

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION FOR A NEW PREMISES LICENCE – THE YARD CAFÉ,
11 ST THOMAS STREET, LYMINGTON**

Decision of the Licensing Sub-Committee hearing held at Lymington Town Hall,
Lymington on Wednesday, 10 October 2018 at 10.00am

1. Members of the Licensing Sub-Committee

Councillor G Beck, Chairman
Councillor S Clarke
Councillor S Davies

2. Parties and their Representatives attending the Hearing

Mr S J Knowles – Applicant
Mr T Stanley – Owner – attending in support of the Applicant

Objectors:

Mr P Allan (representing Ms F Perks)
Mr P Griffiths (also representing Ms W Rock, Mr G Harrington and
Mr J Harrington)
Mr J Harrington
Mrs J McCain (also representing Ms E Marsden)
Ms F Perks
Ms W Rock
Ms T Toms

3. Other Persons attending the Hearing

Observers:
Ms M Griffiths
Mr T Marsh
Mr L McCain

Council officers:
Christa Ferguson – Team Manager, Licensing
Peter Donelan – Licensing Compliance Officer

4. Parties not attending the Hearing

Mr J Bull
Mr G Harrington
Mr N House
Ms E Marsden
Lymington Town Council

5. Officers attending to assist the Sub-Committee

Amanda Wilson – Legal Advisor
Prosper Mwedzi –Assistant Legal Advisor
Karen Wardle - Clerk

6. Decision of the Sub-Committee

The application is granted on the following terms and conditions.

Licensable activities and times permitted:

J: Supply of Alcohol – On the premises

Monday 10:00 to 21:00 hours
Tuesday 10:00 to 21:00 hours
Wednesday 10:00 to 21:00 hours
Thursday 10:00 to 21:00 hours
Friday 10:00 to 21:00 hours
Saturday 10:00 to 21:00 hours
Sunday 10:00 to 21:00 hours

L: Hours premises are open to the public

Monday 09:00 to 21:30 hours
Tuesday 09:00 to 21:30 hours
Wednesday 09:00 to 21:30 hours
Thursday 09:00 to 21:30 hours
Friday 09:00 to 21:30 hours
Saturday 09:00 to 21:30 hours
Sunday 09:00 to 21:30 hours

Mandatory conditions:

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

Conditions consistent with the operating schedule accompanying the application (M) (amended and updated to take into account the further conditions agreed with the Police and Environmental Health):

a) General – all four licensing objectives

1. Risk Assessments and Fire Risk Assessments will be undertaken to identify hazards to general public and staff. Staff will be required to evaluate risks, record findings and take appropriate action / precautions.
2. Assessments referred to in condition 1 above should be undertaken periodically and updated as required in response to changes to operations.

b) The prevention of crime and disorder

3. All requests for the sale of alcohol to intoxicated people will be refused.
4. All incidents of criminal (or suspected criminal) activity must be reported to the police.

c) Public safety

5. There will be compliance with food safety legislation and the premises shall have designated first aider on site during its opening hours.
6. There should be no overcrowding in the premises and capacity should be limited to that set by risk assessments for the premises.
7. No glassware should be removed from the premises.
8. Glass breakages will be cleared up immediately.
9. Emergency exits must be kept clear at all times.

d) The prevention of public nuisance

10. No amplified music will be played at the premises and any background music will be kept to a minimum.
11. There will be compliance with all smoking legislation and signs related to smoking will be displayed at the premises.
12. Staff will ensure there is no loitering outside the premises and customers and staff must enter and leave premises quietly.
13. Litter bins will be regularly cleared and bins should be kept away from public areas.
14. Deliveries to the business will be carried out at such a time to minimise disturbance.

e) The protection of children from harm

15. Alcohol must be kept in a safe place.

Other conditions (as agreed between the Applicant and Hampshire Constabulary and Environmental Health, New Forest District Council prior to the hearing):

CCTV

16. 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.

17. CCTV warning signs to be fitted in public places.

18. The CCTV system must be operating at all times whilst the premises are open for licensable activity.

19. The recording equipment shall be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and maintain the integrity of the system.

20. The system shall be serviced at twelve monthly intervals and maintained to a standard that is acceptable to the police licensing department responsible for the area.

21. The system clock shall be checked regularly for accuracy taking account of GMT and BST.

22. 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.

23. A competent trained person in the use of and operation of the CCTV, nominated by the data controller, must be in attendance at the premises at all times that licensable activities take place. This person must be able to fully operate the CCTV system in order to download at the times of the visit onto a CD/DVD/USB stick any information lawfully requested by any Responsible Authority.

24. Any images recovered must be in a format that can be viewed on readily available equipment without the need for specialist software.

25. In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Hampshire Police Licensing Unit within 24 hours, and arrangements made to repair the fault without delay.

Incident book

26. 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.
27. 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.
28. 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.
29. 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 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.
30. This record will be retained for 12 months.

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.

Training

34. 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.
35. 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.
36. 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

37. 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.
38. Acceptable identification for the purposes of age verification will include a driving licence, passport or photographic identification bearing the "PASS" logo and the persons date of birth.
39. 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.
40. 'Challenge 25' posters shall be displayed in prominent positions at the premises.

Noise

41. The use of the outside terrace area shall not be permitted after 21:00 hours;
42. All external doors and windows shall be kept closed after 21:00 hours except for access and egress.

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 G Harrington, Ms E Marsden, Mr N House, Mr J Bull

This, therefore, left one absent party (Lymington Town Council) 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 this party. The Sub-Committee took into account that the points raised by the absent party were very similar to the points raised by the parties in attendance. The Sub-Committee decided to proceed with the hearing in their absence and take into consideration their written representations in reaching its decision.

8. Additional Documentation

At the start of the hearing the Legal Advisor informed the parties that the Applicant had submitted two further documents in support of their application. These documents were circulated to the other parties to the

hearing who all indicated their consent for them to be taken into account by the Sub-Committee. The documents contained details of the right of way related to the alleyway and a letter from New Forest District Council's Planning Service dated 17 September 2018.

9. Reasons for the Decision

The Sub-Committee carefully considered the application for a new premises licence along with 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 was of the view that the appropriate step for the promotion of the licensing objectives was to grant the application for the supply of alcohol in the terms set out at section 6 above.

The Sub-Committee heard from the Applicant that the Premises were located to the rear of the Guy Kremer hair salon. When both premises were open it would be possible to move from one to the other without going outside, although entry through a door directly into the Premises would still be possible through the side entrance. The Premises proposed to offer good quality healthy food and wine for people attending the hair salon, as well as other members of the public. The applicant referred to a desire to attract high quality clientele. The Applicant referred to similar premises, unrelated to the Applicant, which had opened elsewhere in the country and had been successful.

The Sub-Committee accepted that the Premises would be run alongside the hair salon and that the two businesses would enhance each other but be able to operate separately.

During the hearing questions were raised related to the lawful planning use of the site and whether the hair salon and the Premises could be considered one planning unit. However, the Sub-Committee noted that planning and licensing are separate (albeit related) regimes and their decision to grant the licence did not affect whether or not the Premises had planning permission.

In addition, issues related to private land law issues were raised regarding rights of access and rights of way. However, the Sub-Committee considered that its role related to the promotion of the licensing objectives and such issues were outside of its remit.

The Sub-Committee listened carefully to the concerns raised by objectors that the use of the narrow alleyway to the premises would mean there was a risk of crime and disorder and there would be the risk of public nuisance through noise being generated from customers using the courtyard area and

the alleyway, particularly when the hair salon was closed and the alleyway was the only means of entrance and exit for the Premises.

The objectors, some of whom were neighbours to the Premises, expressed concern that the use of their properties would be disturbed by noise nuisance or anti-social behaviour from the Premises and customers accessing their properties in error. Concerns also related to the risk to children at the neighbouring properties and potential fire risks associated with the premises.

However, the Sub-Committee noted the absence of relevant representations from any of the responsible authorities. In particular, in light of the complaints raised related to fire safety, the Sub-Committee noted that no objections had been received from the Fire and Rescue Authority and they took into account the fire risk assessment produced in support of the application.

In addition to the mandatory conditions of the Licensing Act 2003, a number of conditions to be attached to the premises licence had been agreed between the Applicant, Hampshire Constabulary and the Environmental Health Department at New Forest District Council in advance of the hearing. Further, the applicant had offered a number of conditions in the applications' operating schedule. The Sub-Committee carefully considered these conditions and where appropriate has imposed them on the licence in order to promote the four licensing objectives. The Sub-Committee felt that strict adherence to these conditions would address many of the concerns raised by parties who were objecting to the application.

During the hearing, the Applicant offered to work with the neighbouring residents and the property owner regarding the issues raised relating to lighting and noise from the door to access the alleyway leading to the Premises in order to resolve any concerns.

The Applicant advised the Sub-Committee of their intention to adhere to any conditions imposed on the licence and that they had worked with the responsible authorities as part of the application process and this would continue. The Applicant reported that he would have well trained staff to ensure that customers left the premises quietly and that staff would monitor the alleyway at regular intervals in order to reduce the risk of anti-social behaviour.

The Sub-Committee were aware that prior to the hearing the Applicant had agreed to change the hours originally applied for. They had agreed to a reduction of one hour in the evening for the sale of alcohol each day and the opening times had been amended to close the premises 30 minutes earlier every day. This would bring the licensing hours in line with those detailed in the planning permission for the premises.

The Applicant had reported that initially they only intended to operate the Premises in accordance with the opening hours of the hair salon. However, the licence was sought for extended hours to provide flexibility in the future. After taking into account the objections raised, particularly regarding the risk of noise disturbance through the use of the side alleyway, the Sub-Committee were of the view that the hours applicable to the Premises should be as follows:

Monday to Sunday – Sale of alcohol 10.00 to 21.00 hours
Monday to Sunday - Opening times 09.00 to 21.30 hours

The Sub-Committee felt that the change in hours would go some way to address the objectors' concerns regarding public nuisance and late night activity. The Applicant indicated at the hearing that should the Sub-Committee consider it appropriate to amend the opening hours in light of the representations before it, that this would be supported.

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

Date: 10 October 2018

Licensing Sub-Committee Chairman: Cllr G Beck

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Decision notified to interested parties on 12 October 2018