

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION TO VARY A PREMISES LICENCE: GIRL GUIDING UK,
FOXLEASE, CLAY HILL, LYNDHURST**

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on Friday, 19 July 2013 at 10.00am**

1. Members of the Licensing Sub-Committee

Councillor Clarke - Chairman
Councillor Dow
Councillor Penwarden

2. Parties and their Representatives attending the Hearing

Mr Duclos, Applicant – Represented by Mr Robinson

Objectors

Mrs Cross – Represented by Senior Legal Services
Mr Garling – Represented by Senior Legal Services
Mr Withers – Represented by Senior Legal Services
Mr Woolley – Represented by Senior Legal Services
Mr & Mrs Cutting - Represented by Senior Legal Services

Mr Elton and Ms Russell – Senior Legal Services

3. Other Persons attending the Hearing

Mrs Moore – Observer

4. Parties not attending the Hearing

Mr & Mrs Cristofoli
Ms Millard
Ms Wickens – Represented by Senior Legal Services
Mr Wilkinson

5. Officers attending to assist the Sub-Committee

Amanda Wilson – 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:

Provision of Plays:

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

Provision of Films:

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

Provision of Live Music:

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

Provision of Recorded Music:

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

Provision of Performances of Dance:

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

Provision of Anything of a Similar Description to Live Music, Recorded Music or Performances of Dance:

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

M: Supply of Alcohol

Monday 12noon – 14:00 and 17:00 – 23:00
Tuesday 12noon – 14:00 and 17:00 – 23:00
Wednesday 12noon – 14:00 and 17:00 – 23:00
Thursday 12noon – 14:00 and 17:00 – 23:00
Friday 12noon – 14:00 and 17:00 – 23:00
Saturday 12noon – 14:00 and 17:00 – 23:00
Sunday 12noon – 14:00 and 17:00 – 23:00

O: Hours premises to be open to the public

Monday 10:00 to 23:00
Tuesday 10:00 to 23:00
Wednesday 10:00 to 23:00
Thursday 10:00 to 23:00
Friday 10:00 to 23:00
Saturday 10:00 to 23:00
Sunday 10:00 to 23:00

Mandatory conditions:

As provided in the Licensing Act 2003 and Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.

Other conditions:

As agreed between the Police, Environmental Health and the Applicant prior to the hearing: -

- (1) There will be Challenge 25 policy operating at the premises. Challenge 25 means that the holder of the premises licence shall ensure that every individual, who visually appears to be under 25 years of age and is seeking to purchase or be supplied with alcohol at the premises or from the premises, shall produce identification proving that individual to be 18 years or age or older. Acceptable identification for the purposes of age verification will include a driving licence, passport, HM Force ID card or photographic identification bearing the "PASS" logo and the person's date of birth. If the person seeking alcohol is unable to produce acceptable means of identification, no sale or supply of alcohol will be made to or for that person. 'Challenge 25' posters shall be displayed in prominent positions at the premises.

- (2) Staff will be trained regarding appropriate precautions to prevent the sale of alcohol to persons under the age of 18, the signs and symptoms of drunk persons and the refusal of sale due to intoxication. Records will be kept of such training which must be signed and dated by the member of staff who has received that training.
- (3) All staff will receive refresher training every six months as a minimum and records are to be kept of this refresher training which should be signed and dated by the member of staff who received that training.
- (4) In addition to their training a written test related to the training given will be conducted before the staff member is permitted to sell or authorise alcohol. The test will consist of a minimum of ten questions of which the pass rate is 80%. Anyone who fails to reach the prescribed pass rate will be re-trained and re-tested. Anyone not attaining the pass rate will not be permitted to sell or authorise the sale of alcohol until the pass rate is attained. There will be a minimum of two sets of questions to be used in the training which will be rotated upon each subsequent six month training session. All training records will be made immediately available for inspection by Hampshire Constabulary and any responsible Authority upon request. Training records will be kept for a minimum period of two years. Training records will be kept on the licensed premises to which they relate to.
- (5) Prior to 23:00, music and noise emanating from the premises whilst audible, will be such that distinct tunes, lyrics, musical instruments and any base beat cannot be recognised at the boundary of noise sensitive premises. An assessment of noise levels at the boundary with nearest noise-sensitive premises during the evening will be made to ensure this condition is met.

As agreed between the Applicant and the Objectors during the hearing:

- (6) There will be a maximum of 6 live music events to be held in the outside area of the Foxlease estate each year.
- (7) There will be maximum of 6 recorded music events to be held in the outside area of the Foxlease estate each year.
- (8) There will be a maximum of 8 performances of a play to be held in the outside area of the Foxlease estate each year.

(For the purposes of condition 5 above, a noise sensitive premises includes premises used for residential purpose, hospitals or similar institutions, educational establishments (when in use), or places of worship (during recognised times and days of worship) or any premises used for any other purpose likely to be affected by the music noise).

7. Reasons for the Decision

The Sub-Committee carefully considered all the representations made to it, both written and oral, by the Applicant and their representative ('the Applicant') and the legal representative for the objectors ('the Objectors').

The Sub-Committee noted that there were no objections from any of the Responsible Authorities to the application to vary the Premises Licence.

The Sub-Committee took into account the conditions agreed between the Applicant, the Police and Environmental Health prior to the hearing and it was noted that one objection had been withdrawn as a result of these conditions.

The Sub-Committee listened to all the evidence that was provided and considered what action was appropriate for the promotion of the four licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm

During the course of the hearing, it was indicated by the Applicant that they were open to negotiating with the Objectors and reducing the scope of their application in order to meet the concerns which had been raised.

The Sub-Committee Chairman consequently granted an adjournment. The hearing was adjourned initially for 20 minutes but, following requests from the Objectors for more time to enable an amicable agreement to be reached, the hearing did not resume until 45 minutes had passed.

Following this adjournment, the Applicant agreed to amend their application for the sale of alcohol to 12noon to 14:00 and 17:00 to 23:00 Monday to Sunday. Also, the Applicant proposed the imposition of three further conditions onto the Licence. Namely, that there will be a maximum of 6 live music events, 6 recorded music events and 8 performances of a play to be held in the outside area of the Premises each year. The Objectors indicated that they were satisfied with this proposal.

The Sub-Committee were disappointed that steps had not been taken by the Applicant to make arrangements to meet with the Objectors and discuss their concerns prior to the hearing.

Having considered all the representations, the Sub-Committee is of the view that a grant of the variation to the Licence, as amended at the hearing, along with the imposition of conditions as set out in the application and offered by the Applicant prior to and during the hearing, will promote all four of the licensing objectives and satisfy the majority of concerns raised by the local residents.

During the course of the hearing the Applicant advised the Sub-Committee that the reason for the application to vary the Premises Licence was to allow flexibility which the current Licence does not permit. The Applicant stated that they did not intend to run large scale external events every day of the year. However, it was acknowledged following questioning from the Objectors that the way the application was framed, prior to the amendment, meant that this was a possibility.

It was emphasised by the Objectors that the Premises is located in a residential area. The Objectors advised the Sub-Committee that the current activities of the Premises do impact on their lives and expressed their concern about how the variation to the licence would affect the prevention of public nuisance licensing objective going forward. It was argued by the Objectors that the proposed Licence was too wide in scope and they feared what impact the licensable activities, in particular the noise emanating from those activities, could have on their lives in the future.

The Sub-Committee carefully considered the evidence provided by the Objectors at the hearing relating to previous noise complaints to the Council's Environmental Health Department. However, these complaints related to noise from girls screaming and shouting whilst participating in non-licensable activities and, therefore, the Sub-Committee afforded them little weight in making a decision on the current application. The Sub-Committee considered that the application for variation to the Licence would not impact on this type of noise occurring and, in any case, the Sub-Committee felt that the imposition of conditions, the reduction in hours for sale of alcohol and restriction on the number of external music events taking place at the premises would significantly minimise the risk of noise nuisance occurring from the licensable activities.

During the hearing the Applicant confirmed that, despite the recent changes to the Licensing Act 2003 which largely deregulated the provision of plays and the provision of dance, they did wish to continue with the application for both of these licensable activities on the basis that they may wish to have audiences of larger than 500 people on the Premises. The Sub-Committee was mindful of the fact that large audiences were expected at the premises but felt that the conditions imposed on the licence are adequate and reasonable to address any resultant licensing objective concerns.

Whilst some issues relating to potential for increased traffic and concerns regarding road safety were raised by the Objectors, the Sub-Committee felt that such highways issues would not impact on the licensing objectives. The Sub-Committee would suggest that when external events are to take place, the Applicant seeks advice from the Highways Authority.

The Sub-Committee would like to remind residents that should a statutory nuisance be established in the future then action may be considered under the Environmental Protection Act 1990, or a review of the licence may be requested under the Licensing Act 2003, as appropriate.

The Sub-Committee would also hope that the Applicant and local residents continue to liaise with each other.

Following the request at the hearing by the local residents for an out of hours number for environmental health, the Sub-Committee has made enquires with environmental health and has been advised that there is no out of hours number and residents should contact the Police by dialling 101 should they believe there is a serious breach of the licence occurring at the premises. The Council's Environmental Health Department can be contacted during normal working hours. Residents are able to make arrangements for an Environmental Health Officer to attend the site and monitor noise nuisance. Residents would also be offered diary sheets to log any nuisance occurring. In addition, the Council has a Licensing Enforcement Officer who, by prior appointment, may also attend the Premises to investigate any possible breaches of the Licence.

The Sub-Committee, whilst sympathetic to the concerns of the local residents regarding potential future noise nuisance, felt that on balance, the granting of the application for variation was fair, proportionate and consistent with the licensing objectives, subject to the reduction in the hours for the sale of alcohol and the conditions imposed by this decision.

8. Variation to take effect

The variation is to take effect immediately.

Date: 19 July 2013

Licensing Sub-Committee Chairman: Cllr S Clarke

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Decision notified to interested parties on 24 July 2013