

NEW FOREST DISTRICT COUNCIL

LICENSING ACT 2003

APPLICATION: NEW FOREST ACTIVITY CENTRE, RHINEFIELD ROAD, BROCKENHURST

**Decision of the Licensing Sub-Committee hearing held at Appletree Court,
Lyndhurst on Monday, 21 March 2011 at 9.30am**

1. Members of the Licensing Sub-Committee

Councillor J Penwarden - Chairman
Councillor Mrs M McLean
Councillor P R Woods

2. Parties and their Representatives attending the Hearing

Mr A Girling – Heathgate Land and Property Ltd (Applicant)
Mr L Weston – Applicant’s barrister
Mr C Morris – Applicant’s solicitor
Mr M Sugden - Alan Saunders Associates - Acoustic specialist for Applicant

Objectors:

Mr S Avery (New Forest National Park Authority)
Mr P Ball
Mr J Brewer
Mr D Browne
Mr A and Mrs K Butterworth
Mr R and Mrs G Coombs
Mr R and Mrs F Dobson
Mr M Dow
Mrs P Dawkins
Mrs J Eley
Mr D and Mrs W Gaffikin
Mr T Glenister (representing Mr & Mrs Kirsch)
Mr P and Mrs J Griffiths
Cllr Mrs M Holding
Mr R Jeans
Mr P and Mrs U Jeffree
Mr N Jones
Mr D and Mrs J Kirsch
Mr J and Mrs V Luke
Mr G and Mrs S Marshall
Mr T and Mrs J Masefield
Mr D Moore
Mr R Needell
Mr M Nichol
Mr G Parker – Friends of Brockenhurst
Dr D Pearce

Objectors:

Mr A and Mrs J Phelps
Mr D and Mrs L Pitcher
Mrs M Porteous
Mr C Smith
Mrs E Smith
Mr P and Mrs G Smith
Mrs K Staines
Mr G Taylor – Brockenhurst Parish Council
Mrs R Thomas
Mr C and Mrs J Turner
Mr J and Mrs A Woolhouse
Mr D Worn
Mr R and Mrs G Coombs
Mr P and Mrs U Jeffree
Mr E Vandyck - Environmental Health, New Forest District Council

3. Parties not attending the Hearing

Objectors:

Mr D Allan
Mr T and Mrs G Angel
Mr J and Mrs J Baker
Mr F and Mrs C Batty
Mr R and Mrs C Bailey
Mr C and Mrs C Brace
Mr E and Mrs P Brown
Mr C and Mrs J Campbell
Mr J and Mrs E Chester
Ms B Danby
Mr C and Mrs M Fay
Mrs M Egleton
Mr D Eley
Mr M Graveling
Mr G and Mrs F Harvey
Mr A and Mrs J Hendry
Mr D Heslop
Mr P Hill
Mr J and Mrs S Hooper
Mr R and Mrs R Hood
Ms C Hooper
Mr C Horner
Mr S Kennard
Mr A Ling
Mr A and Mrs G MacLeod
Ms C Matthews
Mrs J S Mylchreest
Ms S Moss
Mr D and Mrs M Newton
Mr R Park
Mr R and Mrs C Pepperell
Mr D Podmore
Mrs E Richmond
Mr R Smith

Objectors:

Mr and Mrs M Snell
Mrs S Staines
Mr J and Mrs E Stanton
Mr C and Mrs M Teed
Mr J Thomas
Mr M and Mrs J Turner
Mr C and Mrs J Wood
Mr D Wooller
Mr A and Mrs J Wright

4. Officers attending

Grainne O'Rourke – Legal Advisor
Lynne Battersby – Clerk
Lisa Clark - Solicitor

5. Decision of the Sub-Committee

That the application be refused.

6. Reasons for the Decision

The Sub-Committee carefully considered the application, the written evidence, and approximately 6 hours of oral evidence given at the hearing.

The reasons for this decision are based solely on the licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.

At the start of the hearing the applicant amended the application to cover the months of April (or starting at Easter if Easter fell in March) to September only, and the hours of operation to 9.00 a.m. to 8.30 p.m. (the latter time being amended during the hearing to 6.30 p.m. in March/April and September, in the light of concerns about the safety of access and egress during the hours of darkness).

The applicant also expressed a willingness to accept a condition limiting noise at the boundary to 38 decibels (5 decibels above background noise); to carry out improvement works to the building; to limit numbers on site to 480; and to display notices requiring people to leave quietly and respect the environment. Regarding access, they also accepted the need to delineate a pedestrian strip along the side of the access road; to construct a vehicle passing place on the driveway; and to place stewards at both ends of the access route to direct and control the flow of traffic, including displaying an appropriate sign at the bottom of the driveway when the car park was full.

In respect of the objectors, evidence was put forward by the Council's Environmental Health Department, the New Forest National Park Authority, Brockenhurst Parish Council, the local ward member, Friends of Brockenhurst, and by and on behalf of a number of local residents.

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. They considered the likelihood of prejudice on either of these grounds to be too remote.

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

Highways

There was some dispute about the precise width of the track leading to the building (the applicant stated 11 feet, an objector 3 metres (about 9 feet 10 inches)), but it was accepted by all that the track does not exceed 11 feet, is too narrow to allow vehicles travelling in opposite directions to pass each other, and is about 200 yards long.

The applicant offered to construct a passing place, although an objector disputed that there was sufficient width to do so.

However, even if (a) a passing place was constructed on the access road, (b) a pedestrian strip was delineated, and (c) marshals were employed to direct and control traffic and place a temporary sign when the car park was full, the Sub-Committee considers it inevitable that there would be significant build up of traffic on the public highway of Rhinefield Road before and after events with up to 400 people attending. It considers that such build ups would be regular occurrences, not occasional, "worst case" events. This finding is due to:

- (a) the length and single track nature of the road, which may even lead to marshals having to hold vehicles on Rhinefield Road if a stream of traffic were exiting the site;
- (b) the difficult angle of the turn into the access road;
- (c) the relatively narrow width of Rhinefield Road and the current uses, including cyclists and pedestrians, that could exacerbate the potential for obstruction;
- (d) the likelihood of motorists causing obstructions by parking in the road when the car park is full,
- (e) the fact that the access road is shared, leading to the likelihood of delays causing obstruction on Rhinefield Road being compounded when the access road is used by vehicles going to or from the two homes that share the access and also livestock regularly using the track.

In these circumstances, the Sub-Committee was satisfied that, when events took place, the public highway would regularly be obstructed. The Sub-Committee does not consider that any licensing condition or conditions would be effective in preventing obstruction. 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.

Noise

(a) Noise outside the building

It is accepted that there would be some noise outside the building from people and vehicles arriving at and leaving the site. However, the Sub-Committee considered that such noise was unlikely to be loud enough, or if loud, of a long enough duration, to constitute a public nuisance, especially as licensable activities would cease at 8.30/6.30 p.m.

(b) Noise generated within the building

The applicant stated that they would accept a condition limiting noise from the building to 38 decibels at the boundary, and also accepted that they would need to undertake works to the building to be able to meet such a condition. The Sub-Committee noted the background noise measurements taken by the applicant over 3 days in January 2011, and by the Council's Environmental Health Officer during an afternoon in 2010, and the differences between these.

The Sub-Committee noted that the Code of Practice provided by the Noise Council, on which the applicant's case (that 5 decibels above background noise levels over a 15 minute period was acceptable) was based, specifically related to "indoor venues used for up to about 30 [music] events per calendar year".

The application is for licensable activities for at least 6 months of the year, every day from 9.00 a.m. to 8.30/6.30 p.m. – that is 11 and a half or 9 and a half hours per day – with the potential for more than one event a day. Clearly the number of events covered by such a licence could exceed 30 by a large factor. In these circumstances the Sub-Committee feels that the applicant's reliance on the Noise Council Code of Practice standard is flawed, and that a level of 38 decibels may well be too high, as noise would be generated much more often than the 30 events a year envisaged under that standard. The Sub-Committee considers as a consequence that the applicant has not demonstrated that there would not be an unacceptable disturbance to residents in the vicinity of the site and the nearby area of Rhinefield Road. Furthermore, the Sub-Committee considers that the applicant has not demonstrated that the mitigating works proposed to the building would be adequate to contain noise even to 38 decibels measured at the boundary.

Public safety

The Sub-Committee was mindful that there were no objections relating to public safety from the fire authority (they had written to the applicant, but their letter was not a formal objection), the Council's Environmental Health (Commercial) Department (covering health and safety matters) or the Police.

However, although the effect of the amendments to the application offered at the hearing were such as to restrict the operation to daylight hours, the Sub-Committee had serious concerns for the safety of the public arising out of the volume of vehicular and pedestrian traffic that the events would generate. In particular:

- (a) Stationary traffic obstructing Rhinefield Road, which is itself narrow, could contribute to a significant risk of accidents occurring on the road;
- (b) Even if a pedestrian strip were delineated and movement of traffic along the single track leading to the premises were managed, the Sub-Committee could foresee risks to pedestrians, including families with children, accessing the site on foot, especially as (i) the track would not be paved or hard surfaced, (ii) the vehicular track is itself very narrow (11 feet maximum) and close to the pedestrian track, and (iii) the likelihood of users with pushchairs or wheelchairs travelling in opposite directions or at different speeds having to use the vehicular track to pass each other.
- (c) The narrow width of the track and associated obstructions could hamper the passage of emergency vehicles.

In light of all 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: 23 March 2011

Licensing Sub-Committee Chairman: Cllr J Penwarden



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Decision notified to interested parties on 23 March 2011