

**NEW FOREST DISTRICT COUNCIL
LICENSING ACT 2003**

**APPLICATION FOR THE REVIEW OF A PREMISES LICENCE – INDIA COTTAGE, 35
CHRISTCHURCH ROAD, RINGWOOD**

Decision of the Licensing Sub-Committee hearing held on-line via Skype on Thursday, 9 July 2020 at 10.00 a.m.

1. Members of the Licensing Sub-Committee

Cllr Steve Clarke - Chairman
Cllr Steve Davies
Cllr Geoffrey Blunden

Cllr Neil Tungate (Substitute observing)

2. Parties and their Representatives attending the Hearing

Mr S A Mannan – Premises Licence Holder
Mr P Day – Solicitor Representing the Premises Licence Holder
PC Brian Swallow – Hampshire Constabulary (Applicant for the Review)

3. Other Persons attending the Hearing

Council officers:

Christa Ferguson – Licensing Manager
Joanne McClay – Service Manager - Environmental and Regulation (Part)

Observers:

Cllr Jeremy Heron – Local Member

4. Parties not attending the Hearing

None.

5. Officers attending to assist the Sub-Committee

Amanda Wilson – Legal Advisor
Richard Davies – Legal Advisor (Assisting)
Andy Rogers – Clerk
Matt Wisdom – Democratic Services Manager
Karen Wardle – Committee Administrator

6. Reasons for the Decision

The Sub-Committee considered the application for review of the premises licence along with the evidence, including CCTV and body worn camera footage, together with written submissions, supplied by the Police and the Premises Licence Holder.

At the hearing, the Sub-Committee carefully listened to all the evidence that was provided by the parties and considered what steps would be 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 that, in particular, the prevention of crime and disorder licensing objective was engaged by the actions of the Premises Licence Holder in the sale of alcohol for consumption on his premises as set out in the evidence.

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 Act'), the Council's own Statement of Licensing Policy and the Human Rights Act 1998 and particular attention was drawn to various provisions of these documents during the course of the hearing.

The selling of alcohol on the premises during the time stated, was in contravention of both a condition imposed on the premises licence and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ('the Regulations') (which were in force at the time). Both of these are criminal offences by virtue of section 136 of the Act and Regulation 9 of the Regulations respectively.

The Sub-Committee were mindful that the Premises Licence Holder had requested a variation to his premises licence in February 2020 which sought to incorporate the outside space on the premises within the terms of the licence. Following this variation, condition 18 was imposed on the licence. This condition had been offered by the Premises Licence Holder.

With the condition's inclusion being so recent, the Sub-Committee wished to convey its disappointment with the Premises Licence Holder's submission that he was unaware of the licence restrictions imposed and accepted by him. For such a well-established business to be pleading ignorance of its own licence conditions is far from impressive.

The Sub-Committee heard that the premises had been owned by the Premises Licence Holder's family for nearly forty years and the Premises Licence Holder had been running the premises for over half of this time.

The Sub-Committee heard that there had not been any formal enforcement action taken in respect of the premises previously, nor had there ever been a previous application for review of the licence. There was no evidence presented to suggest that the Premises Licence Holder had ever been given a formal warning in relation to breaches of the licence conditions, the Act more generally, or the Regulations, prior to the Police visit on 25 April 2020.

The Sub-Committee noted that the Licensing Authority had not made representations in support of the application for review, nor had any of the other responsible authorities or members of the public.

However, the action taken by Council officers through serving a Prohibition Notice on the Premises Licence Holder did demonstrate that enforcement action had been taken in respect of the breach of the Regulations. It was noted that no criminal proceedings were being contemplated by either the Police or the Licensing Authority.

The Sub-Committee heard from the Police regarding the seriousness of the breaches of the Regulations and that the decision to submit the application for review was not taken lightly. The Sub-Committee observed that there had clearly been breaches as demonstrated by the CCTV and body worn video footage. It was also noted that such breaches were not disputed by the Premises Licence Holder.

However, the Sub-Committee were of the view, in relation to the beach huts in the outside space of the premises, that whilst the Police were of the belief that the dressing of these huts demonstrated that there was an intention to serve food to customers in them, there was no direct evidence to support this.

It was felt by the Sub-Committee that the breaches that occurred were significant, particularly at such a time when restrictions affecting all individuals and businesses across the country were being put in place to protect the public from the COVID-19 pandemic.

Serious consideration was given to whether the licensable activity of the sale of alcohol should be removed from the premises licence, either permanently or for a shorter period. In addition, the Sub-Committee discussed whether removing the Premises Licence Holder from his position of Designated Premises Supervisor was appropriate for the promotion of the licensing objectives. However, the Sub-Committee were mindful of the evidence before it relating to the premises' history and, most importantly, that no further breaches of the licence or the Regulations had been alleged since the service of the Prohibition Notice.

The Sub-Committee fully supports the Police and the other responsible authorities for the purposes of the Act. However, on this occasion, and taking into consideration all the evidence and circumstances, it was concluded that the proportionate and appropriate step for the promotion of the licensing objectives was to take no formal action as set out in section 7 below. In this regard, the Sub-Committee requests that this decision be brought to the attention of any decision maker when considering the premises on behalf of the Licensing Authority in the future.

The Sub-Committee hereby formally warns the Premises Licence Holder that there should not be any further breach of the conditions of the licence, the Act, or any other applicable legislation. If there is such a breach, this decision and warning is likely to carry significant weight in any subsequent enforcement action and the consideration of whether further steps are appropriate.

The Premises Licence Holder is required to fully apprise himself of the requirements of his existing premises licence, the Act and any changes to the law relating to the operation of licensed premises arising out of the current COVID-19 pandemic or otherwise.

For the avoidance of doubt, condition 18 of the premises licence has been included below:

'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'.

This means that customers must not be served alcohol whilst waiting for the collection of a takeaway meal and alcohol may only be sold if a customer is being served with a meal to be consumed on the premises.

The Premises Licence Holder is strongly encouraged to engage with the Council's Licensing Manager to ensure there are no future misunderstandings or errors.

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 a further review.

7. Decision of the Sub-Committee

To take no formal action in accordance with section 52 of the Licensing Act 2003, but to submit a written warning to the Premises Licence Holder as set out above.

Date: 9 July 2020

Licensing Sub-Committee Chairman: Cllr S Clarke

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Decision notified to interested parties on 10 July 2020