

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION: THE TESTWOOD, SALISBURY ROAD, TOTTON

Decision of the Licensing Sub-Committee hearing held at Appletree Court, Lyndhurst on Wednesday, 15 August 2007 at 10.00 a.m.

1. Members of the Licensing Sub-Committee

Councillor Beck - Chairman
Councillor Mrs Smith
Councillor Woods

2. Parties and their Representatives attending the Hearing

Mr P Livsey, Business Development Manager, Representing Greene King Retailing Ltd, Applicant

Mr & Mrs Peters, Designated Premises Supervisors, Representing Greene King Retailing Ltd, Applicant

Mr Robinson, Environmental Health Officer – on behalf of Verity Fletcher – Objector
Mr & Mrs Rankin – Objectors
Miss J Houslander & Miss S Cannon – Objectors
Mr & Mrs Robins – Objectors
Mr & Mrs Cauley - Objectors

3. Other Persons attending the Hearing

Mr Hetherington, Licensing Officer – Observer

4. Parties not attending the Hearing

Mr & Mrs Quinlan – Objectors
Mr A Russell, represented by Mr Cauley - Objector

5. Officers attending to assist the Sub-Committee

Grainne O'Rourke – Legal Advisor
Melanie Dunsmore - Clerk

6. Decision of the Sub-Committee

The application to amend the conditions as detailed in the application was refused and the current conditions remain.

7. Reasons for the Decision

The Sub-Committee carefully considered the evidence from the parties, both written and oral. The nature of the application would have meant that smokers and other patrons would have been able to have free rein of the garden until closing time of the premises. Whilst the applicant, as part of their application, stated that no licensable activities would take place after 22.30 hours Sunday through to Thursday and 23.00 hours Friday and Saturday, it still remained that smokers and other patrons, with their drinks in hand, could sit in the garden which was very close to residential premises after the above hours until closing time.

The residents were currently experiencing considerable noise problems even under the current conditions and the Sub-Committee was most concerned that to allow this variation would result in an unacceptable level of noise being caused to the nearby residents at an unacceptably late hour.

During the course of the hearing the issue arose as to whether the proposed condition could be amended to preclude smokers from taking their drinks outside whilst going out to smoke. The applicant said that they were amenable to this being precluded. The Sub-Committee considered that such a condition would be very difficult to enforce and be largely impractical. Even if such a condition could include this prohibition they considered that unacceptable noise would still result from people (even without their drinks) being in the garden including the patio area at an unacceptably late hour.

The Sub-Committee were mindful of the evidence from the Environmental Health Department that they had currently found that noise from the patio would be likely to cause a statutory nuisance after 23.00 hours. In light of all the above the Sub-Committee did not feel that the Licensing Objective relating to the prevention of public nuisance would be promoted by the variation as requested in the application and hence the application was refused.

The Sub-Committee was most concerned to hear during the course of the hearing that the current conditions were being breached. In response the applicant said that they were not aware that the patio area was covered by the current conditions but they were aware that the garden had been used on occasions by people outside the permitted hours and that shouting and swearing had taken place to the detriment of the neighbours.

The Sub-Committee asked the Licensing Officer to vigorously enforce the conditions currently imposed on the licence.

In conclusion, the Sub-Committee considered that to amend the conditions as requested would result in unacceptable noise being caused to nearby properties at an unacceptably late hour.

Date: 15.08.07

Licensing Sub-Committee Chairman: Cllr G C Beck

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Decision notified to interested parties on 17.08.07