

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION: SIR WALTER TYRRELL, CANTERTON, BROOK

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on 6 September 2005**

1. Members of the Licensing Sub-Committee

Cllr G C Beck – Chairman
Cllr M H G Fidler
Cllr G M Walmsley

2. Parties and their Representatives attending the Hearing

Ms J Palmer – applicant's representative
Mr J Hughes – owner of premises
Mrs Battrick – manager/licensee

Objectors:

Mr R G Blackham
Mr P N Reynolds
Mrs J J Robinson
Mr G and Mrs L Gutsell
Mrs M Hyde

3. Other Persons attending the Hearing

None

4. Parties not attending the Hearing

Mr and Mrs A Lowth

5. Officers attending to assist the Sub-Committee

Ms J Mutlow – legal advisor
Mrs L Battersby – clerk
Mrs M Dunsmore - clerk

6. Decision of the Sub-Committee

The application is granted on the following terms and conditions.

Licensable activities and times permitted:

- B. Films:
 - Monday 08.00 to 00.00
 - Tuesday 08.00 to 00.00
 - Wednesday 08.00 to 00.00
 - Thursday 08.00 to 00.00
 - Friday 08.00 to 00.00
 - Saturday 08.00 to 00.00
 - Sunday 08.00 to 00.00

- E. Live music:
 - Monday 12.00 to 23.00
 - Tuesday 12.00 to 23.00
 - Wednesday 12.00 to 23.00
 - Thursday 12.00 to 23.00
 - Friday 12.00 to 00.00
 - Saturday 12.00 to 00.00
 - Sunday 12.00 to 23.00

- F. Recorded music:
 - Monday 08.00 to 23.00
 - Tuesday 08.00 to 23.00
 - Wednesday 08.00 to 23.00
 - Thursday 08.00 to 23.00
 - Friday 08.00 to 00.00
 - Saturday 08.00 to 00.00
 - Sunday 08.00 to 23.00

- G. Performance of dance:
 - Monday 12.00 to 00.00
 - Tuesday 12.00 to 00.00
 - Wednesday 12.00 to 00.00
 - Thursday 12.00 to 00.00
 - Friday 12.00 to 00.00
 - Saturday 12.00 to 00.00
 - Sunday 12.00 to 00.00

- I. Provision of facilities for making music:
 - Monday 12.00 to 00.00
 - Tuesday 12.00 to 00.00
 - Wednesday 12.00 to 00.00
 - Thursday 12.00 to 00.00
 - Friday 12.00 to 00.00
 - Saturday 12.00 to 00.00
 - Sunday 12.00 to 00.00

- J. Provision of facilities for dancing:
 - Monday 12.00 to 00.00
 - Tuesday 12.00 to 00.00
 - Wednesday 12.00 to 00.00
 - Thursday 12.00 to 00.00
 - Friday 12.00 to 00.00
 - Saturday 12.00 to 00.00

Sunday 12.00 to 00.00

- L. Late night refreshment
 - Monday 23.00 to 00.00
 - Tuesday 23.00 to 00.00
 - Wednesday 23.00 to 00.00
 - Thursday 23.00 to 00.00
 - Friday 23.00 to 00.00
 - Saturday 23.00 to 00.00
 - Sunday 23.00 to 00.00

- M. Supply of alcohol:
 - Monday 08.00 to 00.00
 - Tuesday 08.00 to 00.00
 - Wednesday 08.00 to 00.00
 - Thursday 08.00 to 00.00
 - Friday 08.00 to 00.00
 - Saturday 08.00 to 00.00
 - Sunday 08.00 to 00.00

Non-standard hours:

Current permitted hours for New Year's Eve/New Year's Day continue to apply.

Hours premises to be open to the public

Monday 07.00 to 00.30
Tuesday 07.00 to 00.30
Wednesday 07.00 to 00.30
Thursday 07.00 to 00.30
Friday 07.00 to 00.30
Saturday 07.00 to 00.30
Sunday 07.00 to 00.30

Mandatory conditions:

As provided in the Licensing Act 2003

Other conditions:

1. The licence shall be subject to the conditions detailed in the operating schedule at annex D,E,G, and H.
2. The number of events involving live and recorded music which are held outdoors shall be limited to a total of 4 events per calendar year and shall only be permitted between the hours of 12.00 and 23.00 hours.
3. Any indoor music events (live or recorded) shall only be permitted on Fridays and Saturdays between the hours of 12.00 and 00.00 hours.
4. After 23.00 hours noise from live music, recorded music and karaoke emanating from the premises shall be inaudible at the boundaries marked with a red line on the plan to be attached to the licence.
5. Prior to 23.00 hours noise from live music, recorded music and karaoke emanating from the premises shall be barely audible* at the boundaries marked with a red line on the plan to be attached to the licence.

* For the purposes of conditions 5 above, 'barely audible' means that the noise level is so low that distinct tunes, lyrics, musical instruments and any bass beat cannot be recognised.

7. Reasons for the Decision

The Sub-Committee carefully considered the evidence, both written and oral, supplied by the parties. The applicant had modified his application since its initial submission which had the effect of reducing, in part, the hours of the proposed licensable activities.

The Sub-Committee noted that Ms Crosthwaite-Eyre and Mr and Mrs Nash had withdrawn their objections.

Following submissions from the parties, the Sub-Committee initially determined that the representations by Mr Blackham, Mr and Mrs Lowth, Mr Reynolds and Mrs Robinson could not be considered as "relevant" within the meaning of section 13(3) of the Licensing Act as those persons did not live in the vicinity of the Sir Walter Tyrrell. In reaching this conclusion the Sub-Committee in particular had regard to the DCMS guidance under paragraph 5.33, and did not consider that those persons were likely to be directly affected by disorder and disturbance occurring on the premises or immediately outside the premises.

In these circumstances the Sub-Committee decided that only the representations of Mr and Mrs Hyde and Mr and Mrs Gutsell would be considered.

In respect of the finish time for the licensable activities the Sub-Committee had particular regard to representations concerning public nuisance. However, they noted that no objections to the application (in its amended form) for increased opening hours had been made by Environmental Health Department. The concerns raised by objectors as to the likelihood of potential nuisance were mostly speculative. In the absence of any clear evidence that the increase in hours will lead to nuisance, the Sub-Committee did not consider that they could restrict opening hours at this stage on the basis of speculation.

Additionally the Sub-Committee took the view that as the premises already had the benefit of special licences under sections 68 and 77 any increase in traffic leaving the premises (and potentially causing nuisance) after 23.30 hours would not significantly increase if the licence were granted as applied for.

In light of the above, the Sub-Committee considered that it would be consistent with the licensing objectives if the application were granted. Having considered the conditions suggested by the Environmental Protection Department and consented to by the applicant, the Sub-Committee decided that conditions could be imposed that would ameliorate concerns as to nuisance.

However, should a statutory nuisance be established in the future, action may be taken under the appropriate statutory regime including the Environmental Protection Act.

There were limited relevant representations made in respect of that part of the application to remove the embedded restrictions as set out in the application and therefore this part of the application was granted.

Date 6 September 2005

Licensing Sub-Committee Chairman: Cllr G C Beck

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Decision noted to interested parties on 8 September 2005