



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	14 JUNE 2021
Title	TO DETERMINE AN APPLICATION FOR THE VARIATION OF A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR THAT THE VECTIS TAVERN, 103 HIGH STREET, COWES, ISLE OF WIGHT, PO31 7AT.
Report Author	COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS

BACKGROUND

1. Under section 34 of the Licensing Act 2003, a premises licence holder may apply to vary the 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. A copy of the current licence can be found at Appendix 1
4. An application for variation of the premises licence was submitted to the licensing authority on 16 April 2021, for The Vectis Tavern, 103 High Street, Cowes, Isle of Wight, P031 7AT. 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 received on 16 April 2021. The application was advertised in the Isle of Wight County Press, at the premises and on the Council's website. The consultation period ended on 16 May 2021.
7. Specifically, the applicant Victoria Inns Ltd, seeks to extend the hours that regulated entertainment is permitted.

8. The current licence permits the following activities on the days and times as shown below:

Activity	Days of Week	Start	Finish
Indoor Sporting Events	Monday to Saturday Sunday	11:00 hrs 11:00 hrs	00:00 hrs 23:00 hrs
Late Night Refreshment (Indoors and Outdoors)	Monday to Thursday Friday and Saturday	23:00 hrs 23:00 hrs	00:00 hrs 01:30 hrs
Live Music, Recorded Music Provision of Facilities for Making Music & Dancing (Inside)	Monday to Saturday Sunday 24 & 26 December Public Holiday Sunday	19:00hrs 19:00hrs 19:00hrs 19:00hrs	00:00 hrs 23:00hrs 01:00hrs 00:00hrs
Sale of Alcohol (supplied for consumption both on and off the premises)	Monday to Saturday Sunday	07:00 hrs 07:00 hrs	02:00 hrs 00:00 hrs
Late Night Refreshment	Monday to Saturday 24 & 26 December Public Holiday Sunday	23:00hrs 23:00hrs 23:00hrs	02:00hrs 01:00hrs 01:00hrs

Hours premises are open to the public

Days of Week	Open	Close
Monday to Saturday Sunday	07:00 hrs 07:00 hrs	02:30 hrs 00:30 hrs

9. The current premises licence is also subject to a condition that requires an electronic sound limiter to be installed and used whenever regulated entertainment takes place after 23:00 hours. The condition requires that the levels be approved by the local Licensing Authority, for the device to be tamper proof and for the limiter not to be adjusted without first obtaining written approval from the Licensing Authority.
10. In addition, there are a number of other conditions attached to the current licence specifically in relation to the prevention of public nuisance. These can be found on the licence from number 8 to number 12. A copy of the licence can be found at Appendix 1.
11. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	Representation made and now satisfied
Fire and Rescue Service	No Representation made

Trading Standards Service	No Representation made
Planning Services	No Representation made
Police	No Representation made
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made

Environmental Health Department

12. During the consultation period an officer from the Environmental Health Department commented as follows “Although the variation will not extend opening hours it seeks to increase the amount of music played within the premises opening hours. This will increase the possibility of noise nuisance to neighbouring residential properties if not properly managed. I am not opposed to the idea but have reservations about its impact on neighbouring residents. I would therefore ask that the applicant submit a noise management plan to demonstrate how they are to control the levels of noise created by the live and recorded music to prevent nuisance to nearby residents.
13. The applicant produced their Noise Management Plan (NMP) on 4 May 2021, a copy of which can be found at Appendix 3.
14. The Environmental Health officer confirmed on 7 May 2021, that they were happy with the Noise Management Plan. There are no outstanding representations or comments from this department.

Other Persons

15. One valid representation remains outstanding following the consultation. This can be found at Appendix 4 and relates to the licensing objectives:
 - Prevention of public nuisance
16. Mr Roberts, a local resident and owner of a holiday let property in the high street, has made representations stating that the music that emanates from the applicant’s premises is so loud that they cannot sleep.
17. He also claims that there are large groups of people outside late at night who display anti-social behaviour, and that guests of his holiday let have often commented on being disturbed by noise. He is concerned that the granting of this application will affect his business.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

19. The 28 day consultation period ended on 16 May 2021. 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

20. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
21. 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.
22. 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.
23. 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.

24. 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.

25. 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

26. 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

27. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
28. 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".

29. 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.

30. 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	All
Paragraph 4	Integration of Strategies and Other Legislation	4.1 – 4.8
Paragraph 5	Approach to Licensing Applications	5.1 – 5.4 & 5.7
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 & 10.2, 10.13 – 10.17
Paragraph 11	Data Protection	All
Paragraph 12	Related Documents	All

EQUALITY AND DIVERSITY

31. 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).
32. 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 proportional to promote the licensing objectives.
- Option 3: Refuse the whole or part of the application.

RISK MANAGEMENT

33. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance arising from regulated entertainment, and associated nuisance and disorder from the customers of 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.
34. 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.
35. 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

36. The Environmental Health department have no outstanding representations in relation to this matter and are satisfied with the control measures that are in place.
37. Conditions attached to the existing licence already place a duty on the licence holder to comply with a number of noise control conditions. These combined with the measures outlined in the Noise Management Plan have comprehensively addressed potential sources of noise breakout from the premises.
38. The above statement is supported by the fact that the Regulatory Services database shows that the last alleged nuisance complaint received about the premises was in June 2017, and this was closed without formal action due to log sheets not being returned from the complainants.
39. On being made aware of representations from a local resident, the DPS of the premises (on behalf of the applicant), produced a response to the objection and this was delivered to the objector's home address. A copy of the response prepared by the DPS can be found at Appendix 5. At the time of writing this report no response has been received from the objector in relation to the information provided.
40. The police have made no representations in respect of this application.
41. 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.
42. 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

RECOMMENDATION

43. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.
44. It is the view of the Licensing department that the application should be granted in accordance with Option 1.

APPENDICES ATTACHED

Appendix 1 Current Premises Licence

Appendix 2 Application for a variation of a premises licence under section 34 of the Licensing Act 2003

Appendix 3 The Vectis Tavern Noise Management Plan

Appendix 4 Representation from Nicholas Roberts

Appendix 5 Statement provided by DPS of The Vectis Tavern in reply to objection.

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2019 – 2024.
<http://www.iwight.com/azservices/documents/1226-Statement-of-Licensing-Policy-2014-2019-Adopted-v1.pdf>

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

COLIN ROWLAND
Director of Neighbourhoods