

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION: Finn M'Couls, Market Place, Ringwood

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on Tuesday, 29 September 2009 at 10.00am**

1. Members of the Licensing Sub-Committee

Councillor Dow
Councillor Mrs Smith
Councillor Woods - Chairman

2. Parties and their Representatives attending the Hearing

Richard Brady and Sandra Arend – License Holders
Nigel Aaron - Punch Taverns - Applicant
Julia Palmer - TLT Solicitors - Solicitors for the Applicant

Objectors:

Mr I Pepperell – Philip Day representing
Ms B Dean – Philip Day representing
Ms A Saqui
Ringwood Town Council – Cllr Woodfield and Steele
Mrs T Jenness
Mrs H G Lister – Philip Day representing
Mr Kelly

3. Other Persons attending the Hearing

Cllr J Heron – local ward member
Mr Davis – Observer

4. Parties not attending the Hearing

Objectors:

Mr & Mrs Tomlinson
Ms G O'Reilly – Cllr Woodfield
Mr D Hordle
Mrs B P Judge
Ms I Walker

Ms V Nielseu
Mr Watson & Ms Matthews – Philip Day representing
Ms J Cross
Mr & Mrs P Wright
Mr W G Summer
Mr K Evans
Ms B Morris
Mrs I Richman-Ives

5. Officers attending to assist the Sub-Committee

Edward Williams – Legal Advisor
Melanie Stephens- Clerk

6. Decision of the Sub-Committee

The following variations to the premises licence are granted on the following terms and conditions.

Licensable activities and times permitted:

E: Live Music (indoors only) for the period 1 May to 30 September

Performance of live music is to be permitted **indoors only**

The following restrictions/ entitlements are to be removed from the licence:

- 'Live music (amplified or acoustic) played inside will be restricted to no more than 2 live performers and a maximum of 2 occasions per month.'
- 'Live music played outdoors in the rear patio area will finish at 21.00 hours and will be restricted to no more than 1 amplified and 3 unamplified events per annum. Details of such outdoor events to be recorded in a diary for future reference'.

The following restrictions/ entitlements are to be added to the licence:

- 'For the period 1 May to 30 September (inclusive), live music (amplified or acoustic) will be restricted to no more than 2 live performers and a maximum of 2 occasions per month.'
- 'For the period 1 October to 30 April (inclusive), live music (amplified or acoustic) can occur from 10.00 hours to 23.00 hours, there being no limit on the number of performers. Such live music can take place on no more than 5 occasions per month'.
- 'Details of all of these occasions are to be recorded in a diary for future reference'.

F: Recorded Music

The following restrictions/ entitlements are to be removed from the licence:

- 'Recorded music played outdoors is restricted to a maximum of 8 occasions per annum only, and must finish by 21.00 hours. Details of these occasions are to be recorded in a diary for future reference'.

The following restrictions/ entitlements are to be added to the licence:

- 'Recorded music played outdoors is restricted to a maximum of 12 occasions per annum only, and must finish by 21.00 hours. Details of these occasions are to be recorded in a diary for future reference'.

Layout of premises

- The area covered by the premises licence is to be varied in accordance with plan 202706-001 dated July 2009.

Mandatory conditions:

As provided in the Licensing Act 2003

Other conditions:

The existing conditions are to be varied as follows: -

- 1) The condition 'The patio shall not be used by customers after 23.00 hrs' is to be removed.
- 2) The following new conditions are to be added:
 - 2.1 The external patio area may only be used for the permitted licensable activities during the following periods:
 - a. Sunday to Thursday (inclusive) - 10.00 hours to 23.00 hours
 - b. Friday and Saturday – 10.00 hours to 00.00 hours
 - c. Christmas Eve, New Year's Eve and St Patrick's Day - 10.00 hours to 00.00 hours
 - 2.2 Between the hours of 23.00 and 00.00 when the patio is open, it shall be attended at all times by a member of staff. The duties of that person shall include ensuring that the patio area is used in a responsible fashion and that noise is kept to a minimum, this shall include taking all reasonable steps to reduce shouting, screaming and other loud vocalisations that may cause nuisance to neighbours.
 - 2.3 No food or drink is permitted in the patio area after 23.00 hours.
 - 2.4 Notices shall be displayed in a prominent position within the premises requiring patrons to leave quietly and respect local residents

7. Reasons for the Decision

The Sub-Committee carefully considered the application along with the evidence, both written and oral, supplied by the Applicant and the Objectors.

The Sub-Committee recognised the understandable concerns of the Objectors regarding the potential noise nuisance that the proposed variations might create.

However, in arriving at its decision, the Sub-Committee considered the following factors:

- the Applicant had significantly reduced the scope and extent of the proposed variations to the licence from those set out in the original application. In particular, the Applicant had withdrawn its request to extend the scope of live music outdoors, which had been the cause of many of the written objections. (It was noted that the Applicant had, in fact, agreed to give away its entitlement under the existing licence to have live music outdoors).
- in light of those concessions, the Objectors had withdrawn most of their objections apart from in respect of the application to extend the scope of live music indoors. In that regard, the Sub-Committee noted that the proposed variations only affected the winter months and were restricted to only 5 occasions per month (increased from 2 per month).
- the Sub-Committee acknowledged that the proposed increase in the number of performers of live music had the potential to create a noise nuisance, but considered that regulation of licensable activities should be based more on evidence rather than concerns about what might happen in the future.
- it appeared that there had only been one complaint regarding noise nuisance over the past few years and that was dealt with promptly by the premises' management.
- the Council's Environmental Health Officer was satisfied with the proposed variations (even before the Applicant had, on the day of the hearing, further reduced the scope of the variations); in particular, he was satisfied that those variations would not create a noise nuisance taking account of the existing conditions and the proposed new conditions. He did not see the need for any further conditions or restrictions in respect of live music.
- the Sub-Committee was of the view that the premises were very well run, as evidenced by the fact that the police had not been called out to the premises in the last few years.
- the Sub-Committee was of the view that the existing conditions (and the proposed new conditions) were adequate to prevent noise nuisance. The Sub-Committee was also of the view that it was a matter for the premises licence holder to decide how to ensure that conditions were not breached.
- the Sub-Committee also noted the absence of objections from any of the Responsible Authorities.

- the Sub-Committee was of the view that it had not been demonstrated that any of the other licensing objectives would be prejudiced by the granting of the variations.

Accordingly, the Sub-Committee was prepared to grant the variation in the terms set out at section 6 above.

The Sub-Committee reminds all Objectors of their entitlement to seek a Review of the Licence in the event that the licensing objectives are prejudiced at some future point or if the conditions are breached. Alternatively, the Council's Environmental Health Department could be contacted with any complaints regarding noise nuisance.

Date: 30 September 2009

Licensing Sub-Committee Chairman: Cllr P R Woods

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Decision notified to interested parties on 2 October 2009