14 September and ended on 11 October 2023. The application was advertised at the premises, on the Council's website and in the Observer newspaper as required.
10. 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 – satisfied with measures in place
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 – conditions agreed see Appendix 2

11. Police have recommended a number of conditions which have been agreed by the applicant. A copy of these can be found at Appendix 2.

### Other Persons

12. Nine representations were received from other persons during the consultation which relate to the licensing objectives of:
  - Prevention of public nuisance
  - Public safety
  - Prevention of crime and disorder
  - The protection of children from harm

13. A copy of the representations received from other persons can be found at Appendix 3.
14. Some of the representations received contain references to issues that do not directly relate to the licensing objectives and these issues cannot be taken into account when determining the application. For ease of reference any part of a representation that contains such references has been redacted.
15. At the end of the first consultation period, five representations had been received.
16. The applicant was notified of the objections received and produced a statement Appendix 4 addressing the concerns that had been raised. This statement was sent to the objectors along with a copy of the agreed police conditions. The objectors were asked to advise if the information contained within the email had alleviated their concerns and whether they wished for their representations to stand. One objector withdrew at this point.
17. When it became necessary to restart the consultation, contact was made with the objectors, and they were asked if they wished for their representation to be carried over. All confirmed that they would like their representations to stand and to be carried over. Confirmation of this can be found at Appendix 3.
18. Details of the specific representations received are as follows:
19. Mr Ratcliff states that the grant of a licence could add considerably to light, noise, traffic pollution and safety concerns but does not expand on how or why he believes these would be consequences of the granting of a licence. Mr Ratcliff also suggests that the area is difficult to police.
20. Ms Pearson raises concerns over parking and the potential for anti social behaviour and noise. She claims that there is already groups of youths who congregate in the area who behave in an anti social manner and believes that the grant of a licence will exacerbate the issue. Ms Pearson also raises concerns over the likelihood of noise from customers when leaving the premises.
21. Mr and Mrs Taft believe that the grant of a licence will inevitably lead to anti social behaviour and will attract serious drinkers to the area. They also raise concerns over noise, acknowledging that the applicant will have no control over individuals once they have left the premises.
22. Mr Walbank states that the local community would benefit from a family friendly café, possibly with a licence permitting alcohol to be served with meals. He does however raise concerns over public safety in relation to the potential for intoxicated people to access the pier or surrounding coastal path.
23. Ms Proles has raised concerns over the potential for an increase in litter, including broken glass, she has also raised concerns over an increase in anti

social behaviour and criminal activity that she perceives will be the outcome if an 'off sales' licence is granted.

24. Mr McCredie has also raised concerns over the grant of an off licence, as he also believes this will lead to an increase in litter and alcohol fuelled anti social behaviour.
25. Mr and Mrs Metcalfe are also against the grant of an off licence. They too believe that there will be an increase in litter including broken glass. They have also raised concerns over the lack of parking in the area and the potential for noise into the evening.
26. Mr Hammett and Ms Inge have raised similar concerns stating that whilst a café will enhance the amenities of the area, the grant of this licence will have a detrimental effect on the area. In their view anti social behaviour will increase by way of litter, broken glass and drinking and drug taking in the surrounding area.
27. Ms Sale has raised concerns around each of the licensing objectives. She has considered the agreed police conditions but her concerns are that these will act as a deterrent but will not prevent anti social behaviour in the form of litter & noise nuisance occurring as a result of an 'off licence' being granted, she believes the issues will move further away from the premises.
28. In relation to public safety and the protection of children from harm, Ms Sale has raised concerns around the location of the premises in relation to the lack of parking in the area. She also raises concerns over a perceived increase in traffic on a narrow road, where it is difficult for cars to pass and where there is no verge. She states that walking down this road is extremely hazardous particularly for families with young children particularly when it is dark.
29. Any objector who submitted representations during the second consultation period has also been sent a copy of the statement produced by the applicant along with a copy of the agreed police conditions.

#### FINANCIAL/BUDGET IMPLICATIONS

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

#### LEGAL IMPLICATIONS

31. The 28-day consultation period ended on 11 October 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

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

33. 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

34. 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

35. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
36. 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”.

37. 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.
38. 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	All
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 – 10.18

## EQUALITY AND DIVERSITY

39. 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).

40. 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 proportionate to promote the licensing objectives.
- Option 3: Refuse the whole or part of the application.

### RISK MANAGEMENT

41. 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.
42. 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.
43. 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

44. 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.*
45. It should be noted that the premises to which this application relates has already been licensed for the same hours and activity that is being applied for now. In February 2020, a licence was granted permitting the sale of alcohol to take place on and off the premises between the hours of 9am and 11pm each day.
46. The only exception to that which is being applied for now is that the previous licence did have a condition which prevented any person removing alcoholic or other drinks from the premises in open containers. A similar condition could

be applied here if members are minded to grant a licence but this will not prevent customers from opening a container once off the premises.

47. However, in relation to the concerns raised by objectors regarding the potential for anti social behaviour to occur as a result of customers to the premises consuming alcohol on the beach, Public Space Protection Orders (PSPO's) are in place in several locations across the island. The area to which this application relates is covered by a PSPO and is a restricted area. A map showing the extent of the restricted area for Totland and Freshwater can be found at Appendix 5.
48. In a restricted area, a police officer may require a person not to consume alcohol and to surrender anything the officer reasonably believes to be alcohol. A person commits an offence if they do not comply with such a request. The maximum fine for this offence is currently £500.
49. A public space protection order does not prevent members of the public consuming alcohol in a public place. The powers the police have under the order are discretionary. The police would not normally request someone to stop drinking in the public place if they were doing so responsibly.
50. The orders do not apply on licensed premises while they are open for the sale of alcohol and for 30 minutes after.
51. Furthermore, the behaviour of people outside the immediate vicinity of any licenced premises cannot be attributed to the management of the premises. Point 2.26 of the Section 182 Guidance for the Licensing Act 2003 states:  
  
*“Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial 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.”*
52. The police, as a responsible authority are consulted and review every application received. The police licensing officer has considered the application and has recommended a number of proportionate conditions which the applicant has agreed. Condition no.7 states “No person will be permitted to take or remove alcoholic or other drinks from the premises in glass containers. All drinks will need to be transferred in to plastic or alternate vessel before being removed from the premises.”
53. All of the conditions that have been agreed with the police can be found at Appendix 2. If a licence is granted then these conditions will be attached and will become legally enforceable.
54. Both the Environmental Health department and the police were asked about any nuisance complaints made in relation to activities that have previously

taken place on the premises and in the vicinity of the premises under the earlier licence.

55. The Police have confirmed that there have been two incidents in the past 12 months, one relating to the building to which this application relates, whereby youths have attempted to gain entry causing minor damage. They have confirmed that there has been no reports of drunken anti social behaviour.
56. The Environmental Health department have confirmed that there have been no nuisance complaints made to them resulting from any licensable activities that took place previously at the premises.
57. In relation to the concerns raised regarding litter, the applicant has advised that *“ All off sales will be decanted and only single measures will be provided, for example a 25ml spirit and soft drink, or a 125ml glass of wine. We do not see this as our main point of trade and will also use common sense as to when and if we even use this part of the license. However this is no different to the license that was held before where no issues occurred. If we do decide to do off sales a member of our team will be dedicated to doing hourly checks to collect any rubbish that may potentially be left behind by customers in order to eradicate litter on the beach front. As for off sales on the pier itself a member of our team will be stationed there to clear tables as often as required. All of our team will have frequent Think 25 training and will adhere completely to the terms of our license at all times.”*
58. In relation to concerns raised around noise disturbance, as a result of people congregating on the beach to consume alcohol that has been purchased from the premises. Again, a licensee cannot be held responsible for the behaviour of others when away from the premises. The Licensing Act places a responsibility on business operators to ensure that the sale of alcohol is made responsibly, and offences exist in relation to under age sales or to people who are drunk. Staff training is expected in order to ensure that sales are made responsibly in order to uphold all of the licensing objectives but the behaviour of those people once away from the premises is not the responsibility of the operator. Other powers exist in order to deal with incidents of anti social behaviour which would include noise nuisance from people in public places, either by way of powers under Public Order legislation, or under the provisions of the PSPO.
59. Officers from the Environmental Health department have not made representations to this application. They have no powers to control the noise from groups of people once away from licensed premises.
60. It should also be noted that there is another licensed premises in close proximity to the pier. The Waterfront has a large garden and has a licence to supply alcohol for consumption on and off the premises until midnight, (an hour later than is being applied for here). The premises is also able to provide regulated entertainment until 00:30 hours.
61. The applicant in this case has not applied for regulated entertainment. Whilst the provisions of the Live Music Act would permit music until 23:00 hours without this being regulated, this application makes no reference to music entertainment.

62. The existence of this business and its daily operations, have not resulted in any of the issues that have been raised by the objectors as potential consequences to the grant of a licence.
63. No other responsible authority has made representations to this application.
64. A further concern that has been raised relates to the issue of traffic and parking. Residents are concerned that due to limited parking on the seafront customers will park illegally or trespass on private parking facilities. This is not something that members can factor into their determination as enforcement of parking violations is a matter for the Parking Services department of the Local Authority.
65. The applicant has stated that they are *“currently putting together a traffic management plan that will hopefully eliminate any issues with noise and car congestion down at the entrance of the Pier. There are limited parking spaces along the front which will be on a first come and paid for basis if available. However, we will also be offering shuttles from around the island for people coming in by Ferry. We are also building relationships with local taxi firms in order to be able to make sure guests are collected safely and dropped home if they are residents.”*
66. Further details have been requested from the applicant in respect of these proposals, in order to confirm that Island Roads are happy with any plans they wish to implement as well as confirming that there are no implications in respect of the private hire taxi licensing regime. At the time of writing this report no further details have been submitted.
67. 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.
68. 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

*Option 1: Grant the licence as per the application.*

APPENDICES ATTACHED

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

Appendix 2 Agreed Police Conditions

Appendix 3 Representations from Other Persons

Appendix 4 Statement from Applicant in response to Objections

Appendix 5 Public Space Protection Order (PSPO) map for Totland and Freshwater

### 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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