



Committee report

Committee	LICENSING SUB COMMITTEE
Date	MONDAY 3 OCTOBER 2022
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR ACW TRADING LTD.
Report Author	COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS

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 4 August 2022, by Alex Wibberley of ACW Trading Ltd. (Appendix 1).
3. Mr Wibberley and his partner run an online catering business known as Eat Street which specialises in food from around the world. Orders are placed online the day before and customers collect their orders from designated locations at specified times across the island.
4. The applicant is looking to add alcohol to his current food and drink offering.
5. 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.

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 4 August 2022. The application was advertised in the Observer, at the premises and on the Council's website. The consultation period ended on 1 September 2022.

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
Environmental Health	No Representation made
Police	No Representation made

Other Persons

9. One valid representation has been received from other persons (Appendix 2) relating to the licensing objectives of:
- Prevention of public nuisance
 - Prevention of crime and disorder
 - Public safety
10. On 31 August 2022, Cowes Town Council made representations against the grant of this licence on the grounds of the objectives listed above but did not expand on their reasons for objection.
11. On 1 September an officer from the Licensing department emailed the town council in order to clarify that the sale of alcohol would only be permitted via online orders and no physical sales or consumption would take place at the residential premises. The town council were asked to clarify how, in their view, the granting of a licence would impact on the licensing objectives.
12. Cowes Town Council responded stating that although the sales are online, customers will still be able to collect food and alcohol from outside the residential address up until 23:00 hours each day, and it is their view that this could cause nuisance to neighbours and could result in crime and disorder and a risk to public safety if those collecting orders have already consumed alcohol.
13. To clarify the requested hours for the sale of alcohol in the application are from 12:00 hours until 22:00 each day and not 23:00 hours.
14. Further information was provided to Cowes Town Council on 2 September regarding the applicant's operating model. They were also advised that the police and the Environmental Health department who considered applications specifically from a nuisance and crime and disorder perspective had not submitted any concerns in relation to the application. This correspondence can be found at Appendix 3.

15. In response to the representation made by Cowes Town Council, the applicant contacted the Licensing department to advise that if it satisfied members they would reduce their requested sale of alcohol times to 20:00 hours.
16. The applicant pointed out that they had originally applied for the same operating hours as the Co-op which is located directly opposite the applicant's home address and sells a range of alcohol at a cheaper price than they would be offering.
17. This offer of revision was emailed to Cowes Town Council for members to consider but the response received was that the majority decision was for the objection to remain. (Appendix 4).
18. Again, this information was fed back to the applicant and his partner who confessed to being somewhat confused as to the issue causing concern and they asked if they were able to make contact with members to explain further their business model. They were advised to provide an email which in turn could be sent to the town council for circulation to its members.
19. This email was produced and sent to the town council. The response of the town council was that councillors are concerned at the location of the proposed trading, rather than the hours of trading and therefore their representation remains. This communication can be found at Appendix 5.

FINANCIAL/BUDGET IMPLICATIONS

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

LEGAL IMPLICATIONS

21. The 28-day consultation period ended on 1 September 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

22. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
23. 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.
- 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.
- 2.15 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.

- 2.21 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.
- 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.
- 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.

- 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

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 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”.

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	2.3 – 2.6
Paragraph 3	Licensable Activities	3.1
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	10.1 – 10.4, 10.7, 10.9, 10.12, 10.26

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 nuisance and disorder arising from customers 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.

32. 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.

33. 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

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 concern raised by Cowes Town Council is that residents may be disturbed by customers collecting orders from the Cowes location which is the applicants home address of Mill Hill Road. However, no representations have been made by other persons living in the vicinity.

36. The responsible authorities, particularly the Environmental Health department and the police who view applications specifically from a nuisance and crime and disorder perspective have considered the application and not made representations

37. The operating model of the business is such that it is not open to abuse. Safeguards are in place in terms of ordering which requires an age verification process to be satisfied, a minimum order value and orders to be placed in advance the day before.
38. Alcohol is proposed to be an ancillary part of the business and cannot be purchased without food. Anyone looking to purchase large quantities of alcohol, can (as pointed out by the applicant) do so more easily and more cheaply at the Co-op located across the road.
39. In terms of collection, slots are allocated at 15 minutes apart in order to avoid groups or individuals meeting and being tempted to congregate.
40. 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.
41. 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

42. Option 1: Grant the licence as per the application.

APPENDICES ATTACHED

- Appendix 1 Application for a premises licence under section 17 of the Licensing Act 2003
- Appendix 2 Representations received from Cowes Town Council
- Appendix 3 Communications between Licensing department and Cowes Town Council
- Appendix 4 Proposed amendment to the application and response of Cowes Town Council
- Appendix 5 Email from applicant to Cowes Town Council and response

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2019 – 2024.

<https://www.iow.gov.uk/azservices/documents/1226-Approved-Licensing-policy-2019-24.pdf>

Contact Point: Andrea Bull, Senior Licensing Officer, ☎ 01983 823159
e-mail Andrea.bull@iow.gov.uk

