

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION FOR VARIATION OF PREMISES LICENCE – THE SAIL INN,
QUEEN STREET, LYMINGTON (FORMERLY KNOWN AS THE FUSION INN)**

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on 17 June 2019 at 10.00am**

1. Members of the Licensing Sub-Committee

Councillor Steve Clarke (Chairman)
Councillor Rebecca Clark
Councillor Steve Davies

2. Parties and their Representatives attending the Hearing

Applicant:

G Domleo, Flint Bishop Solicitors
S McInerney, Business Development Manager for the Premises Licence Holder
P Smith, Designated Premises Supervisor (DPS)
R Ludlow, Property Manager

Objectors:

R and P Lee (also representing a number of objectors)
G Carter (also representing a number of objectors)
E Todd
Mr and Mrs Nott
S Seymour
J Charlton
M Warne
J Armstrong
L Williamson
J Thomson
M and J McStay
F Callaghan
G Broomfield
P Rogers

Responsible Authority Representatives:

Hampshire Constabulary – PC Sharon Conway
Environmental Health – Arran Harmer

3. Other Persons attending the Hearing

Observers:

CIlr Barry Dunning
CIlr Jacqui England

Council Officers:

Christa Ferguson - Licensing Manager
Joanne McClay- Service Manager, Environmental and Regulation

4. Parties not attending the Hearing

The following had confirmed that they would not be attending the hearing:

J Burrows
T Foulkes-Jones
A Poole
P and H Smith
M Freeman
D Lawrence
N Watson
R Mudge
J Waterhouse
S and L Bennett
A Herd
J Ashley
M Fenner

5. Officers attending to assist the Sub-Committee

Prosper Mwedzi – Legal Advisor
Andy Rogers - Clerk

6. Clarification

The Council's Legal Advisor clarified two typographical errors relating to paragraph 6, page 43 where it should have read 12 months and not 121, and on page 34 Annex 2 should have read Annex 3.

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 as set out below:

P Ratcliffe
D Harvey
A Lawley
E.G. Dunford Limited
G Axten
M Dunn
J and K Hanna

J Faulkner
Rt Hon Sir Desmond Swayne
A Thomson
Mr and Mrs Chaperlin
R Coetzee
R Middle
A Pickance
B G Baker
J Corbett
R Gray
L Butler
M Orton
P and A Cox

Some absent parties had not indicated whether or not they would be in attendance. 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 those parties. The Sub-Committee took into account the fact that the points raised by these parties 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. Decision of the Sub-Committee

The application is granted on the following terms and conditions.

Licensable activities and times permitted:

Plans

Accepted amendment to licensing plan in accordance with drawing number 7482-08 revision B dated 31 May 2017 which accompanied the application.

Live Music

Sunday – Thursday 10:00-23:00
Friday and Saturday 10:00-00:00

Recorded music

Sunday - Thursday 10:00-23:00
Friday 10:00-00:00
Saturday 10:00-00:45

Late Night Refreshment

Sunday - Thursday 23:00-00:30
Friday - Saturday 23:00-02:30

Films

Sunday -Thursday 08.00-00:30
Fridays and Saturdays 08:00-02:30

Non-standard timings

Christmas and New Year as in application

Mandatory conditions:

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

General Conditions

1. No customers carrying bottles, either sealed or open, shall be permitted to enter the premises at any time that the premises are open.

Other Conditions**Prevention of Crime and Disorder**

2. The premises shall install and maintain a comprehensive CCTV system. All entry and exit points will be covered enabling frontal identification of every person entering the premises. The CCTV system shall continually record whilst the premises are open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 28 days with date and time stamping. Viewing of recordings shall be made available upon the request of Police or authorised officer throughout the entire 28 day period.
3. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
4. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be made available for inspection at the premises by the Police and other officers of Responsible Authorities at all times whilst the premises are open. The record of refusals will be retained for 12 months.
5. An incident log shall be maintained at the premises and details of all known incidents recorded within the log. The log shall be kept on the premises and be produced to an authorised officer on reasonable request. The completion of the incident log should be part of staff training.
6. Full training shall be provided to all staff involved in the sale of alcohol on commencement of employment relating to prevention of underage sales of alcohol, proxy sales of alcohol to underage persons and sales of alcohol to a person who is drunk. Refresher training shall be provided at regular intervals – at least every 6 months. Records detailing the training provided shall be kept on the premises for a minimum of 12 months and be made available for production upon request by the Police and other officers of Responsible Authorities.

7. No new customers shall be permitted entry to the premises after midnight. Re-admission to existing customers to retrieve personal belongings and those who have gone outside to smoke is permitted

Prevention of Public Nuisance

8. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in external storage receptacles between 23.00 hours and 07:00 hours the following day
9. No deliveries of consumables to the premises shall take place between 19:00hrs and 07:00hrs.
10. No customers shall be allowed to use any external area of the premises after 23.00 hours, except for customers permitted to temporarily leave the premises to smoke in the external area to the front of the premises. No drinks shall be permitted to be taken into the external area after this time
11. No licensable activities or consumption of alcohol will take place outside after 23:00hrs.
12. Staff shall monitor customers in the external area of the premises on a regular basis and ensure customers do not cause a public nuisance. Smoking will only take place in the designated area agreed by New Forest District Council.
13. When regulated entertainment, including live and recorded music, is taking place, regular boundary noise checks shall be conducted to measure music noise emanating from the premises. Whilst it may be audible, music shall be so low that distinct tunes, lyrics, musical instruments and any bass beat cannot be recognised at the boundary of all noise sensitive premises, and any required action shall be taken to reduce such noise. Records detailing the sound checks and any required action shall be recorded.
14. All external windows and doors shall be kept closed after 23:00 hours, except in the event of an emergency and to permit access and egress
15. Customers will not be permitted to remove from the premises any drinks supplied by the premises (alcoholic or otherwise) in open containers unless to an external drinking area set aside for consumption
16. Notices shall be prominently displayed at all exits and in the external area requesting customers to respect the needs of local residents and leave the premises and area quietly.
17. The noise limiting device installed shall be retained and maintained in good working order and all amplified regulated entertainment shall be channelled through the 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.

18. The noise limiting device shall be sealed to avoid tampering.
19. A minimum of two SIA trained door staff will be employed at the premises on Friday and Saturday nights from 22:00hrs and will remain on duty until 30 minutes after the premises are closed to the public and to aid with the quiet dispersal of customers.

Protection of Children from harm

20. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
21. Notices informing customers of the proof of age scheme in operation shall be prominently displayed at the premises.
22. Children under the age of 18 must be accompanied by an adult over the age of 18 at all times whilst on the premises and must be off the premises by 22.00 hours, unless attending a private function or on New Year's Eve or Christmas Eve.

9. Reasons for the Decision

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

In reaching its decision, the Sub-Committee has had regard to the Home Office Guidance issued under section 182 of the Licensing Act 2003, the Council's own Statement of Licensing Policy and the Human Rights Act 1998.

At the hearing, the Sub-Committee carefully listened to all the evidence that was provided and considered what action, if any, was appropriate for the promotion of the four licensing objectives namely, the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

The main areas of concern raised by those objecting to the application related to the following:

- Increase in Anti-social behaviour (ASB) caused by alcohol;
- Noise issues and disturbance to neighbours in a residential area;
- Noise/ASB in the rear garden of the premises by those drinking and/or smoking;
- Increase in music related disturbance;
- Fears that the venue will become more popular and therefore increase the risk of further disturbances and incidents for nearby residents;
- The addition of live music until the early hours will appeal to a younger clientele, leading to increase in problems;
- Additional crime and disorder in the face of reduced police presence to deal.

The Sub-Committee took into account the objections from the Responsible Authorities namely Hampshire Police and New Forest District Council's Environmental Health.

The Sub-Committee carefully considered objections from Hampshire Police made by PC Conway and noted that the objections centred on historical issues primarily relating to alcohol misuse. The Sub-Committee noted that the premises had been closed for nearly three years and would be opening under new management. The Sub-Committee took into account and gave weight to the recommendation by Hampshire Police that conditions relating to Challenge 25 policy; the requirement for SIA staff; due diligence on training; and the requirement for staff to play an active role in the dispersal of crowds were appropriate conditions in promoting the licensing objectives. The Sub-Committee noted that some of the conditions which were recommended to remain in place by the police were incorporated by the Applicant through proposed additional conditions dated 13th May 2019.

The Sub-Committee considered recommendations from the Council's Environmental Health Officer and accepted that noise limiters are an appropriate measure to keep noise levels at reasonable levels and that the condition requiring noise limiters should remain part of the license. The Sub-Committee considered whether installing noise limiters was cost inhibitive as suggested by the Applicant in its submissions but accepted the evidence from the Environmental Health Officer that the cost was reasonable and not disproportionate.

The Sub-Committee was sympathetic to the views of the objectors, but noted that some of the concerns related to historical anti-social behaviour on the site when it was being run by different tenants. The Sub-Committee was guided by the need to deal with each application on a case by case basis and in light of the licence conditions put forward by the Applicant.

The Sub-Committee heard and considered submissions by the Applicant's legal representative Mr Domleo who outlined the intention for the Sail Inn to take a different approach to how the pub was run previously. Mr Domleo stated that the Sail Inn would be a family friendly venue with more emphasis on food and managed by an experienced Designated Premises Supervisor (DPS) with less emphasis on low priced alcohol.

The Sub-Committee heard from Mr Smith, the DPS, who stated that there were no plans to open the premises beyond 2300hrs on most week nights or beyond midnight most Fridays and Saturdays. He also stated that he would be living on the premises.

The Sub-Committee also noted that the Applicant had offered to include conditions on the licence to mitigate the effects of proposed extended hours. These conditions included stopping entry of new customers into the premises after midnight, customers being prohibited from using external areas after 2300hrs, regular boundary noise checks when regulated entertainment was being provided (including live and recorded music). The Sub-Committee accepted these conditions as appropriate with minor amendments.

The Sub-Committee carefully considered requests from the objectors in relation to noise nuisance. In particular, Mr Lee raised concerns in relation to noise nuisance due to the proximity of his property to the premises. The

Sub-Committee considered that a condition requiring noise limiting equipment would be an appropriate measure to keep the noise levels low. However, the Sub-Committee was aware that this measure could not deal with live music noise levels, but took into consideration the Applicant's submission that live music would not be played frequently (mainly limited to weekends). The Sub-Committee also considered the effect of the Live Music Act 2012 and the Deregulation Act 2015 which suspended the requirement for a license allowing the playing of live and recorded music between 0800 and 2300.

The Sub-Committee noted other objections concerning staff working excessive hours and considered that there was specific legislation to deal with such matters and this was not something which the Sub-Committee could take into account.

Accordingly, the Sub-Committee was of the view that the appropriate steps for the promotion of the licensing objectives was to grant the application subject to the above conditions.

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: 17 June 2019

Licensing Sub-Committee Chairman: Cllr Steve Clarke

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Decision notified to interested parties on 21 June 2019