

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION: Fusion Inn, Queens Street, Lymington

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on Friday 16 December 2005 at 2.00pm**

1. Members of the Licensing Sub-Committee

Councillor G C Beck
Councillor A R Tinsley
Councillor M H G Fidler

2. Parties and their Representatives attending the Hearing

Applicant: - Mr Poon Klungarvuth – represented by Isi Tuivai

Objectors: -
Sgt P Howlett
Ms E Travis
Ms D Stenner
Mr R Penney
Mr & Mrs Lee
Air Cmdr J L Mitchell

3. Other Persons attending the Hearing

Ms V Fletcher – Environmental Health

4. Parties not attending the Hearing

Mr J Tregear
Mr & Mrs Coleman
Grp Cpt Walford
Mr I Large
Mrs R Cornwall
Mr E Ashley – represented by Mr Lee
Ms B Davies– represented by Mr Lee
Ms M Knott
Mrs S Burgess
W P Andreae-Jones
Mrs Webb
Mr M Fenner

5. Officers attending to assist the Sub-Committee

Miss J Mutlow – Legal Advisor
Mr A Rogers - Clerk

6. Decision of the Sub-Committee

The application is granted on the following terms and conditions.

Licensable activities and times permitted:

- E. Live music*:
Monday 20.00 to 23.00
Tuesday 20.00 to 23.00
Wednesday 20.00 to 23.00
Thursday 20.00 to 23.00
Friday 20.00 to 23.00
Saturday 20.00 to 23.00
Sunday 20.00 to 23.00

*NOTE: The number of events involving live music permitted will be restricted to 2 per week.

- M. Supply of alcohol:
Monday 10.00 to 00.00
Tuesday 10.00 to 00.00
Wednesday 10.00 to 00.00
Thursday 10.00 to 00.00
Friday 10.00 to 01.00
Saturday 10.00 to 01.00
Sunday 10.00 to 00.00

Hours premises to be open to the public

Monday 10.00 to 00.30
Tuesday 10.00 to 00.30
Wednesday 10.00 to 00.30
Thursday 10.00 to 00.30
Friday 10.00 to 01.30
Saturday 10.00 to 01.30
Sunday 10.00 to 00.30

Non-Standard Opening Hours/Non-Standard Timings

The licensable activity detailed at Section M above and premises opening will be permitted between 00.00 (or 01.00) hours and 10.00 hours (24 hour opening) on a maximum of 10 occasions per calendar year, provided that such events:

1. Are notified to the Police and the Licensing Authority at least 7 days in advance of the date of each event; and
2. Are not vetoed by the Police.

Mandatory conditions:

As provided in the Licensing Act 2003

Other conditions:

1. Notices shall be displayed in prominent positions both within and outside the premises requiring patrons to leave quietly and respect local residents.
2. No patrons carrying bottles, either sealed or open, will be permitted to enter the premises at any time that the premises are open.
3. The licensable activity permitted at Section E. above shall not be permitted to take place in the garden or any other external area of the premises.
4. The licensable activity permitted at Section E. above shall be permitted on no more than 2 occasions per week.
5. No regulated entertainment whatsoever shall be permitted to take place in the garden or any other external area of the premises.
6. The designated premises supervisor or his nominated representative shall receive and respond to complaints at all times that the premises are open to the public.
7. No patrons will be permitted to enter or remain in the garden or other external areas of the premises between 23.00 and 09.00 hours.
8. Bottles, waste and other refuse shall not be placed or disposed of into external storage receptacles between 22.00 and 07.00 hours.
9. No waste collection contractors will be permitted to collect waste from the premises between 19.00 and 07.00 hours.
10. No deliveries of consumables to the premises shall take place between 19.00 and 07.00 hours.
11. All windows and doors will be kept closed between 23.00 and 08.00 hours each day, except for access and egress.
12. All music noise emanating from the premises, whilst audible shall be so low that distinct tunes, lyrics, musical instruments and any base beat shall not be recognised at the boundary of all noise sensitive premises*.
13. No patrons shall be permitted to enter or re-enter the premises after 23.00 hours.

*For the purposes of condition 12 above, the definition of "noise sensitive premises" shall include premises used for residential purposes, hospitals or similar institutions, educational establishments (when in use), places of worship (during recognised times and days of worship) and any other premises used for any other purpose likely to be affected by the music noise.

7. Reasons For The Decision

The Sub-Committee carefully considered the evidence, both written and oral, supplied by the parties, and in particular the substantially amended application that was submitted at the hearing.

In respect of licensable activities the Sub-Committee had particular regard to representations concerning the potential for noise nuisance emanating from the premises but took the view that permitting live music for 3 hours and limited to 2 occasions per week, with appropriate conditions would satisfy the licensing objective relating to such public nuisance.

Problems arising from 'background music' which was exempt under the Act could not be dealt with by this Sub-Committee but it was suggested that the alleged breaches of planning control, which were complained of, should be raised with the Council's Planning Enforcement Team.

The Sub-Committee considered that permitting a longer period for certain licensable activities on a limited basis with appropriate conditions would be appropriate as the concerns raised could be countered by conditions attached to the licence. The conditions imposed would assist in promoting the licensing objective relating to the prevention of public nuisance.

The Sub-Committee carefully considered the proximity of the premises in relation to a large number of residential properties. However, it took the view that with the protection of licence conditions, the powers of review available under the Licensing Act 2003, other statutory regimes, such as the Environmental Protection Act, that could be invoked should a statutory nuisance occur and also the fact that the premises were apparently very well run that the licence should be granted in the terms laid out above.

The Sub-Committee were impressed by the efforts made to reach agreement between the objectors and the applicant.

Date: 19 December 2005

Licensing Sub-Committee Chairman: Cllr G C Beck

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Decision notified to interested parties on 19 December 2005