



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	21 SEPTEMBER 2020
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR HARBOUR HOUSE, ESPLANADE, RYDE, ISLE OF WIGHT, PO33 1JA
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 31 July 2020 for Harbour House, Esplanade, Ryde (Appendix 1).
3. 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.
4. A licence already exists for these premises, which can be found at 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 premises licence was received on 31 July 2020. 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 28 August 2020.

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
Police	Representation made
Environmental Health	Representation made

8. Police have objected to this application and have not proposed any modifications or conditions that would address their concerns. Their representations outline that the nature of the business appears to be changing from a restaurant/bistro to more of an alcohol led bar. This has caused antisocial behaviour and nuisance over the past few months, which resulted in a warning being given that a Community Protection Notice could be issued if matters do not improve. Police therefore believe that to grant a new licence which extends the hours for licensable activities would undermine the licensing objectives. Their full representation can be found at Appendix 3 of this report.
9. Police have subsequently provided additional information regarding complaints received and what officers have witnessed. This can be found at Appendix 4.
10. Environmental Health have raised concerns regarding noise from people and music in the outdoor areas of the premises as well as off-sales of alcohol leading to people congregating and causing nuisance and/or antisocial behaviour in the vicinity of the premises. They therefore suggest that activities are limited to inside only with no off-sales permitted after 23:00hrs and that additional measures are required to manage the noise and the dispersal of customers. Their full representations can be found at Appendix 5.

Other Persons

11. Eight valid representations have been received from other persons (Appendix 6) relating to the licensing objectives:
- Prevention of public nuisance
 - Prevention of crime and disorder
 - Public safety

12. Local residents have raised concerns regarding how the premises currently operate and the potential impact of increased hours of licensable activities. They state that there is already noise from customers and music, disorderly and antisocial behaviour by customers, litter in the area as well as a lack of control by staff and management in ensuring customers maintain social distancing during the current Covid-19 pandemic.

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 28 August 2020. 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**

- 1.17 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 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 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.

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.

Statement of Licensing Policy

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, 8.2, 8.4 – 8.7, 8.11 – 8.15
Paragraph 9	Enforcement	N/A
Paragraph 10	Operating Schedules	10.1 – 10.21

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: 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

30. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of compromising the licensing objectives, 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 modifying the proposed operating schedule and/or attaching conditions to the licence to promote the licensing objectives. Conditions must be appropriate and proportionate. Any such decision may be appealed by all parties if they believe the modifications 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. These premises currently operate under a licence that authorises Live Music until 21:00hrs as well as Recorded Music and the Sale of Alcohol until 23:00hrs. This application for a new licence proposes the same activities with extensions for Recorded Music, Sale of Alcohol and the inclusion of Late Night Refreshment until 1am Thursday to Saturday along with an extended operating period for New Year's Eve/Day.

35. The steps proposed by the applicant to promote the licensing objectives in this application (Section M of the application form) mirror those conditions of the current licence. These include the use of CCTV, employment of SIA door supervisor staff in accordance with a documented assessment regarding their need, staff training and records kept of incidents and alcohol sales refusals.
36. Additional steps proposed by the applicant are that signage will be displayed requesting customers leave quietly, which will be reinforced by staff through verbal communication and the implementation of a designated driver scheme including drink-driving awareness posters being displayed.
37. Environmental Health and Police have outlined in their representations that they do not believe the measures outlined are sufficient to uphold the licensing objectives in proportion to the proposed activities.
38. Environmental Health suggested in their representations that no off-sales are permitted after 23:00hrs; the applicant has stated in their proposed operating schedule that off-sales cease at 23:00hrs. This would therefore be a condition of the licence if it is granted.
39. The main concerns regarding this application raised by the responsible authorities and local residents are:
 - a. Antisocial behaviour and noise from customers of the premises
 - b. Noise from music
 - c. Litter
40. It should be noted that comments in relation to whether or not a licensed venue is “needed” in an area are not relevant under the Licensing Act 2003 and therefore cannot be taken into account when determining this application.
41. Complaints have been received in recent months regarding how the premises conduct activities currently and enforcement action has been taken by way of a warning issued. The formal process of reviewing the licence has not been instigated during this time; however, it should be noted that authorities will seek to resolve problems using other enforcement tools prior to taking such action.
42. As there is a licence already in existence and no review application has been formally considered in respect of this, there may not be evidence to support refusing to grant the licence entirely.
43. If there are already concerns from residents as well as responsible authorities regarding how the premises are currently operating until 11pm, the sub-committee may therefore be satisfied that granting the licence with the proposed ‘extended’ hours would undermine the licensing objectives. In this instance, they may wish to consider reducing the proposed hours for activities.
44. Environmental Health have suggested that live/recorded music are inside only – the applicant has not indicated their views regarding this proposal.
45. It should be noted that the Live Music Act 2012 outlines various exemptions for providing entertainment and therefore Live/Recorded Music could be

provided inside and outside between 08:00 and 23:00hrs without needing to be specified on the licence. If issues were to arise from such entertainment, a review of the licence could be sought in order to regulate these activities.

46. Environmental Health believe additional measures are required to manage the noise and the dispersal of customers.
47. Local residents have also raised concerns regarding litter.
48. In respect of these matters, the sub-committee will need to consider what a proportionate response to such concerns is; refusing to grant the licence on these grounds would not be appropriate if there are conditions that could be attached to a licence requiring the licence holder to implement measures that should address them.
49. Representations have also referred to the Covid-19 pandemic and the social distancing guidelines from Government that have been in place this year. Responsibilities of business operators in this regard fall under the Health and Safety at Work legislation and in general would not come under the Public Safety objective. Please refer to section 2.7 of the guidance (paragraph 18 of this report) which clarifies that cleanliness, hygiene and health in general are outside the scope of this objective.
50. Information regarding how the business operators have managed the premises during this time however, will be relevant to the sub-committee's decision as this will aid their assessment of the likely outcomes of granting the licence application.
51. 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.
52. 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

53. It is recommended that the licence is granted with modifications to the proposed operating schedule by reducing the hours for activities and attaching additional conditions to address the concerns that have been raised by responsible authorities and other persons in their representations.

APPENDICES ATTACHED

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

Appendix 2 Current Premises Licence for Harbour House

Appendix 3 Representations received from Police

Appendix 4 Additional representations received from Police

Appendix 5 Representations received from Environmental Health

Appendix 6 Representations received from other persons

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: Claire Thomas, Licensing Officer

☎ 01983 823159 E-mail claire.thomas@iow.gov.uk

COLIN ROWLAND
Director of Neighbourhoods