

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION: Anglo Asian Food & Wines, Station Road, New Milton

Decision of the Licensing Sub-Committee hearing held at Appletree Court, Lyndhurst on Wednesday, 21 April 2010 at 10.00am

1. Members of the Licensing Sub-Committee

Councillor W H Dow
Councillor J Penwarden
Councillor A E J Shotter - Chairman

2. Parties and their Representatives attending the Hearing

Mr Day, Horsey Lightly Fynn – Solicitors for the Applicant
Mr Kugalijan – Witness in support of the Applicant

Objectors:
Sgt Adams and Georgina Fice - Hampshire Constabulary
Mr Crorie - Barrister representing Hampshire Constabulary
Mr Worrall -Trading Standards

3. Other Persons attending the Hearing

None.

4. Parties not attending the Hearing

Tory Putnam – Observer

5. Officers attending to assist the Sub-Committee

Edward Williams – Legal Advisor
Melanie Stephens- Clerk

6. Decision of the Sub-Committee

The application is granted on the following terms and conditions.

Licensable activities and times permitted:

M: Supply of Alcohol

Monday 07.00 to 23.00

Tuesday 07.00 to 23.00

Wednesday 07.00 to 23.00

Thursday 07.00 to 23.00

Friday 07.00 to 23.00

Saturday 07.00 to 23.00

Sunday 07.00 to 23.00

Hours premises to be open to the public

Monday 07.00 to 23.00

Tuesday 07.00 to 23.00

Wednesday 07.00 to 23.00

Thursday 07.00 to 23.00

Friday 07.00 to 23.00

Saturday 07.00 to 23.00

Sunday 07.00 to 23.00

Mandatory conditions:

As provided in the Licensing Act 2003

Other conditions:

1. The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale of alcohol. The policy must require individuals who appear to be under 25 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark. Further the only acceptable forms of identification shall be a passport, driving licence, PASS approved card or such other means of identification as may be approved by the Police and/or Trading Standards from time to time.
2. CCTV shall be installed and maintained at the premises to the reasonable satisfaction of the Licensing Authority and the Police. The system shall include surveillance of both the internal and external areas of the premises including all entrances and exits. Recordings from the system shall be to a standard acceptable as evidence in a court of law and shall be securely retained for at least 31 days. Copies of the recordings in a playable format shall be provided to the Police and/or the Licensing Authority as soon as reasonably possible, on request. Signs shall be displayed within the premises advising customers of the presence of CCTV.
3. The CCTV system shall be in operation whenever the premises are open and selling alcohol. The senior member of staff present shall be capable of operating the CCTV system including in particular providing copies of recordings when requested to do so. If for any reason, the CCTV becomes inoperative, the sale of alcohol must cease until such time as the system is again functioning or a back-up system is operating.
4. No alcohol shall be sold unless a Personal Licence holder is on duty at the premises.
5. No alcohol product shall be sold, offered for sale or advertised as a loss leader, in other words at less than its cost price or offered either free of charge or at a reduced price if bought at the same time as a product that does not contain alcohol.

6. No sign or advertisement shall be displayed either inside or outside the premises that compares the price of any alcoholic product with either a previous or future sale price and/or the price at which the same product may be purchased at other premises.
7. All alcohol shall be displayed in clear view of the till point.
8. The Designated Premises Supervisor shall be a person whose principal occupation is to work at the premises and who is on average (assessed on a monthly basis) physically present at the premises for at least 35 hours per week. If the Designated Premises Supervisor is for any reason other than normal holiday entitlements (that is 25 days per year) and absences caused by short term sick leave (that is leave of less than 7 consecutive days) unable to satisfy this condition, the sale of alcohol must cease until such time as another Personal Licence holder who is able to comply with this condition is appointed as the Designated Premises Supervisor.
9. No waste shall be placed outside the premises after 23.00 hours but nothing herein shall prevent waste from being placed outside before that time and left for collection the following morning.
10. Staff shall be trained in the licensing objectives, the conditions attaching to this licence, the age verification policy and other restricted or prohibited sales, such initial training shall be to at least NCPLH standard or equivalent. A record of such training shall be maintained on the premises and made available for inspection by the Licensing Authority and authorised persons upon reasonable request. Refresher training shall be provided at least every 3 months and a record maintained of the same; the refresher training shall be to the standard approved by Trading Standards from time to time (currently the HCC Trading Standards Age Restricted sales Retailer Pack).
11. Any member of staff who has not been trained (or received refresher training as detailed in condition 10 above) shall not be permitted to make any sale of alcohol unless the sale has been specifically and individually authorised by a Personal Licence holder or a Designated Premises Supervisor.
12. Posters and signs shall be prominently displayed in the premises to publicise the age verification policy that is in place. These shall include appropriate signage on the entrances to the premises.
13. A refusals register shall be maintained on the premises to record all instances when a sale of alcohol is refused, for whatever reason. The register shall be checked by the DPS or his nominated deputy at least once a week and a note to that effect shall be recorded in the register. The register shall be made available for inspection by the Licensing Authority and other authorised persons upon request.

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 objectors.

Whilst the Sub-Committee had concerns that granting a premises licence would effectively be undermining the revocation of the existing licence, it was mindful that, under the Licensing Act 2003, the application had to be considered on its own merits and that it could only refuse to grant a licence if a refusal was necessary for the promotion of the licensing objectives.

The Sub-Committee therefore considered that the key issues were:

- whether the grant of a licence would give rise to harm to children (in the form of sales of alcohol to minors), crime and disorder in the premises itself or crime and disorder in the vicinity of the premises; and
- whether the nominated Designated Premises Supervisor (“DPS”) would be capable of (a) supervising the running of the premises on a day-to-day basis and (b) promoting the licensing objectives (this was a significant issue in respect of the previous DPS).

On the first point, the Sub-Committee heard submissions to the effect that the applicants, supported by Mr Kugaljan, had effectively been running the business since February 2010 (although the applicants had not, at the time of the hearing, completed a purchase of the business – Mr Day represented that the sale would be a genuine ‘arms length transaction’ and not a mechanism to overcome the revocation). Of particular significance, the Sub-Committee heard no evidence that there had been any crime and disorder, or any prejudice to the other licensing objectives, since February 2010. Indeed, the last recorded incident occurred in December 2009 and premises had passed a recent test purchase by Trading Standards. Therefore, the indications were that the new management had eradicated the previous problems. Furthermore, there was no evidence linking the sale of alcohol at the premises to crime and disorder in the locality. The Sub-Committee also heard no evidence to cause it to think that the granting of the licence would prejudice any of the licensing objectives in the future, taking account of the change of management and control of the business.

On the second point, Mr Day provided a solicitor’s undertaking that, if the licence was granted, an application to replace Mr Navanathan as DPS with Mr Kugaljan would follow immediately. The Sub-Committee accepted that it was not appropriate within the confines of this application to consider whether either person was ‘fit and proper’ to be the DPS. However, the Sub-Committee had concerns that, because both Mr Navanathan and Mr Kugaljan lived in Harrow, they may not be able to fulfil their obligations as DPS under the Act and the Guidance. However, the Sub-Committee was reassured that the licensing objectives would not be prejudiced in light of (a) submissions that Mr Kugaljan lived in a flat in the locality for much of the week, (b) the imposition of a condition requiring the DPS to be at the premises for 35 hours per week and (c) the imposition of a condition requiring the presence of a personal licence holder at the premises at all times when alcohol is being sold.

Accordingly, the Sub-Committee was prepared to grant a premises licence in the terms, and subject to the conditions, set out at section 6 above. In light of the problems that gave rise to the review and revocation of the existing licence, the conditions were all deemed necessary for the promotion of the licensing objectives.

Date: 22 April 2010

Licensing Sub-Committee Chairman: Cllr A E J Shotter

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Decision notified to interested parties on 23 April 2010