

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION FOR A GRANT OF A PREMISES LICENCE: 9 GOSPORT STREET,
LYMINGTON**

Decision of the Licensing Sub-Committee hearing held at Appletree Court, Lyndhurst on
Wednesday, 18 January 2017 at 10.00am

1. Members of the Licensing Sub-Committee

Councillor G B Beck - Chairman
Councillor Ms L C Ford
Councillor L E Harris

2. Parties and their Representatives attending the Hearing

Mr Ballardini, VG Ventures Ltd – Applicant

Objectors:

Ms Bach
Mr & Mrs Capner
Mr Dolphin

3. Other Persons attending the Hearing

Joanne McClay – Environment & Regulation Service Manager
Sarah Wilson – Licensing Services Assistant

4. Parties not attending the Hearing

Supporters:

Mr Hurst
Ms Savin

Objectors:

Mr J & Mrs A Bearcroft
Mr R & Ms J Brill
Mr P Cardwell
Ms G Comfort
Mr D & Ms E Cox
Ms S Crowe
Mr T Feilke
Ms D Garbutt
Mr P & Ms L Gredley
Ms F Hellier
Mr M A Johnson
Mr I Mellor
Mr G de Mowbray
Ms P de Mowbray
Mr P Packham
Mrs S Pitt-Brown
Ms J Rule
Mr B Smith & Mr S Boswell
Captain M Stevens
Mrs J Tester
Mrs C A Tydeman
Mr G Tydeman
Ms K White
Mr M White

5. Officers attending to assist the Sub-Committee

Grainne O'Rourke– Legal Advisor
Kate Green – Assistant 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:

B: Films

Monday 12:00 – 23:00

Tuesday 12:00 – 23:00

Wednesday 12:00 – 23:00

Thursday 12:00 – 23:00

Friday 12:00 – 23:00

Saturday 12:00 – 23:00

Sunday 12:00 – 23:00

J: Supply of Alcohol – On the premises

Monday 08:00 – 23:00

Tuesday 08:00 – 23:00

Wednesday 08:00 – 23:00

Thursday 08:00 – 23:00

Friday 08:00 – 23:00

Saturday 08:00 – 23:00

Sunday 10:00 – 23:00

L: Hours premises are open to the public

Monday 08:00 – 23:30

Tuesday 08:00 – 23:30

Wednesday 08:00 – 23:30

Thursday 08:00 – 23:30

Friday 08:00 – 23:30

Saturday 08:00 – 23:30

Sunday 08:00 – 23:30

Seasonal Variations:

Christmas Eve

Supply of Alcohol – 10:00 – 00:30

Opening Hours – 10.00 – 01.00

New Years' Eve

Supply of Alcohol – 10:00 – 01:00

Opening Hours – 10.00 – 01.30

Mandatory conditions:

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

Subject to the alternative licence condition as contained in section 25A (2) of the Licensing Act 2003.

Conditions consistent with the operating schedule accompanying the application (M):

General – all four licensing objectives

1. Strong management controls and effective training of all staff so that they are aware of the premises licence and the requirements to meet the four licensing objectives with particular attention to: -
 - i) No sales of alcohol to underage people
 - ii) No drunk and disorderly behaviour on the premises
 - iii) Vigilance in preventing the use and sale of illegal drugs at the retail area
 - iv) No violent and anti-social behaviour
 - v) No/any harm to children
 - vi) Operating schedule providing the hours of operation and licensable activities during those hours

- vii) Designated premises supervisor, day-to-day control, providing good training on the Licensing Act (training records), authorise each sale of alcohol
- viii) Clear Challenge 25, information to prevent supply of alcohol to underage drinkers.

The prevention of crime and disorder

- 2. A clear and legible notice outside the premises indicating the normal house of trade.
- 3. No selling of alcohol to drunk or intoxicated persons.
- 4. Customers will be discouraged from standing outside the front of the premises for longer than necessary.
- 5. No drinks to be consumed outside the front of the premises.
- 6. Staff will be trained in asking customers to use the premises in an orderly manner.

Public Safety

- 7. Internal and external lighting fixed to promote the public safety objective.
- 8. Well trained staff adherence to environmental health requirements.
- 9. Training and implementation of underage I.D checks.
- 10. A log book or recording system in which shall be entered particulars of inspections made: those required to be made by statute, and information compiled to comply with any public safety condition attached to the premises licence that require the recoding of such information.
- 11. All parts of the premises and all fittings and apparatus therein will be maintained at all times in good order and in safe condition.

The prevention of public nuisance

- 12. Bins and recycling will not be emptied between the hours of 21:00-07:00 hours to reduce disturbance.
- 13. Waste collection, deliveries or contractors will not be active between 19.00-07:00 hours.
- 14. Any kitchen extraction fans will be turned off when they are not required.
- 15. At each exit point a clear notice will be displayed requesting customers to leave respectfully.
- 16. A list of local taxi firms will be displayed to discourage loitering outside at the end of the evening.
- 17. No drinks to be consumed outside the front of the building to reduce noise disturbance.

The protection of children from harm

- 18. The designated premises supervisor is to be trained in safeguarding of children and paediatric first aid.
- 19. There will be a strict policy of no unaccompanied minors (under 16) on premises at any time. Under 18's will not be served alcohol at any time, regardless of the accompanying adult request.
- 20. In the case of an event not being appropriate for children to attend, there will be a strict ban on under 18's attending.
- 21. All films being played will only be viewed by persons equal to or older than the stated age by the BBFC.

22. A constant monitor of general noise, light pollution noxious smells and litter will be completed.

Other conditions (as agreed between the Police and Environmental Health prior to the hearing):

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 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 sessions.
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.

Challenge 25 Age Verification

27. 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.
28. 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.
29. 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.
30. 'Challenge 25' posters shall be displayed in prominent positions at the premises.

Refusals Book

31. 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 store manager/manageress.
32. 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.
33. The record of refusals will be retained for 12 months.

Incident Book

34. 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.
35. 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.
36. 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.
37. At the close of business on each day the incident book will be checked by the manager on duty where any entries will be reviewed and signed. If incidents have occurred the duty manager will de-brief 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.
38. This record will be retained for 12 months.

Alcohol with Food

39. Alcohol shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to their meal.

Off-Sales of Alcohol

40. Off sales of alcohol shall only be permitted to customers who have dined in the premises. Alcohol for consumption off the premises will be sold / supplied in sealed containers.

Outside Areas

41. No consumption of alcohol or other drinks will take place outside to the front of the premises (Gosport Street).
42. The garden area will be closed to patrons from 21:00 hours each day.

Prevention of Public Nuisance (as agreed between the Applicant and Environmental Health prior to the hearing)

43. Signage shall be placed on all tables outside reminding customers to be respectful of neighbouring properties and keep noise to a minimum.
44. The premises licence holder shall ensure that any patrons outside the premises are regularly supervised by staff and managed so as to ensure that there is no public nuisance.

Conditions agreed between the Applicant and Mr & Mrs Capner, Mr Pidsley and Ms Bach at their meeting held on 6 January 2017 and approved by the Committee.

45. The outside rear garden area will be closed from 21:00 hours and will not be available for customers for smoking. Any customers wishing to smoke will be directed to the front of the premises.
46. The playing of recorded music indoors on the in house sound system is allowed for the playing of incidental background music only

7. Absence of parties

At the outset of the hearing it was noted by the Sub-Committee that a number of the parties were absent. Of these parties, the following had confirmed they would not be in attendance:

Mr & Mrs Gredley, Mr Packham, Ms Pitt-Brown and Ms Rule.

This, therefore, left a number of absent parties who had not indicated whether they would be in attendance or not.

The Sub-Committee considered whether it was necessary in the public interest to adjourn the hearing or to hold the hearing in the absence of some of the parties. The Sub-Committee took into account that many of the points raised by the absent parties were very similar to the points raised by the parties in attendance. The Sub-Committee decided to proceed with the hearing in the absence of the parties and take into consideration the written representations made by those parties in reaching its decision.

The Sub-Committee also noted that following the amendments to the original application and as a result of conditions agreed between the Applicant and some of the objectors during a meeting held on 6 January 2017 some residents had written to the Council indicating their wish to withdraw their objections on the basis that the conditions agreed at the 6 January 2017 meeting were adhered to.

The Council's Legal Advisor confirmed that these submissions had been circulated at the hearing for information. She reminded all parties that it was for the Sub-Committee to determine what conditions should be attached to the premises licence. On that basis, the conditional withdrawals were in fact treated as further representations from the objectors.

8. Legal Points of Clarification

In order to address a number of concerns, the Council's Legal Advisor and Licensing Officer clarified the application was as set out in Section 6 above.

In reference to the Police query regarding CCTV, the Applicant confirmed that CCTV would not be installed at the premises at this time.

9. Reasons for the Decision

The Sub-Committee considered the application for the premises licence, along with all the evidence, both written and oral, supplied by the applicant and all those who had made relevant representations.

At the hearing, the Sub-Committee carefully 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

The Sub-Committee noted the absence of any relevant representations from any of the responsible authorities.

During the hearing, the applicant confirmed to the Sub-Committee the scope of the license now requested. This is as follows: -

B: Films

Monday 12:00 – 23:00

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The applicant also confirmed his wish that the request for seasonal variations on Christmas Eve and New Year's Day be considered. The application had included a request for seasonal variations until 01:00 hours on Christmas Eve and 03:00 hours on New Years' Eve. After hearing from concerns raised by the objectors present regarding this request, the applicant offered to reduce down the seasonal hours requested to the following: -

Christmas Eve

Supply of Alcohol – 10:00– 00:30

Opening Hours – 10.00 – 01.00

New Years' Eve

Supply of Alcohol – 10:00 – 01:00

Opening Hours – 10.00 – 01.30

The applicant explained to the Sub-Committee that his intention for the premises was for it to operate as a restaurant serving breakfast, brunch, lunch and evening meals with the focus being on food rather than purely a drinking establishment. The applicant stated that he had tried as far as possible to accommodate the comments from the Police, Environmental Health and the objectors. His intention is for the premises to become a good, well-managed, local restaurant. He was from a family of local restaurateurs and he did not intend to tolerate inappropriate behaviour on the premises. He informed the Sub-Committee that he had sought to resolve the concerns raised by the responsible authorities that had made representations and the objectors, by agreeing to a number of conditions in advance of the hearing to demonstrate his commitment to meeting the licensing objectives.

The Sub-Committee also heard from the objectors that they were pleased that the applicant had met with them and had agreed a number of conditions. The objectors reminded the Sub-Committee that a number of the objectors' withdrawals were conditional on the conditions (that had been agreed with the applicant) being imposed by the Sub-Committee. In particular the objectors urged the Sub-Committee to impose a condition so that music from the in-house sound system would be incidental background music only. The objectors raised significant concerns following issues with the premises under previous ownership in relation to noise and anti-social behaviour. The objectors highlighted that the premises was a small listed building with poor sound insulation and space and felt that the conditions suggested would uphold the licensing objectives.

The Sub-Committee noted that in addition to the mandatory conditions of the Licensing Act 2003, the applicant had offered a number of conditions in the applications' operating schedule. Conditions had also been agreed between the Police and Environmental Health. Further conditions had been agreed between the residents and the applicant who attended a mediation meeting held on 6 January 2017.

Whilst the Sub-Committee noted the concerns relating to anti-social behaviour linked to the previous premises licence, it was of the view that with the imposition of the conditions that had been agreed between the police, environmental health and the applicant along with the further conditions agreed between the applicant and Mr & Mrs Capner, Mr Pidsley and Ms Bach, it was satisfied that the promotion of the licensing objectives would be met, by granting the licence with the conditions set out above to mitigate any possible future disturbances.

The Sub-Committee were grateful to all parties for their attempts to resolve the issues prior to the hearing and would encourage a continued open dialogue between the parties.

The Sub-Committee was of the view that the appropriate step for the promotion of the licensing objectives was to grant the application in the terms set out at section 6 above.

In addition, should there be any concerns in the future regarding operation of the premises, the Licensing Act 2003 provides a statutory mechanism for any person to call the premises licence in for review.

Date: 18 January 2017

Licensing Sub-Committee Chairman: Cllr G C Beck

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Decision notified to interested parties on 25 January 2017