



Purpose: For Decision

# Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>22 JULY 2022</b>
Title	<b>TO DETERMINE AN APPLICATION FOR THE VARIATION OF A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR THORNESS BAY HOLIDAY PARK, THORNESS LANE, THORNESS, ISLE OF WIGHT, PO31 8NJ.</b>
Report Author	<b>DIRECTOR OF NEIGHBOURHOODS</b>

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## 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 June 2022, for Thorness Bay Holiday Park, Thorness Lane, Thorness, Isle of Wight, P031 8NJ. 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 1 June 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 29 June 2022.
7. Specifically, the applicant Park Resorts Limited, seeks to extend the hours that regulated entertainment is permitted both indoors and outdoors and to extend

the hours for the sale of alcohol by bringing the start time forward for this activity.

8. The application also requests the approval of a new site plan showing the location of outdoor activities.
9. The chart below shows the current permitted times for licensable activities and the new proposed timings:

<b>Activity</b>	<b>Days of Week</b>	<b>Existing timings</b>	<b>Proposed timings</b>
Films – Indoors	Monday to Sunday	10:30 – 01:00 hrs	No change
Films – Outdoors	Monday to Sunday	14:00 – 23:30 hrs	11:00 - 23:30 hrs
Indoor Sporting Event	Monday to Saturday Sunday	10:30 – 01:00 hrs 10:30 – 00:30 hrs	00:00 hrs 01:30 hrs
Boxing/Wrestling – Indoors	Monday – Sunday	09:00 – 19:00 hrs	10.30 – 01:00 hrs
Outdoors		As above	11:00 – 22:00 hrs
Live Music, Recorded Music, Performance of Dance, Entertainment of a similar description – Indoors	Monday to Saturday Sunday	10:30 – 01:00 hrs 12:00 – 23:30 hrs	10:30 – 01:00 hrs 10:30 – 00:30 hrs
Outdoors	Monday to Sunday	11:30 – 19:00 hrs	11:00 – 22:00 hrs
Late Night Refreshment Indoors	Monday to Saturday Sunday	23:00 – 01:00 hrs 23:00 – 00:30 hrs	No change
Outdoors	As above	As above	
Sale of Alcohol (supplied for consumption both on and off the premises)	Monday to Saturday Sunday	11:00 – 01:00 hrs 12:00 – 00:30 hrs	10:00 – 01:00 hrs 11:00 – 00:30 hrs
Add an additional outside Horsebox bar	Monday to Sunday		11:00 – 23:00

Non Standard Timings	Bank Holiday Sundays (except Easter Sunday)	12:00 – 02:00	
	New Years' Eve	From the start of permitted hours on New Years' Eve until the start of permitted hours on New Years' Day	No change

**Hours premises are open to the public**

Days of Week	Open	Close
Not open to the public		

10. The current premises licence is subject to five conditions that were imposed at the time the licence was originally converted and varied. At least three of these conditions are now outdated and no longer serve any real purpose.

11. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	No Adverse Comments
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

12. The Environmental Health department have reviewed the application and returned a response of no adverse comments.

13. Despite the old and outdated conditions on the current premises licence the police have unfortunately not responded to this consultation.

## Other Persons

14. Two valid representations remain outstanding following the consultation. These can be found at Appendix 3 and relate to the licensing objectives:
  - Prevention of public nuisance
  - Prevention of crime and disorder
15. Miss Jewett states that events that have been run at the site are so loud that it causes her disturbance even through double glazed windows. Miss Jewett is concerned at the prospect of the hours for these activities being extended further into the evening. Miss Jewett's representation can be found at Appendix 3.
16. Concerns have also been raised regarding incidents of trespass and an intruder from the site having previously entered her property.
17. Ms Saxby objects to the application on the basis of noise, nuisance and the adverse effects that she claims the neighbouring properties and businesses experience from an alleged fifteen hours of noise from the site every day. Ms Saxby's representation can be found at Appendix 4.
18. At the end of the consultation period, contact was made via email with both interested parties in order to establish if any compromise could be agreed. Both parties were asked to provide details of a compromise that would be agreeable to them if one existed.
19. Miss Jewett replied stating that she had discussed the matter with members of her household, and they would be agreeable to music being played outside on Friday, Saturday and Sunday evenings but not throughout the week. They would also like the outside entertainment conditioned so that it is permitted between Easter and October each year.
20. Miss Saxby replied stating that in order for the licence variation to be granted she feels that the company should be required to install an effective acoustic barrier to the area designated for outdoor activities, and for maximum noise levels to be set with independent monitoring taking place.
21. This information was fed back to the applicant's solicitor.
22. In the meantime, Miss Saxby was contacted by the Licensing department and asked if she would be agreeable to the licence being granted if the applicants were to accept the limitations proposed by Miss Jewett (detailed in paragraph 19).
23. Ms Saxby replied stating that what had been proposed in her view could form the basis for a compromise, but she still felt that a maximum noise level should be set.
24. Communications with both parties can be found at Appendix 5 & 6.

25. Further information was provided to Ms Saxby explaining why Environmental Health officers have moved away from setting maximum levels, the explanation for this can be found in Appendix F. Ms Saxby was asked to consider this information and advise if she would be agreeable to a compromise on the basis of the limitations detailed in paragraph 19 above, along with the applicant being required to carry out noise monitoring and record actions taken as part of an agreed Noise Management Plan.
26. Ms Saxby replied stating that she believed this could form the basis for a compromise.
27. Again, this information was fed back to the applicants' solicitors at which point I asked for an update on their position. I was advised that at the time discussions were ongoing and the 'sticking point' was the limitation of weekend nights only.
28. At the time of writing the report nothing further has been heard from the applicants' solicitor.

#### 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 29 June 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

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	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

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 proportional 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 nuisance arising from regulated entertainment being held outside potentially every evening; 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 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. The Environmental Health department have no outstanding representations in relation to this matter and are satisfied with the control measures that are in place.
48. On receipt of Ms Saxby's representation which made reference to the EH officer who had responded to the consultation, I went back to the officer and asked him to provide further details on what factors he'd needed to consider in order to submit his comment.

49. The officer has provided a detailed email which can be found at Appendix 7. He states that in light of the objections received, consideration could be given to the imposition of a condition requiring a Noise Management Plan to be agreed between the applicant and the Environmental Health department.
50. In relation to Miss Jewett's concerns regarding issues of trespass and an intruder being found in her house. Police have confirmed there was an incident, but the individual concerned had not come from the holiday park, so this has no bearing on the application or the activities taking place on site.
51. Police have made no further representations in respect of this application.
52. Both objectors have been willing to consider information provided by the Licensing department and to indicate that they are willing to compromise and agree a 'middle ground' in the interest of all parties.
53. At the time of writing this report the applicants' have not offered any concessions.
54. Members are urged to consider the current conditions on the premises licence and to consider whether such conditions are appropriate and proportionate to the size and nature of the premises in relation to the activities that take place on site.
55. 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.
56. 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

57. Vary the licence as per the application with any additional conditions that the Sub-Committee deem reasonable and proportional to promote the licensing objectives.

### 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 Representations received from Miss A Jewett

Appendix 4 Representation from Ms A Saxby

Appendix 5 Communications with Miss Jewett

Appendix 6 Communications with Ms Saxby

Appendix 7 Email from EH officer

### 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](mailto:Andrea.bull@iow.gov.uk)

COLIN ROWLAND  
*Director of Neighbourhoods*