

**NEW FOREST DISTRICT COUNCIL**

**LICENSING ACT 2003**

**APPLICATION:** New Forest Activity Centre, Black Knoll, Brockenhurst

**Decision of the Licensing Sub-Committee hearing held at Appletree Court, Lyndhurst on Tuesday, 6 July 2010 at 10.00am**

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**1. Members of the Licensing Sub-Committee**

Councillor G C Beck - Chairman  
Councillor J A G Hutchins  
Councillor Mrs B Smith

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**2. Parties and their Representatives attending the Hearing**

Mr Winship, Medieval Jousting Ltd – Applicant  
Mr Weston – Barrister, Paris Smith Solicitors  
Mr Morris – Paris Smith Solicitors  
Mr Girling – In support of the Applicant  
Mr White - In support of the Applicant

Objectors:

Mr Avery, New Forest National Park Authority  
Mr Vandyck, Environmental Health Pollution  
Mrs Pattison, Clerk, Brockenhurst Parish Council

Mr Alcock  
Mr Ball  
Mr Browne  
Mrs Dawkins  
Mr Eley  
Mr Griffiths  
Cllr Mrs Holding  
Mr Horne  
Dr & Mrs Jones  
Mr Kirsch  
Mrs Leigh  
Mr & Mrs Luke  
Mr & Mrs Marshall  
Mr & Mrs Masefield  
Mr Moore  
Dr Newton  
Mr & Mrs Nichol  
Mr Nolan  
Mr Parker  
Dr Pearce

Mr & Mrs Pitcher  
Mr Teed  
Mrs Thomas  
Dr & Mrs Trowell  
Mr & Mrs Turner  
Dr Wilson  
Mrs Wingate  
Mr Wooller

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**3. Other Persons attending the Hearing**

Observers:

Mr & Mrs Batty  
Mr Banister  
Mr Campbell  
Mr & Mrs Coombs  
Mr Greaves  
Mr & Mrs Hibberd  
Mr & Mrs Jeffry  
Mrs Marr  
Mr & Mrs Needell  
Mr Perry  
Mr Ranslay  
Mr & Mrs Risso  
Mrs E Smith  
Mr C Smith  
Mr R Smith  
Mrs Staines  
Mr Weaver  
Mr Yandell (press)

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**4. Parties not attending the Hearing**

Objectors:

Mr Angel  
Mr & Mrs Brown  
Mr Brown  
Mr & Mrs Dow  
Mr & Mrs Garrod  
Mrs Gossage  
Mr & Mrs Harrison  
Mr Hawes  
Mrs Hudson  
Mrs Janes  
Mr Killengray  
Mr & Mrs Killengray  
Mr & Mrs Letley  
Ms Mylchreest  
Ms Parker  
Mr Park  
Ms Paulson  
Mrs Penny

Mrs Turner  
Mr Waight  
Mr Walkers  
Mr Wingham  
Mr & Mr Worn

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**5. Officers attending to assist the Sub-Committee**

Grainne O'Rourke – Head of Legal and Democratic Services  
Edward Williams – Solicitor  
Melanie Stephens- Committee Administrator

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**6. Decision of the Sub-Committee**

That the application be refused.

**7. Reasons for the Decision**

1. The Sub-Committee carefully considered the application along with the evidence, both written and oral, supplied by the applicant and objectors.
2. In respect of the objectors, evidence was put forward by the Council's Environmental Health Department, by Brockenhurst Parish Council and by New Forest National Park Authority. In addition, 68 local residents objected, including a local ward Councillor.
3. Notwithstanding the objections raised, the Sub-Committee was satisfied that the licensing objectives of (a) the prevention of crime and disorder and (b) the protection of children from harm would not be prejudiced by granting the application.
4. However, the Sub-Committee was satisfied that refusing the licence was necessary in order to promote the licensing objectives relating to public safety and public nuisance.

**Prevention of public nuisance**

Noise nuisance

5. The Sub-Committee was satisfied, based on the oral evidence of the Council's Senior Environmental Health Officer, Mr Vandyke, that the proposed jousting events would cause a public noise nuisance. In particular, Mr Vandyke's evidence was persuasive in the following regards:
  - 5.1 Mr Vandyke gave clear evidence that there would be significant noise emanating from the events. This would take the form of (a) the noise of horses and weapons involved in the events themselves, (b) crowd noises and (c) the public address system and amplified music.
  - 5.2 Having carried out noise assessments in compliance with the appropriate code of practice, Mr Vandyke was clear that the levels of noise from the events would materially and adversely affect the reasonable comfort and convenience of the residents in the locality and members of the public using the surrounding areas of the Forest for amenity purposes.

- 5.3 Whilst Mr Vandyke was of the view that the two neighbouring properties would suffer the worst of the noise nuisance, his professional view was that the nuisance from the noise would extend beyond those two adjoining properties and would affect the residents south of Rhinefield Road and beyond.
6. Oral evidence was also put forward by long-standing local residents who had experienced noise nuisance from similar previous events that had taken place on the premises. In addition, the Council served a Planning Enforcement Notice on the then owners of the site in 1995 which referred to the use of the land for public entertainment leading '*to noise and disturbance to residents and visitors to the area*'. This provided the Sub-Committee with further evidence of the likely adverse material impact upon the reasonable comfort and convenience of the residents in the locality and members of the public generally, that the proposed activities would have.
7. The Sub-Committee considered whether conditions could be imposed to ensure that the licensing objective would not be prejudiced. In particular, representations were made by the Applicant to the effect that amplified sound could be limited to, say, 5dB above the background noise (as heard from a prescribed distance from the event). The Sub-Committee did not consider that such a condition would resolve the problem, for the following reasons:
- 7.1 Whilst the Applicant would potentially have control over the noise emanating from the public address and amplified sound system, the Applicant would have no control over the crowd noise or the noise of the horses and weapons. Mr Vandyke was clear that any condition restricting the level of noise would have to relate to the whole event, not just the public address and amplified sound system. The proposed condition was therefore not likely to prevent a public noise nuisance.
- 7.2 Restricting the noise emanating from the public address and amplified sound system may not be practicable. In order to function effectively, the people attending the events would have to be able to hear the public address and amplified sound system above the crowd noise. The Sub-Committee thought this would be very unlikely to be achievable at the suggested limits to the noise levels.
- 7.3 Mr Vandyke's evidence was that the structure within which the events would take place was very acoustically 'leaky'. His evidence was that the only way of preventing a noise nuisance was to effect substantial works to sound-proof the structure at a cost of tens of thousands of pounds. The Sub-Committee was mindful that any condition that had the practical effect of requiring the Applicant to spend such sums on improvement works is unlikely to be proportionate as required by the section 182 Guidance that accompanies the Licensing Act (at paragraph 10.13). Furthermore, the Applicant gave evidence that it does not own the land and would have no rights to effect structural works.

#### Highway

8. Because (a) the access to the Premises is via a single track (which itself exceeds 200 yards in length, 11 feet wide with no passing points and which bends such that one end cannot be seen from the other), (b)

parking on the site is limited and (c) the turning into the track is at an acute angle, the Sub-Committee considered that it would be inevitable that there would be significant traffic build up on Rhinefield Road both before and after the events. Rhinefield Road itself is a public highway and a small, narrow country road.

9. The Sub-Committee was satisfied that it would be highly likely that, when events took place, the public highway would be obstructed. Whilst an increase in the volume of traffic is not likely to be a public nuisance in itself, an obstruction of the public highway does constitute a public nuisance.

### **Public safety**

10. The Sub-Committee was mindful that there were no extant objections relating to public safety from the fire authority, the Council's Environmental Health (Commercial) Department (covering health and safety matters) or the Police.
11. However, the Sub-Committee had serious concerns for the safety of the public arising out of the volume of traffic that the events would generate. In particular:
  - 11.1 Because of the build-up of traffic on Rhinefield Road around the site entrance, the Sub-Committee saw a significant risk of accidents occurring as a result of the stationary traffic obstructing Rhinefield Road. Rhinefield Road itself is a narrow and windy road.
  - 11.2 Notwithstanding the Applicant's proposed measures to manage the movement of traffic along the single track leading to the Premises, the Sub-Committee could foresee risks to pedestrians walking along the track, especially if large vehicles or coaches were using the track (it being only 11 feet in width).
  - 11.3 The Sub-Committee also had concerns regarding the access for emergency vehicles in light of the narrowness of the track.
12. In light of the above, the Sub-Committee was of the view that a refusal of the licence was necessary to promote the licensing objectives relating to public safety and public nuisance.

**Date: 7 July 2010**

**Licensing Sub-Committee Chairman: Cllr B C Beck**

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**FOR OFFICE USE ONLY**

**Decision notified to interested parties on 8 July 2010**