

Committee Report

Committee	LICENSING SUB COMMITTEE
Date	MONDAY 13 NOVEMBER 2023
Title	TO DETERMINE AN APPLICATION FOR A VARIATION TO A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR EPHEBUS PIZZA GRILL, 137 HIGH STREET, NEWPORT, ISLE OF WIGHT, PO30 1TY
Report Author	COLIN ROWLAND STRATEGIC DIRECTOR COMMUNITY SERVICES

BACKGROUND

1. Under section 34 of the Licensing Act 2003, a premises licence holder may apply to vary a 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. Any person may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the application.
3. An application for the variation of a premises licence was originally submitted to the licensing authority on 10 August 2023, by Mr Ramazan Kanial for Ephesus Pizza Grill, 137 High Street, Newport, Isle of Wight, PO30 1TY.
Appendix 1
4. A copy of the current licence can be found at Appendix 2.

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 application for a variation of the premises licence was originally received on 10 August 2023.
7. Consultation commenced, but the applicant failed to advertise the application in the newspaper within the required timescales and it was therefore necessary to restart the consultation period.

8. The second consultation period commenced on 21 September 2023. The application was advertised as required at the premises and in the Isle of Wight Observer on the 30 September 2023. The consultation period ended on 19 October 2023.
9. Specifically, the applicant Mr Ramazan Kanial seeks to extend the hours in which he is permitted to provide late night refreshment on Friday and Saturday evenings and on New Years' Day, by a total of three hours, extending the terminal hour from 01:00 until 04:00 hours.
10. The current licence permits the provision of late night refreshment from 23:00 hours until midnight Sunday to Tuesday and until 01:00 hours Wednesday to Saturday and on New Years' Day.
11. Mr Kanial also requests the removal of conditions 1 & 2 on Annex 2 of the current licence. These conditions relate to the hours in which the public are currently permitted to enter the premises and will no longer be relevant if this application is successful.
12. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	Representation made
Environmental Health	Representation made
Fire and Rescue Service	No Representation
Trading Standards Service	No Representation
Planning Services	No Representation
Police	Conditions agreed with applicant
NHS	No Representation
Licensing Authority	No Representation
Immigration Enforcement	No Representation

Children's Services

13. An officer from this department has reviewed the application and has commented that there should be a documented policy in place in relation to safeguarding children. They state that they would wish to see a documented policy on how staff will deal with any incidents of young children frequenting the premises alone late at night, or during the early hours, or attending with adults who look to be with children who are of an age that it would be concerning to find them out late at night. The officer states that the policy should train staff to ask questions and to contact the police if there are any safeguarding concerns. A copy of this representation can be found at Appendix 3.

Police

14. Conditions have been recommended by the police and agreed by the applicant. A copy of the agreed conditions can be found at Appendix 4. If the

variation to the licence is granted these conditions will be added to the licence and will be enforceable.

Environmental Health Department

15. Officers from the Environmental Health department initially stated that there is the potential for the licensing objective of the prevention of public nuisance to be impacted, and do not consider that any conditions, over and above those recommended by the police would be beneficial. They therefore object to a terminal hour of 04:00 hours and recommend that this be brought forward to 03:00 hours in-line with other premises in the immediate vicinity.
16. The officer considering this application made contact with the applicant via email on 18 September and advised that it is his view that a terminal hour of 03:00 hours is more appropriate and in line with the closing time of other businesses in the vicinity. The officer asked if the applicant was prepared to accept this end time and provided his reasonings.
17. Mr Kanial responded the following day stating that the reason he would like a terminal hour of 04:00 is in order to benefit from the additional trade from people leaving the licensed premises in the area.
18. Mr Kanial also stated that as there is a taxi rank outside his premises, he doesn't believe that his remaining open will add to any further disturbance. Mr Kanial asked if the department would be prepared to accept a 03.30 terminal hour but the officer advised that they would have to agree to disagree. Copies of these communications along with the representation made by the Environmental Health department can be found at Appendix 5.
19. It is normal practise as part of the preparation for a meeting of the Licensing Sub Committee, and during the preparation of a report for the officer to share agreed conditions and recommendations from one responsible authority to another, if there are shared interests.
20. In this instance the police licensing officer was advised that the Environmental Health officer had recommended a 03:00 terminal hour and their reasons for doing so.
21. The police licensing officer expressed some concerns that a 03:00 terminal hour may exacerbate issues of crime and disorder if the premises must close just as two late night venues in very close proximity are closing. He stated that it will potentially be very difficult to manage people exiting Ephesis Pizza Grill who have been served or those waiting to be served whilst others are being turned away because the premises are closing. This could be a cause of friction which could lead to disorder and noise issues. The officer has put his concerns in writing and these comments can be found at Appendix 6.
22. These comments were forwarded to the Environmental Health officer to consider. The officer stated that he could understand the concerns raised but must also consider the objective of the prevention of public nuisance. As a result, he feels that he must now revise his initial recommendation of a 03:00 hour close to 02:00 hours, in order to uphold the prevention of public nuisance

objective, and in order to avoid the scenario posed by police licensing. The officer provided these comments in writing and these can be found at Appendix 7.

Other Persons

23. Three valid representations were received during the consultation. A copy of the representations can be found at Appendix 8 and relate to the licensing objectives of:
 - Prevention of public nuisance
 - Prevention of crime and disorder
24. Mr Batchelor and Ms McMullen state that they already experience anti-social behaviour in the form of littering, fighting and noise both from people leaving licensed venues and from traffic.
25. Mr Batchelor states that they have witnessed fighting both inside and outside the premises and believe that the granting of the variation will exacerbate the issues they experience further, as later opening times will encourage more intoxicated people and traffic to the area.
26. Having considered the police conditions that the applicant has agreed, they acknowledge that security provisions are due to be put in place but do not believe that this will adequately address their concerns once customers have moved away from the premises.
27. Ms Flynn and Mr Parsons have also raised concerns regarding anti-social behaviour which they state they experience at weekends in the form of shouting, swearing and littering.
28. Ms Flynn and Mr Parsons state that they have had to move to a room at the back of their property due to the disturbance they experience and fear that to extend the operating hours as requested will exacerbate these issues further.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

30. The 28 day consultation period ended on 19 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

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

32. Each application on its own merits –

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.

33. Public nuisance

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.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for

example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 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.
34. Determining actions that are appropriate for the promotion of the licensing objectives
- 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.

35. Proportionality

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.

36. Hours of trading

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

37. 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

38. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
39. 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".

40. 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.
41. 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	3.1-3.3
Paragraph 4	Integration of Strategies and Other Legislation	4.1 – 4.8
Paragraph 5	Approach to Licensing Applications	5.1 – 5.4 & 5.6
Paragraph 6	Major Events & Isle of Wight County Council Act	N/A
Paragraph 7	Cumulative Impact	N/A
Paragraph 8	Representations, Review, Appeals & Complaints	8.1 – 8.6, 8.11 – 8.15
Paragraph 9	Enforcement	N/A
Paragraph 10	Operating Schedules	10.1 - 10.3, 10.9 – 10.11
Paragraph 11	Data Protection	All
Paragraph 12	Related Documents	All

EQUALITY AND DIVERSITY

42. 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).
43. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

- Option 1 Vary the licence as per the application.
- Option 2: Vary the licence as per the application with any 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

44. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance and disorder being experienced by local residents from customers attending the venue should the Sub-Committee deem this to be a likely outcome. The decision not to address the concerns raised may subsequently be appealed by those parties who have made representations.

45. With regard to Option 2: The risk of crime and disorder or nuisance being attributed to the premises 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.
46. 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

47. Paragraph 2.5 of the Isle of Wight Council's Statement of Licensing Policy 2019- 2024 states *"The Licensing Authority recognises that licensable activities are an important part in the cultural life of our community. In regulating activities under this legislation, it acknowledges that a balance must be struck between the legitimate objectives of applicants and the desires of the population as a whole, and in particular those members of the public living, working or engaged in normal activity in the area concerned. A balance must be struck between these, often conflicting, positions and all relevant views will be taken into account when making licensing decisions or determining a course of action."*
48. The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate.
49. Objectors have raised concerns relating to the potential for issues such as anti-social behaviour, littering and noise nuisance to increase if this application is granted.
50. The police conditions that the applicant has agreed, go some way to addressing the issues in terms of managing the behaviour of customers whilst at the premises, and under the supervision of the licence holder.
51. Once away from the premises, the licence holder cannot be held responsible for the behaviour of customers. Paragraph 2.26 of the Revised Guidance issued under Section 182 of the Licensing Act 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 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."
52. Paragraph 2.15 of the Section 182 Guidance states in relation to public nuisance that *"It is therefore important that in considering the promotion of the 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.”

53. 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.
54. The Committee should determine the application in accordance with section 35 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
55. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

RECOMMENDATION

56. *It is the view of the Licensing department that the application should be granted in accordance with Option 2.*

APPENDICES ATTACHED

- Appendix 1 Application for a variation of a premises licence under section 34 of the Licensing Act 2003
- Appendix 2 Current Premises Licence
- Appendix 3 Representation from Children’s Services
- Appendix 4 Agreed Police Conditions
- Appendix 5 Representation from the Environmental Health Department
- Appendix 6 Further comments from Police Licensing Officer
- Appendix 7 Further comments from Environmental Health Officer
- Appendix 8 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>

Contact Point: Andrea Bull, Licensing Officer,
☎ 823159 ext 6126 e-mail Andrea.bull@iow.gov.uk

COLIN ROWLAND
Strategic Director Community Services