



Committee report

Committee	LICENSING SUB COMMITTEE
Date	THURSDAY 31 MARCH 2022
Title	TO DETERMINE AN APPLICATION FOR A VARIATION OF THE PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR THE HARBOUR HOUSE, RYDE HARBOUR, ESPLANADE, RYDE, ISLE OF WIGHT, PO33 1JA.
Report Author	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 1 February 2022 for Harbour House, Ryde Harbour, Esplanade, Ryde, Isle of Wight, PO33 1JA. Please see Appendix 2 within this report for full details.

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 1 February 2022. 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 1 March 2022.
7. 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
Environmental Health	Representation made
Police	Agreed Conditions

8. Conditions have been agreed between the Police and applicant. Should the proposed variation be granted then these will form part of the premises licence going forward. Please refer to Appendix 3 within this report for a list of the agreed conditions.
9. Environmental Health have submitted a representation based upon concerns relating to the objective for the Prevention of Public Nuisance. Information within their representation to support the departments concerns include previous complaints received by the department in relation to noise disturbance emanating from the licenced premises. It is documented within the departments submission that investigations into complaints received were carried out and assessments were conducted at the time by investigating officers. These investigations concluded that the applicant had failed to uphold the licensing objective for the Prevention of Public Nuisance and a written warning was formally issued to the applicant, reminding him of his future conduct in relation to the management of the premises, inclusive of but not limited to incidents relating to noise disturbance. Please refer to Appendix 4 for full details of all communications and actions taken during the investigations which support Environmental Health's representation in relation to this variation application.

Other Persons

10. Sixty one (61) valid representations have been received from other persons Sixty (60) of these oppose the proposed variation and one (1) is in support. Please refer to Appendix 5 & 6 respectively of the report for full details. Those representations opposing the variation application relate to one or more of the following four licensing objectives:
 - Prevention of public nuisance
 - Prevention of crime and disorder
 - Protection of children from harm
 - Public safety

11. Concerns have been raised stating that there are already instances where noise disturbance from persons frequenting the premises as well as from regulated entertainment, in the form of live and recorded music takes place. Furthermore, concerns state that should the proposed extension of operating hours, inclusive of the ability to play live and recorded music past the current limitations be granted, then the risk of noise disturbance occurring later on into the night would increase further.
12. Other concerns that have formed part of the representations received, cite that there is litter, rubbish and broken glass left outside of the licenced premises which already cause nuisance and safety issues to members of the public and that these matters will become worse should the proposed extension of licensable activities be permitted.
13. From a disorder perspective various representation also cite the behaviour of persons frequenting the premises to be rowdy, aggressive and of an intimidating nature, due to the levels of intoxication when consuming alcohol whilst on the premises.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

15. The 28-day consultation period ended on 1 March 2022. 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

16. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
17. **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.

18. **Public Safety**

2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

19. **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.

20. **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.

21. **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.

22. **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.

- 10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

Implications under the Crime and Disorder Act 1998

23. 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

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

26. 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.
27. 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	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	All

EQUALITY AND DIVERSITY

28. 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).
29. 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

30. 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 licenced premises; 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.
31. 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.
32. 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

33. 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.
34. The main concerns regarding this application and of which has been raised by the responsible authorities (Environmental Health) and/or other persons are:
- The impact that existing authorisations in the form of live and/or recorded music has on nearby residents and the risk for this to impact further on the objective for the Prevention of Public Nuisance, should the proposed variation (i.e., the extension of hours for live and/or recorded music) be granted.

- The increased risk to public safety and the overall area surrounding the licenced premises in relation to litter, broken glass, and other debris, should an extension of hours be granted as per the variation application.
 - The risk of increased anti-social behaviour and disorder from customers of the licenced premises late at night, should an extension of hours be granted as per the variation application.
35. Many nearby residents have raised concerns within representations relating to the impact that current noise disturbance has from live and/or recorded music being played at the licenced premises. Investigations and assessments carried out by Environmental Health, the lead authority for the objective for the Prevention of Public Nuisance has supported the validity of complaints received and has cumulated in enforcement action being taken, in the form of a written warning being issued to the licenced premises with regards to this matter. It is for the committee to apply appropriate weighting to these matters and to determine after considering all of the available evidence and information available, whether the Licensing Objective for the Prevention of Public Nuisance is likely to be further undermined should the extension to hours and activities as per the variation application be granted.
36. Safety concerns with regards to the increased effects that litter, debris and glass from the licenced premises have on members of the public and overall environment within the vicinity of the licenced premises have been cited as a reason to oppose the extension of operational hours via the variation application. As per section 2.8 of the Section 182 guidance of the Licensing Act 2003, the committee must determine whether any actions carried out by the licence holder or their staff to uphold the objectives for Public Safety would mitigate such concerns. One example of promoting this objective in the circumstances surrounding the concerns raised may be to ensure appropriate and frequent waste disposal, particularly of glass bottles is carried out.
37. A further concern raised within representations have cited the behaviour of customers that frequent the licenced premises in that rowdiness, intimidating actions and foul language towards passers by have resulted in persons feeling threatened and uncomfortable when within the vicinity of the premises. No reports or incidents in relation to these concerns have been submitted by the Police as part of their representation, nevertheless the committee are required to have regard to these matters and apply proportionate weighting to such concerns, based on evidence and information supplied within representations relevant to the variation application that they are responsible for determining.
38. 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.
39. 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

40. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005. It is the Licensing Authorities recommendation that the application be refused based upon representations submitted by Environmental Health which detail complaints received in relation to noise disturbance from regulated entertainment at the licenced premises. Investigations and assessments carried out by Environmental Health supported enforcement action in the way of a written warning, issued to the premises following assessments of the complaints received. It is the view of the Licensing Authority that the extension of operational hours (if granted) is likely to have a significant impact on the objective for the Prevention of Public Nuisance and should therefore be refused.

APPENDICES ATTACHED

Appendix 1 Current Premises Licence for Harbour House

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

Appendix 3 Police Representation – Agreed Conditions

Appendix 4 Environmental Health Representation

Appendix 5 Other Persons Representations – Opposed to Variation

Appendix 6 Other Persons Representations – In support of Variation

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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