

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION TO VARY A PREMISES LICENCE – FUSION INN, QUEENS
STREET, LYMINGTON**

Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on Monday, 10 August 2015 at 10.00am

1. Members of the Licensing Sub-Committee

Councillor S C Clarke - Chairman
Councillor J Olliff-Cooper
Councillor Mrs P A Wyeth

2. Parties and their Representatives attending the Hearing

Mr Judd – Applicant
Mr & Mrs Lee – Objectors
Mr Neath – Objector (speaking on behalf of himself and Mr Hardy)

3. Other Persons attending the Hearing

None

4. Parties not attending the Hearing

Mr Hardy

5. Officers attending to assist the Sub-Committee

Lisa Clark – Legal Advisor
Mel Stephens - Clerk

6. Decision of the Sub-Committee

The application is granted on the following terms and conditions.

Licensable activities and times permitted:

Late Night Refreshment (indoors)

Friday 23:00 – 01:30
Saturday 23:00 – 01:30

Supply of Alcohol (on and off premises)

Monday 10:00 – 24:00
Tuesday 10:00 – 24:00
Wednesday 10:00 – 24:00
Thursday 10:00 – 24:00
Friday 10:00 – 02:00
Saturday 10:00 – 02:00
Sunday 10:00 – 24:00

Christmas Eve: 10:00 to 02:00
New Year's Eve: 10:00 to 02:00

Hours premises to be open to the public

Monday 10:00 – 00:30
Tuesday 10:00 – 00:30
Wednesday 10:00 – 00:30
Thursday 10:00 – 00:30
Friday 10:00 – 02:30
Saturday 10:00 – 02:30
Sunday 10:00 – 00:30

Christmas Eve: 10:00 to 02:30
New Year's Eve: 10:00 to 02:30

Mandatory conditions:

As provided in the Licensing Act 2003, Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010, and Licensing Act 2003 (Mandatory Conditions) Order 2014.

Other conditions:

General Conditions

1. No patrons carrying bottles, either sealed or open, will be permitted to enter the premises at any time that the premises are open.
2. The designated premises supervisor or their nominated representative will be available to receive and respond to complaints at all times that the premises are open to the public.

The prevention of crime and disorder/protection of children from harm

3. Door staff will patrol both inside and outside of the premises checking for suspicious behaviour and will be in touch with the other bars in Lymington town via walkie talkies. The premises will have in place Night Watch radio which will enable instant communication with Lyndhurst CCTV operatives. The Designated Premises Supervisor will regularly attend both Lymington and New Milton Pubwatch.

CCTV

4. The premises shall have sufficient cameras located within the premises to cover all public areas including outside of the premises covering the entrance and exit. The system will be able to cope with strobe lighting (where used) and all levels of illumination throughout the premises as well as outside areas.
5. CCTV warning signs must be fitted in public places.
6. The CCTV system must be operating at all times whilst the premises are open for licensable activity. All equipment shall have a constant and accurate time and date generation.
7. The recording system will be able to capture a minimum of 4 frames per second and all recorded footage must be securely retained for a minimum of 28 days.
8. Records must be made on a weekly basis confirming that the system has been checked to ensure that it is functioning correctly and that recorded data is being securely retained. Records of these inspections must be kept for at least 6 months and made available to the Police on request.
9. The DPS or premises manager must be able to demonstrate that the CCTV system has measures to prevent recordings being tampered with, e.g. password protected.
10. There shall be sufficient members of trained staff at the premises during operating hours to be able to provide viewable copies immediately to police on request when investigating allegations of offences or criminal activity. Any images recovered must be in a viewable format on either disc or VHS. Footage supplied in a digital format on CD or DVD will also have a copy of the CCTV system software enabled on the disc to allow playback.
11. In the event of technical failure of the CCTV equipment the Premises Licence Holder/DPS must report the failure to the Hampshire Western Police Licensing Unit within 24 hours.

Incident Book

12. An incident book will be provided and maintained at the premises. It will remain on the premises at all times and will be available to police for inspection upon request.
13. Any incidents that include physical altercation or disorder, physical ejection, injury, id seizure or drug misuse will be recorded in the incident book. The entry is to include an account of the incident and the identity of all person(s) involved (or descriptions of those involved if identity is not known). Should there be any physical interaction by members of staff and the public the entry will include what physical action occurred between each party. The entry shall be timed, dated and signed by the author.
14. If the member of staff creating the entry has difficulties reading or writing then the entry may be written by another staff member. This should however be read back to the person creating the entry and counter signed by the person who wrote the entry.
15. At the close of business on each day the incident book will be checked by the manager on duty and any entries shall be reviewed and signed. If incidents have occurred the duty manager will de-brief staff (including, where applicable, door staff) at the close of business. Should there be no incidents then this will also be recorded at the close of business in the incident book.

Refusals Book

16. A written log shall be kept of all refusals including refusals to sell alcohol. The Premises Licence Holder shall ensure that the refusals log is checked, signed and dated on a weekly basis by the DPS or manager.
17. The refusals log will be kept and maintained at the premises and will be available for inspection immediately upon request by Hampshire Constabulary and any responsible authority.
18. The record of refusals will be retained for 12 months.

Challenge 25

19. There will be a 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 of age or older.
20. Acceptable identification for the purposes of age verification will include a driving licence, passport or photographic identification bearing the 'PASS' logo and the person's date of birth.
21. 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.
22. Challenge 25 poster shall be displayed in prominent positions at the premises.

Training

23. 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.
24. 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.
25. 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 the sale of 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 retrained 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.
26. 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.

Public Safety

27. Staff will be trained in evacuation procedures.
28. Pathways around the premises will be checked for broken glass.

The prevention of public nuisance

29. Live music is permitted on no more than two occasions per week.
30. No regulated entertainment, including but not limited to live music, shall be permitted to take place in the garden or any other external area of the premises.
31. No patrons will be permitted to enter or remain in the garden or any other external area of the premises between 23:00 and 09:00 hours.
32. Bottles, waste and other refuse shall not be placed or disposed of into external storage receptacles between 22:00 and 07:00 hours.
33. No waste collection contractors will be permitted to collect waste from the premises between 19:00 and 07:00 hours.
34. No deliveries of consumables to the premises shall take place between 19:00 and 07:00 hours.
35. All windows and doors will be kept closed between 23:00 and 08:00 hours each day, except to allow access and egress.
36. All music noise emanating from the premises, whilst it may be audible shall be so low that distinct tunes, lyrics, musical instruments and any base beat cannot be recognised at the boundary of all noise sensitive premises. For these purposes, 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 music noise.
37. No licensable activities or consumption of alcohol will take place outside after 23:00 hours.
38. Last entry to the premises by the public will be at 24:00 hours.
39. The noise limiting device installed shall be retained and maintained in good working order and all amplified regulated entertainment shall be channelled through that device, and shall not exceed a noise level determined by Environmental Health Officers from New Forest District Council. The maximum noise level set by Environmental Health Officers from New Forest District Council shall be reviewed as required by Environmental Health Officers from New Forest District Council.
40. The noise limiting device shall be sealed to avoid tampering.
41. Customers shall not be permitted to take open drinks or food purchased at the premises for consumption outside the front entrance of the premises leading onto Queen Street, Lymington. Signage advising customers of this restriction shall be placed adjacent to the front entrance of the premises.
42. An area designated for smoking at the front of the premises shall be submitted to New Forest District Council's Environmental Health Officer for approval within 1 month of the issue date of the amended premises licence. The approved designated area shall be managed by staff from the Fusion Inn to ensure that customers do not cause a public nuisance.
43. After 23:00 hours customers from the Fusion Inn shall only be permitted to smoke in the approved designated smoking area.
44. Customers leaving the premises to smoke or take fresh air in the designated smoking area after 01:15 hours shall not be permitted to re-enter the premises.
45. After 01:00 hours customers shall not be permitted to re-enter the premises once they have exited the premises (save for those using the designated smoking area, in which case condition 44 above shall apply).

46. Signage shall be displayed in prominent positions both within and outside the premises to remind customers of the need to respect local residents and to keep quiet whilst smoking outside the premises, and when leaving the premises and in the immediate vicinity.
47. A minimum of two SIA trained door staff will be employed at the premises on Friday and Saturday nights from 22:00 hours until patrons have dispersed from the vicinity of the premises. Once the premises have closed, at least two door staff shall remain outside the premises until patrons have dispersed.
48. After 22:00 hours staff shall encourage customers to leave the premises quietly and to disperse from the vicinity of the premises quickly and quietly.
49. After 22:00 hours staff shall prevent customers from congregating outside the premises and shall manage customers queuing to enter the premises, or smoking in the designated smoking area, to ensure that they do not cause a public nuisance.

The protection of children from harm

50. Children (persons under the age of 18) will not be permitted to enter or remain in the Premises after 21:00 hours.

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.

The Sub-Committee took into account the absence of any objections from the responsible authorities including the Police and Environmental Health.

The Sub-Committee was sympathetic to the views of the objectors, who it accepted had been disturbed by revellers late at night. The Sub-Committee was mindful that its determination must be evidence-based. When Sub-Committee members asked Mr Neath (objector and resident of Eastern Road) whether the late night disturbance he had suffered was caused by persons leaving the Fusion Inn, he stated that the disturbance was due to "late night drinking" in general, and he could not link it to the Fusion Inn. The Sub-Committee noted that Mr Neath had presented it with evidence (in the form of a Police notice) that in November 2012 the police investigated incidents of criminal damage to vehicles in Eastern Road. The Sub-Committee considered that this evidence was historic, and that there was no evidence that the damage to the vehicles was caused by patrons of the Fusion Inn. The Sub-Committee concluded that it had not seen any evidence to link any crime or disorder on Eastern Road to the Fusion Inn.

The Sub-Committee noted that the objectors Mr and Mrs Lee live directly next door to the Premises. The Sub-Committee were told by Mr and Mrs Lee that since variations to the premises licence were made in 2014, noise levels from inside the premises were at an acceptable level. The concerns raised by Mr and Mrs Lee in relation to the immediate application were that if the premises was permitted to remain open for longer, they would be disturbed by persons outside the premises until later in the night. Mrs Lee gave an account of recent disturbances which she had suffered during the night due to persons outside the premises. The Sub-Committee took into account that Mr & Mrs Lee had not made any complaint to the Police or Environmental Health regarding noise linked to patrons leaving the premises

since the licence was last varied in 2014, but that they had contacted Mr Judd (the Designated Premises Supervisor) twice in the last year.

The Sub-Committee noted that Mr Judd had offered to include conditions on the licence to seek to mitigate any disturbance caused by persons outside the premises, including smokers only being permitted to smoke in a designated area, last entry to the premises not to be permitted after midnight, signage to be placed in the premises reminding customers to respect local residents and to keep quiet when smoking or leaving the premises, door staff to ensure that patrons leave quietly and disperse quickly, door staff to prevent customers congregating outside the premises and to manage queuing customers after 22:00 hours, and door staff to remain outside the premises after the premises close to ensure customers disperse quietly and quickly.

The Sub-Committee noted the evidence given by Mr Judd that he had arranged training for his staff in drugs awareness, challenge 25, and not serving drunk persons and were pleased that Mr Judd is taking his responsibilities as Designated Premises Supervisor seriously. The Sub-Committee were also pleased to note that Mr Judd had made efforts to communicate with neighbours, by giving Mr and Mrs Lee his telephone number.

The Sub-Committee heard from the objectors that they were concerned that if the Fusion Inn was permitted to open and to serve alcohol until later in the night, that this would set a precedent for other premises to do the same. This was not something which the Sub-Committee could take into account.

The Sub-Committee concluded that, given the additional conditions proposed by the applicant, it had not been demonstrated that the variation applied for would adversely affect any of the licensing objectives.

The Sub-Committee grants the application in the terms applied for, with one additional condition: the Premises shall be required to employ at least two SIA trained door staff on Friday and Saturday nights from 22:00 hours until patrons have dispersed after the closure of the premises. This requirement to employ door staff, on the nights when the premises will be open later than at present, is designed to ensure that the other conditions proposed by the applicant to ensure the quiet dispersal of patrons are enforced.

Should there be any concerns in the future regarding noise disturbance at the premises, the Licensing Act 2003 provides a statutory mechanism for any person to call the premises licence in for review.

Date: 10 August 2015

Licensing Sub-Committee Chairman: Cllr S Clarke

FOR OFFICE USE ONLY

Decision notified to interested parties on 13 August 2015