



Committee report

Committee	LICENSING SUB COMMITTEE
Date	26 AUGUST 2021
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR WYLD, 1 PROVIDENCE CORNER, 37 PYLE STREET, NEWPORT, ISLE OF WIGHT, PO30 1XB
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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 9 July 2021, for Wyld (Appendix 1).
3. Live/Recorded Music provided before 23:00hrs will not require licensing and therefore the updated Operating Schedule along with the conditions that would be attached to the licence if it is granted based on the measures included in the application can be found at Appendix 2.
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.
5. These premises were previously licensed to sell alcohol and provide late night refreshment and music until midnight, although it is not clear whether these hours were utilised as the premises were operated as the restaurant Pizza Express, which generally did not provide entertainment or open late.

CONSULTATION

6. 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.

7. The application for a premises licence was received on 9 July 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 6 August 2021.
8. 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	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made
Police	No Representation made
Environmental Health	Representation made

9. Environmental Health believe that the prevention of public nuisance objective may be compromised by the proposed activities and have therefore objected to regulated entertainment being permitted until a second set of doors is implemented at the entrance to prevent noise escaping during entrance/egress from the premises. Their representations can be found at Appendix 3.

Other Persons

10. Nine valid representations have been received from other persons (Appendix 4) relating to the licensing objectives:
 - Prevention of public nuisance
 - Prevention of crime and disorder
11. Nearby residents are concerned that the following may occur and compromise the above licensing objectives:
 - Noise nuisance from music to be provided at the premises
 - Noise nuisance from customers (including when they are smoking outside the premises)
 - Antisocial behaviour by customers
12. The comments received were provided to the applicant who has given a response, which can be found at Appendix 5.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

14. The 28-day consultation period ended on 6 August 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

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

16. **Each application on its own merits**

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.

17. **Crime and Disorder**

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

18. **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.

19. Determining actions that are appropriate for the promotion of the licensing objectives

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.

20. 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.

21. 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.

22. The need for licensed premises

14.19 The need for licensed premises 14.19 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of Revised Guidance issued under section 182 of the Licensing Act 2003.

23. Planning and building control

14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

Implications under the Crime and Disorder Act 1998

24. 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

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

26. There are two 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.

27. 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.

28. 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	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	7.1 – 7.3
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 – 10.6, 10.9 – 10.21

EQUALITY AND DIVERSITY

29. 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).
30. 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

31. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance and/or disorder arising from licensable activities; should the Sub-Committee deem this to be a likely outcome. The decision not to address the concerns raised may therefore subsequently be appealed by those parties who have made representations.
32. With regard to Option 2: The risk of disorder and nuisance being attributed to the premises could be reduced by modifying the proposed activities or attaching additional conditions to the licence to promote the licensing objectives. Any such amendments must be achievable and proportionate.

This decision could be appealed by all parties if they believe the modifications do not adequately promote the licensing objectives.

33. With regard to Option 3: If the Sub-Committee decide to refuse all or part of the application, this decision would likely be appealed by the applicant.

EVALUATION

34. 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.*
35. The main concerns regarding this application raised by the responsible authorities and local residents are:
- Noise nuisance from music to be provided at the premises
 - Noise nuisance from customers (including when they are smoking outside the premises)
 - Antisocial behaviour by customers
36. Several residents have raised that previous permissions were until 22:00hrs, however, the Planning Authority have confirmed that previously permission has been granted for these premises to be used until midnight and the previous licence issued also permitted licensable activities until this time.
37. Representations from residents refer to use of an outdoor area and that this could cause public safety issues due to the lack of space. The applicant has confirmed there is to be no outdoor seating provided at the premises.
38. Comments have also been made that there are too many licensed premises in the area already. However, “need” cannot be considered when determining this application as this is a matter for the Planning Authority and in relation to Licensing, there is currently no Cumulative Impact policy in force on the island.
39. Environmental Health object to entertainment being provided until there is a second set of doors implemented to prevent noise escaping during entrance and egress. The applicant intends to carry out this remedial action but confirms having consulted with various companies that it cannot be done immediately. The sub-committee may therefore wish to consider withholding permission for entertainment until this action has been taken requiring the applicant to vary the licence in due course, or they could permit entertainment but attach a condition stipulating that entertainment is not permitted until such time as the second doors have been implemented.
40. Residents are concerned about the noise from customers smoking outside the premises; the applicant has referred to this in their comments at Appendix 4

and mentions that an area could be created outside to contain customers and they would be advised to not smoke directly in front of residents' properties and monitored by security.

41. The applicant has put forward in their applications a range of measures that will be in place at the premises in order to ensure that they are managed properly and to assist with the prevention of disorder and antisocial behaviour in the area. Such measures including staff training, deployment of door supervisors, CCTV, incident recording etc. will become conditions of the licence as detailed in Appendix 2.
42. The condition proposed by Environmental Health in Appendix 3 requires that a Noise Management Plan is in place and includes details of how customers will be managed when they are smoking and how they will be dispersed from the premises, including that door supervisors will remain at the premises to ensure this happens efficiently.
43. The sub-committee should also note that individuals are responsible for their own behaviour once they leave the immediate vicinity and control of the management/door supervisors of the premises.
44. The sub-committee may believe these measures are sufficient for ensuring that the objectives are promoted and that there is scope for the Police, Environmental Health and Licensing Authority to liaise with the applicant to negotiate suitable changes to the Noise Management Plan should issues arise in the first instance before having to resort to other means of altering the licence.
45. 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.
46. 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

47. It is recommended that the sub-committee grant the licence including the conditions at Appendix 2 along with any additional modifications and/or conditions they deem appropriate and proportionate to ensure the licensing objectives are upheld.

APPENDICES ATTACHED

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

Appendix 2 Updated Operating Schedule and Conditions that will be attached to the licence if it is granted

Appendix 3 Representations received from Environmental Health

Appendix 4 Representations received from other persons

Appendix 5 Response from the applicant to representations made

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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