

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION FOR VARIATION OF PREMISES LICENCE –
INDIA COTTAGE, 35 CHRISTCHURCH ROAD, RINGWOOD**

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on 13 February 2020 at 10.00am**

1. Members of the Licensing Sub-Committee

Cllr Keith Craze (Chairman)
Cllr Ann Bellows
Cllr David Hawkins

2. Parties and their Representatives attending the Hearing

Applicant:

Mr Mannan (Applicant)
Mr Garside (Applicant's Representative)

Objectors:

Mr & Mrs M J Gubbins*
J P & M T Tuck
A Hill (representing J Hill)
*Mr Gubbins also represented Mrs Vesty

Responsible Authority Representatives:

Environmental Protection – Rachel Higgins

3. Other Persons attending the Hearing

Observers:

Cllr Jeremy Heron – Local Member

Council Officers:

Christa Ferguson - Licensing Manager
Peter Donelan - Licensing Compliance Officer
Arran Harmer - Environmental Health Officer

4. Parties not attending the Hearing

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

S W Green
M Burton
C & M Vesty (represented by Mr Gubbins)
J Hill (represented by A Hill)

5. Officers attending to assist the Sub-Committee

Amanda Wilson – Legal Advisor
Richard Davies – Legal Advisor (observing)
Andy Rogers – Clerk

6. Clarification

The Council's Legal Advisor clarified that on the morning of the hearing, one of the objectors had emailed the Committee Administrator with an additional photograph for consideration at the hearing. As the additional evidence had not been provided with enough time to circulate to all of the parties in advance, it could only be taken into account by the Licensing Sub-Committee with the consent of all parties. In this instance, the Applicant did not consent and the photograph would not be taken into account by the Sub-Committee.

7. Absence of Parties

At the outset of the hearing it was noted by the Sub-Committee that several the parties were absent as set out below:

A & Z Sheen
L Wiltshire
T Brayer
S W Green
M Burton
P Humble
A Aguilar

These 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 representation in reaching its decision.

8. Decision of the Sub-Committee

The application for variation is granted on the following terms and conditions.

Licensable activities and times permitted:

Plan

Accepted amendment to licensing plan in accordance with the drawings dated December 2019 which accompanied the application, incorporating the shaded outside area into the licensable area.

E: Live music - Indoors

Thursday 18:00 to 00:00
Friday 18:00 to 00:00
Saturday 18:00 to 00:00

E: Live music – Outdoors

Thursday 18:00 to 23:00
Friday 18:00 to 23:00
Saturday 18:00 to 23:00

F: Recorded music – Indoors

Monday 12:00 to 14:30 and 18:00 to 00:00 hours
Tuesday 12:00 to 14:30 and 18:00 to 00:00 hours
Wednesday 12:00 to 14:30 and 18:00 to 00:00 hours
Thursday 12:00 to 14:30 and 18:00 to 00:00 hours
Friday 12:00 to 14:30 and 18:00 to 00:00 hours
Saturday 12:00 to 14:30 and 18:00 to 00:00 hours
Sunday 12:00 to 14:30 and 18:00 to 00:00 hours

F: Recorded music – Outdoors

Monday 12:00 to 14:30 and 18:00 to 23:00 hours
Tuesday 12:00 to 14:30 and 18:00 to 23:00 hours
Wednesday 12:00 to 14:30 and 18:00 to 23:00 hours
Thursday 12:00 to 14:30 and 18:00 to 23:00 hours
Friday 12:00 to 14:30 and 18:00 to 23:00 hours
Saturday 12:00 to 14:30 and 18:00 to 23:00 hours
Sunday 12:00 to 14:30 and 18:00 to 23:00 hours

I: Late night refreshment - Indoors

Monday 23:00 to 00:00 hours
Tuesday 23:00 to 00:00 hours
Wednesday 23:00 to 00:00 hours
Thursday 23:00 to 00:00 hours

Friday 23:00 to 00:00 hours
Saturday 23:00 to 00:00 hours
Sunday 23:00 to 00:00 hours

J: Supply of Alcohol – On the premises

Monday 12:00 to 14:30 and 18:00 to 00:00 hours
Tuesday 12:00 to 14:30 and 18:00 to 00:00 hours
Wednesday 12:00 to 14:30 and 18:00 to 00:00 hours
Thursday 12:00 to 14:30 and 18:00 to 00:00 hours
Friday 12:00 to 14:30 and 18:00 to 00:00 hours
Saturday 12:00 to 14:30 and 18:00 to 00:00 hours
Sunday 12:00 to 14:30 and 18:00 to 00:00 hours

(Condition 24 (below) limits consumption of alcohol to inside area only after 23:00)

L: Hours premises are open to the public

Monday 12:00 to 14:30 and 18:00 to 00:00 hours

Tuesday 12:00 to 14:30 and 18:00 to 00:00 hours

Wednesday 12:00 to 14:30 and 18:00 to 00:00 hours

Thursday 12:00 to 14:30 and 18:00 to 00:00 hours

Friday 12:00 to 14:30 and 18:00 to 00:00 hours

Saturday 12:00 to 14:30 and 18:00 to 00:00 hours

Sunday 12:00 to 14:30 and 18:00 to 00:00 hours

Conditions:

The previous conditions on the Premises Licence should be removed and replaced with the following:

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.

Conditions consistent with the operating schedule accompanying the application (M) and further conditions offered by the Applicant prior to the hearing, as amended by the Sub-Committee:

a) General – all four licensing objectives

b) The prevention of crime and disorder

1. The Designated Premises Supervisor will nominate a responsible person to manage the premises in his absence.
2. The premises shall have sufficient cameras located within the premises to cover all public areas. Continuous CCTV recording will take place in all licensed areas of the premises. The CCTV system must be operating at all times whilst the premises are open for licensable activity.
3. An incident book will be provided and maintained at the premises and completed by staff. It will remain on the premises at all times and will be available to a responsible authority for inspection upon request.
4. Any incidents that include physical altercation or disorder, physical ejection, injury, identification document 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 between members of staff and the public the entry will include what physical activity occurred between each party. The entry shall be timed, dated and signed by the author.

5. Each incident book record should be retained for at least 12 months.
 6. There shall be in place on the premises a written policy to prevent the sale or supply of alcohol to persons under 18 years of age. That policy will comply with Challenge 25. 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.
 7. Acceptable identification for the purposes of age verification will include a driving licence, passport or photographic identification bearing the "PASS" (Proof of Age Standards Scheme) logo and the persons date of birth. Armed Forces ID will also be acceptable.
 8. 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.
 9. 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.
- c) Public Safety
10. The premises must have adequate lighting inside and outside.
 11. Clear exit signs will be displayed. Emergency exits must be kept clear at all times.
 12. A policy must be in place to exercise due diligence with regard to health and safety and fire safety.
 13. The Fire Assessment will be reviewed annually.
 14. Staff will be trained in health and safety and fire safety and a record will be kept of all training.
- d) Prevention of Public Nuisance
15. Alcohol must not be removed from the premises by customers.
 16. The premises shall operate a smart/casual dress code policy.
 17. The premises will not promote 'Happy Hours' drinking offers
 18. Alcohol shall not be sold or supplied on the premises otherwise to persons taking table meals and for consumption by such a person as ancillary to their meal.

19. Frequent collection of glasses and bottles will be undertaken to ensure that empty containers do not accumulate in or around the licensed premises.
20. A smoking area for customers will be provided and suitable receptacles for cigarette debris provided.

e) Protection of Children from harm

21. Children must be accompanied on the premises by an adult.
22. There shall be no nudity or sexual performances at the premises.

Conditions consistent with those suggested by Environmental Protection in their role as a responsible authority prior to the hearing, as amended by the Sub-Committee:

23. All licensable activities must cease at 23:00 hours in the outdoor area of the premises marked on the plan dated December 2019 by shading comprising the open sided, covered area, the converted sheds and outside area to the rear of the restaurant ('the Outside Area').
24. Customers must not be permitted to consume alcohol in the Outside Area after 23:00 hours.
25. Smoking by customers outside of the premises must be monitored and management must ensure that customers do not cause noise nuisance to neighbours.
26. Management shall make provisions to ensure the safe and quiet dispersal of customers. Any customers congregating or loitering outside after leaving the premises will be asked to depart quickly and quietly.
27. All external doors and windows shall be kept closed after 23:00 hours, except for access and egress and in the event of an emergency.

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.

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

In particular, the Sub-Committee noted that the relevant representations related primarily to the effect of the application on the Prevention of Public Nuisance licencing objective.

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 variation, subject to the restrictions and conditions set out in section 8 above.

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.

The Sub-Committee were reminded at the hearing of the effect of the Live Music Act 2012 and the Deregulation Act 2015 which suspended the requirement for a licence allowing the playing of live and recorded music between 08:00 and 23:00.

The Sub-Committee noted that the main issue of contention between the parties was the proposed use of the Outside Area and the impact this would have on the neighbouring residents at Elizabeth Court.

The report provided by the Licensing Manager described how the Outside Area had been used over a period of at least six years, but it had not previously been included as a licensable area within the premises licence. The application for variation sought to regularise this position. Therefore, whilst the application related to a proposed variation to the premises licence, the evidence from both the residents of Elizabeth Court and the Environmental Protection Manager (on behalf of Environmental Protection as a Responsible Authority), relating to the previous disturbance caused by the use of the Outside Area, was given fair weight by the Sub-Committee in coming to their decision.

The Sub-Committee heard from the Applicant that he had managed the business for 25 years, but that it had been owned by his family since 1981. The premises is a restaurant in a town centre location. However, the Applicant felt that in the current economic climate, the business needed to evolve to continue to attract customers. The Applicant was of the view, which was informed by customer feedback, that a late night outside area was what customers would like. The Applicant stated that in response to this customer feedback, he had created an attractive outside area with sympathetic lighting for the enjoyment of customers and use during the warmer months. The Sub-Committee heard that the Applicant did not wish to cause disturbance to local residents and would remind customers of the need to respect local neighbours of the premises. The Applicant emphasised that he was not intending his premises to become a late-night drinking venue or club, but wanted music entertainment to be available to his customers to enhance their experience.

The Sub-Committee listened to the concerns raised by objectors. The main areas of concern raised by those objecting to the application, which included a petition signed by 15 residents from Elizabeth Court, related to the following:

- The likelihood of noise issues and disturbance to neighbours in a residential area;
- Noise in the Outside Area by those drinking and/or smoking; and
- Increase in music related disturbance.

The Sub-Committee considered the objections from the responsible authority, namely New Forest District Council's Environmental Protection Service. At the hearing, the Sub-Committee heard from the Environmental Protection Manager, that in their professional opinion, granting the variation in the terms applied for would undermine the Prevention of Public Nuisance licensing objective. The Sub-Committee were informed that since 2013, there had been 4 complaints made to Environmental Protection, and noise monitoring had been carried out at residential premises which found that, whilst there was no statutory nuisance established, there was a public nuisance to the local residents. This was typically associated with customers in the Outside Area of the premises. In the relevant representation from Environmental Protection, contained in the papers, it confirmed that the Environmental Protection team had received noise complaints associated with the premises within the previous 12 months.

The view of Environmental Protection was that restricting the use of the Outside Area would be appropriate to mitigate the risk of disturbance to local residents.

The Sub-Committee were mindful that public nuisance relates to the reduction of living amenity and environment of those living in the area of the premises. Whilst the majority of the amendments that were sought through the variation application did not give rise to concern, the Sub-Committee was persuaded by the local residents and the Responsible Authority for Environmental Protection that there was a risk to the promotion of the Prevention of Public Nuisance licensing objective through the use of the Outside Area at a sensitive period of time, that being after 23:00 hours. Therefore, the Sub-Committee decided that the use of the Outside Area after 23:00 hours should be restricted.

In addition to the mandatory conditions of the Licensing Act 2003, the Sub-Committee noted that the Applicant had offered to include conditions on the licence to mitigate the effects of the proposed variation. These conditions included provision regarding CCTV at the premises, an incident book, a Challenge 25 policy and the requirement for alcohol to only be sold to persons taking table meals at the premises. The Sub-Committee accepted these conditions as appropriate, with minor amendments and additions.

The Sub-Committee were of the view that the imposition of these conditions, as well as conditions consistent with those suggested by Environmental Protection, would lessen the impact of the variation on the neighbouring residents and support the Prevention of Public Nuisance licensing objective. The Sub-Committee considered whether a condition could be imposed, as suggested by Environmental Protection, requiring the Applicant to carry out noise monitoring when regulated entertainment is taking place at the premises. However, it was felt that, given the nature of the premises, this was too onerous and could not be carried out by the Applicant in a measurable or meaningful way. Therefore, this condition has not been included on the licence.

The Sub-Committee is of the view that the variation should take immediate effect.

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: 13 February 2020

Licensing Sub-Committee Chairman: Cllr Keith Craze

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Decision notified to interested parties on 19 February 2020