

LICENSING COMMITTEE

11 MARCH 2021

NEWARK & SHERWOOD DISTRICT COUNCIL
LICENSING SUB-COMMITTEE

RECORD OF HEARING HELD ON

5 JANUARY 2021

10:00 HOURS

BROADCAST FROM

CASTLE HOUSE, GREAT NORTH ROAD, NEWARK NG24 1BY

*(Attendance at this Hearing and public access to it were by remote means
due to the Covid-19 Pandemic)*

HEARING TO CONSIDER AN APPLICATION FOR THE GRANT OF A
PREMISES LICENCE

THE 616, WELLOW

LICENSING PANEL: Councillor Mrs Y. Woodhead (Chairman)
Councillor P.R.B. Harris
Councillor Mrs S.M. Michael
Councillor Mrs B.M. Brooks (Reserve)

ALSO IN ATTENDANCE: Caroline O'Hare (Senior Legal Advisor - NSDC)
Nicola Kellas (Licensing Officer - NSDC)
Alan Batty (Business Manager – Public Protection - NSDC)

Applicant: Forest Events Limited
Gair Kettles and David Chapelhow

Representors: Michael Kheng (*Kurnia Licensing Consultants Ltd. -
representing
Jenny Hubbard; Keith & Margaret Hopkinson;
Salianne Collier and Anon No. 4*)
Richard Atkinson (in support of applicant)
Chris Barson & Bronwen Lester (in support of
applicant – written representation and not in
attendance)

Prior to the commencement of the Hearing, the Panel's Legal Advisor advised all parties of the key considerations for determining the application to grant the premises licence. She reminded those present that any decision must promote the four licensing objectives. She advised that any decision must be justified and proportionate to the full circumstances relevant to the application and any applied conditions, should the licence be granted, must be reasonable.

Presentation by Licensing Officer

The Licensing Officer presented to the Panel details of the application made by Forest Events Ltd. The report before the Panel presented Members with a summary of the application. It also noted other licensed premises in the area and that representations had been received in relation to the application.

The report set out the legislation in relation to the powers that licensing authorities had to grant the premises licence, the options available to the Panel and the relevant policies and guidance.

Presentation by the Applicant

The application had been made in the name of Gair Kettles who was in attendance at the hearing. Ms Kettles appointed her husband and business partner, David Chapelhow, to speak on her behalf.

Mr. Chapelhow advised that following discussions and advice taken, the application for the grant of a Premise Licence had been submitted, in good faith. The purpose of the application was in order to ensure the premise was well run and to be able to implement and enforce the licensing objectives. Mr. Chapelhow noted that the premise could be operated without the benefit of a premise licence.

Questions to the Applicant

In noting that the premise could be run without a premise licence, Councillor Harris queried why the application had been submitted with a capacity of 300 persons. Mr. Chapelhow stated that this had been a mistake when completing the application form. At the time of completing the application, discussions were being held with the Nottinghamshire Fire Authority as to the capacity of the venue. Confirmation of that figure had not been available and therefore a figure had been copied and pasted into the form which was incorrect. Mr. Chapelhow confirmed that the figure he wished to be considered was 150 persons for the whole of the venue, adding that that would not be the number at each event.

Councillor Harris also queried as to why the application did not cover the area to the east of the bar. Mr. Chapelhow advised that the area covered by the application would ensure that any noise was contained in the main part of the building and enable them to manage their customers.

Councillor Mrs Michael queried as to who the target customers would be in relation to off-sales at 07:00 hours. Mr. Chapelhow advised that it would enable them to provide a prosecco breakfast or for a guest to purchase a drink and return to their room. It was not to allow anyone to come to the premises to purchase a drink. Any customers must be in attendance at an event and/or a party. The Business Manager – Public Protection suggested that, if granted, the Premise Licence be conditioned to say that only guests and/or customers of the venue could buy off-sales.

Councillor Harris queried as to how Mr. Chapelhow was to address access to the cellar in relation to the Disability Discrimination Act. Mr. Chapelhow stated that the building had been designed to conform with all Acts as far as possible. Unfortunately the cellar was unable to deal with certain types of disability but that it had been constructed to meet with all the necessary building regulations.

Councillor Harris also queried as to the reason for the non-submission of a fire risk assessment. The Business Manager – Public Protection advised that it was not a requirement to include such a document with an application for a premise licence. He added that the applicant would be required to undertake a Fire Risk Assessment to ensure that the capacity of the venue was acceptable in relation to the layout and means of escape from the basement area. Mr. Chapelhow added that under the current building regulations it was necessary to have a commercial risk assessment carried out which would then be forwarded to the Nottinghamshire Fire & Rescue Authority. He confirmed that a professional company had carried out such an assessment and that no comments had been received from Nottinghamshire Fire & Rescue. Therefore the venue complied with current building regulations.

Mr. Kheng referred to the suggested condition by the Business Manager – Public Protection in relation to off-sales, stating that should the application be granted the condition be worded to limit off-sales to any bona-fide residents of the premises and their guests.

Mr. Kheng referred to the amended plan of the cellar and that there was only a single fire exit and a single entrance, noting that they were a standard width doorway. Mr. Chapelhow confirmed that they were a standard width 30 minute fire door which complied with building regulations. Mr. Kheng stated that the current Fire Reform Order stipulated that a door of 850mm width determined the occupancy of the room of 110 persons, irrespective of whether the access was fitted with a fire door. In acknowledging Mr. Kheng's comments, Mr. Chapelhow advised that they relied upon professional organisations e.g. Nottinghamshire Fire & Rescue Authority to advise on such matters. He added that 95% of the time the premises would be open it would only be used by some 25/30 guests.

Councillor Harris referred to the issue of public safety and the access road to the premise, stating that the planning application required it to be surfaced a number of metres in from Rufford Road. He added that he had concerns in relation to the safety of guests accessing the venue using that road. Mr. Chapelhow advised that it was common land and was the responsibility of residents to maintain the land. He stated that Highways were the governing body and they had no objection to the proposals. The Planning Inspectorate had raised no safety issues in relation to the junction. In relation to the maintaining of the track, Mr. Chapelhow stated that he was not the only person to use it and any safety matters should be raised with all users. He had, in the past, maintained it but had not done so for a period of 6 months following complaints by the parish council. He added that he would maintain the track and that the junction would be widened as per the planning condition, noting that no safety issues had been raised by professional bodies.

In noting that the planning consent was separate to that of licensing, the Panel's Legal Advisor commented that it only permitted the premise to be used as a holiday let. She stated that the online advertising for the venue was for weddings, events, parties etc. but that the planning permission did not permit that type of use. She raised concern that the Panel were being asked to licence a premise for those type of events which were not permitted under the current planning consent. Mr. Chapelhow stated that it was the intention to operate as a holiday let e.g. for guests attending a birthday. However, should a

decision be taken to change the use, the necessary planning application would be submitted. He stated that the site had been used to host weddings in an adjacent field for over 7 years, together with concerts and festivals for up to 9,000 people. Several meetings had been held with the Council's planners to discuss future plans but due to the global pandemic, for the next 12 months, the site would be run as accommodation for 26 guests plus any other guests invited to a specific event. No decision had yet been taken as to whether it would operate as a wedding venue. In acknowledging Mr. Chapelhow's response, the Legal Advisor stated that the current advertisements seemed to suggest that anyone could contact the venue and book a wedding etc. in the accommodation and not just in a field. Mr. Chapelhow reiterated that no decision had yet been made on the future operation of the site.

Presentation by Mr. Michael Kheng (on behalf of Representors)

Mr. Kheng stated that he was representing a number of clients, all of who wished to strongly object to the application. They did not feel it was in keeping with the village or its location and, if granted, would undermine the licensing objectives. He stated that the application conflicted with the Council's own Licensing Policies - Nos. 1 and 2, reading excerpts from Policy No. 2. He also drew the Panel's attention to the Section 182 Revised Guidance, Section 2.8 in relation to public safety, including access for the emergency services stating that this did not just mean access to the venue, but also the residential properties that also used the access road. Section 2.12 of the Guidance referred to safe capacities with Mr. Kheng urging the Panel to set a capacity for the venue if they were minded to grant the application. Sections 2.15 and 2.16 of the Guidance referred to public nuisance. Section 8.34 of the Guidance referred to plans and that there was no requirement for plans to be professionally drawn as long as they contained prescribed information. Mr. Kheng stated that the plans supplied did not show that prescribed information. They did not clearly identify where activities would take place but just gave a description of bar area and music area. He also noted that the plan should identify fixed structures but that no bar was shown on the plan with Mr. Kheng suggesting that the application was invalid as the plan was incorrect. It also did not show a kitchen area so Mr. Kheng suggested that the aforementioned provision of breakfast for guests would need to be brought in rather than being cooked on the premises.

Mr. Kheng noted that the application was supported by 3 people, 2 of who were engaged to each other, these being Mr. Barson and Ms Lester. Mr. Kheng stated that neither of who resided in the village. Mr. Kheng advised that Mr. Barson worked on the site. He also noted that the third supporter, Mr. Atkinson ran the local taxi company and that his son had also carried out electrical work at the site.

Mr. Atkinson has been in attendance at the hearing but had to leave early. His written submission was considered by the Licensing Hearing Panel.

In referring to Mr. Atkinson's letter of support, Mr. Kheng advised the Panel that the nearest residential property was 30m from the venue and not well away from the centre of the village as stated in the letter.

Mr. Kheng drew the Panel's attention to the photographs of the track leading to the venue. He referred to its poor surface and how it narrowed with it having an open bridge and large dyke. He noted that the planning permission for the site only provided parking for 30 cars but if the licence was granted for 110 persons there would be insufficient space for potentially 50/60 vehicles. He added that cars would therefore park along the road thereby creating a public safety issue e.g. access for emergency vehicles or anyone returning to their vehicles as there was no street lighting.

In referring to the website for the venue, Mr. Kheng stated that they were advertising for weddings but were not permitted to hold such an event under the current planning consent. One such advert referred to the venue as a mini wedding Glastonbury which was of concern. Mr. Kheng also referred to a post on Mr. Chapelhow's social media presence which stated that the music club was almost ready to test a band with the accompany pictures showing that of the cellar area.

Mr. Kheng referred the Panel to the sound test report, stating that it provided very little information e.g. it did not show charts depicting frequencies of sound, sound leakage or contain recommendations for any mitigating measures that could be put in place to prevent any noise leakage from the building. The report had been carried out by a company who hired equipment and organised large scale music events with the fears of his clients being that this premise would become an add-on to their existing business.

Mr. Kheng referred the Panel to the letter contained in the evidence bundle from Highways in relation to planning matters and requested that they consider paragraphs 2 and 3 during their deliberations. Mr. Kheng also referred the Panel to the appeal decision issued by the Planning Inspectorate again requesting that they consider paragraphs 12, 13 and 14, specifically 13 which stated that the premise should not be used for any other purpose than holiday accommodation. He stated that Mr. Chapelhow had previously attempted to obtain planning permission for the venue to be used for weddings but had been unsuccessful, suggesting that a better course of action would be to obtain the necessary planning consent for that type of venue before applying for a premise licence. Mr. Kheng also noted the letter of representation from the Council's Planning Officer.

In referring to images of the banqueting hall which was laid out for seating 54 persons, Mr. Kheng queried as to why the application had been made to accommodate 300, subsequently reduced to 110. In noting that the applicant had stated that licensable activities would only take place upstairs until 23:00 hours, Mr. Kheng queried where those people would drink when they moved downstairs as there was no bar marked on the plan accompanying the application. Mr. Kheng again reiterated that the plan was therefore invalid as was the application.

Following his specific comments in relation to the evidence supplied, Mr. Kheng advised the Panel as to the general overall concerns of the representors should the application be granted, suggesting that it conflicted with 2 of the Council's own Statement of Licensing Policies and that the necessary planning permission should be secured prior to a premise licence being granted. The access road to the venue was of poor quality and should the licence be granted would result in the creation of a dangerous situation due to cars parking along the narrow track which in turn could restrict access for emergency vehicles.

Mr. Kheng stated that events would create a noise nuisance as in the past and as referred to in one of the representor's submissions. He suggested that if granted, it was inevitable that it would come to the Council for review in the future. In response, the Panel's Legal Advisor stated that Mr. Kheng's comments were speculative. She acknowledged the point Mr. Kheng was making but noted that the premise was a new build and not the same place where noise nuisance had previously been experienced.

Questions to Mr. Kheng

Councillor Harris referred to the representation of Ms Collier and sought clarity on whether the objection was in relation to the DPS. Mr. Kheng advised that it was an objection to the application in its entirety and that the comments were to highlight the issues.

Councillor Mrs Michael referred to the objections in relation to noise and cars and queried whether the representors had attempted to contact Mr. Chapelhow to resolve the issues. Mr. Kheng advised that they had not as they feared they would be met with resistance. He added that he had omitted to mention the advertisements for stag and hen parties. The Legal Advisor advised the Panel that there was no evidence to substantiate that statement and it was not factual.

Mr. Chapelhow confirmed that they did advertise for stag and hen parties and had done so at the site for nearly 10 years and disagreed that they caused problems. In referring to Mr. Kheng's comments about the relationship between 2 of the supporters, Mr. Chapelhow stated that each person was entitled to their own opinion.

In relation to the Highways letter contained in the evidence bundle and which related to the 2017 planning application, Mr. Chapelhow noted that it stated that the junction could be dangerous. He confirmed that this had since been refuted by the Planning Inspectorate who had said that Highways had failed to supply evidence. Subsequently Highways now supported the application and did not find the junction to be dangerous. At this point, the Panel's Legal Advisor stated that the planning and licensing regimes were 2 separate matters, adding that the statutory consultees were different. She advised Mr. Chapelhow that this was his opportunity to ask questions of Mr. Kheng.

Mr. Chapelhow sought clarity as to why it was considered that guests at the venue would park along the track/access road. In response, Mr. Kheng stated that guests would wish to park near to the venue and that there was no alternative. Mr. Chapelhow advised that there was in fact ample hardstanding parking for 300 vehicles and queried whether he was able to show the evidence to the hearing. The Legal Advisor stated that it was late in the process to request permission for a further submission of evidence. If the provision of parking was outside of the application's boundaries then it could not be submitted as it was not relevant to this specific application for the grant of a premise licence. What was available for consideration was that there was provision for 30 vehicles as stated in the planning permission. In response to being asked to provide prior evidence of concerns about cars parking on the track, Mr. Kheng stated that it was referred to in Ms Jenny Hubbard's representation which had been circulated as part of the meeting paperwork in December 2020.

In referring to the website, Mr. Chapelhow asked Mr. Kheng to confirm whether it advertised the venue which formed the application or the wider site. Mr. Kheng stated that it advertised The 616 venue, noting that the mini wedding/Glastonbury was not the actual premises but was linked to them and that pages on the website were clearly images of the newly built premises. Mr. Chapelhow provided clarity that the website advertised 4 separate events and that the venue would not open until they were permitted to do so because of the global Coronavirus Pandemic. The Legal Advisor commented that the website was advertising several things, not just holiday 13 lets. She added that there was confusion between what the website was advertising and the actual application site being considered by the Licensing Panel.

In acknowledging and accepting the comments of the Legal Advisor, Mr. Chapelhow requested that he be provided with an explanation as to why it was better to have an unlicensed venue rather than a licensed one where the licensing objectives could be implemented and the venue managed. In response, Mr. Kheng stated that Mr. Chapelhow's statement suggested that if the licence was not granted the premise would operate but in an irresponsible manner, adding that irrespective of whether the licence was granted or not the premise should still be managed responsibly.

Summing Up

Mr. Kheng

Mr. Kheng stated that the clients he represented did not want the premise licence to be granted and that they felt to do so would be inappropriate with the venue only 30m from the closest neighbour. He commented that planning permission should be secured before the application for a premise licence was made and that there remained concerns about safety in relation to access by emergency vehicles to the venue and residential properties. He referred to the plan submitted with the application, again stating that it did not fulfil the necessary licensing requirements.

Mr. Chapelhow

Mr. Chapelhow advised that the planning application had been for holiday accommodation for 26 people and that the application for the premise licence was the responsible thing to do. He stated that none of the professional bodies had raised objections in relation to the access road; that no evidence had been provided with the representations; and that there would be no impact on traffic movement. He advised that he had sought advice from the Police and the Safety Advisory Group when submitting the application and confirmed that if it was not granted, the venue could still operate.

Mr. Chapelhow closed his comments by stating that the granting of the premise licence would make them, Forest Events Ltd. liable and responsible for the running of the venue and that they should not be judged by events that might happen.

Decision

The unanimous decision of the Licensing Panel was to refuse the application.

Reasons for Decision

On the evidence, the Panel found that:

- a) The licensing objectives of public safety, the prevention of public nuisance and potentially the prevention of crime and disorder would be undermined and not supported by granting the application.
- b) In terms of public safety the members were concerned by the poor access route with no lighting which is an un-adopted track with large potholes and uneven surface. They believed that an increase of vehicle traffic along that route would present a danger particularly if guests to the venue were leaving after 2am in the morning after being at events (particularly those serving alcohol) all day.

The access route crosses an “open bridge” over a deep water dyke and with inadequate lighting and guests potentially unfamiliar with the area, members were satisfied that the access route undermined the Public Safety objective.

The members accepted submissions from Mr. Kheng that if the car park at the venue (which has planning permission for only 30 vehicles) was full, customers/visitors were likely to park along the access route and that this could prevent other vehicles, particularly emergency service vehicles accessing or leaving the premises safely.

- c) Some of the panel members had undertaken a site visit on 4 January 2021 and from that, they did not believe that the basement/cellar area supported the promotion of the public safety licensing objective.

They found that the stairs to the cellar were narrow and very steep and that in an emergency (such as a fire) requiring evacuation, there was no fast and safe exit from the premises. Members also believe that if someone in the cellar was ill and required removal on a stretcher/ chair evacuation this would be extremely difficult to manage and would hamper efforts to be able to treat or remove them to an ambulance quickly. This contributed to undermining the public safety licensing objective.

- d) Members also determined that the licensing objective regarding the Prevention of Public Nuisance would also be undermined and not supported by approving this application. The venue wanted to remain open until 2am and members considered that the noise of numerous people leaving the venue and driving along the access road would cause noise nuisance to residents in the locality. Any musicians/ bands who had played at the venue or other staff not remaining on site would be likely to leave later than 2am causing further disturbance to local residents.
- e) Members also considered that noise from the venue itself in the early hours of the morning would cause noise nuisance to residents. This would be especially annoying for residents if the venue had been open and holding a large event from 7am one day to 2am the following morning. Noise from music, people outside gathering, drinking, talking and “partying” outside would disturb residents close to the venue and in Wellow. Supplying alcohol from 7am-2am was considered likely to increase noise from customers and guests on site. The members believe that the level and duration of noise nuisance would occur at times that would have an unreasonable and disproportionate negative impact on local residents.
- f) Members heard from the Applicant that they would encourage all guests and visitors to return and remain in the cellar/basement area after a certain time of night to avoid noise nuisance occurring.

However the members believed that by doing this the Public Safety licensing condition would be further damaged. This was because the venue capacity on the application suggested 300 guests and visitors; the Applicant stated this had been an estimate and that closer to 110 guests and visitors was their anticipated maximum capacity.

Members who had conducted the site visit did not consider the cellar area suitable to hold 110 guests/visitors plus the bar area taking up floor space and the possibility of a band/musicians also minimising floor space for guests/visitors. There was seating space only for 57 guests/visitors; leaving the majority of guests/visitors standing in close proximity in a crowded space. Members considered that this could lead to accidents impacting the public Safety licensing objective but that also lead to hostility and aggressive behaviour if people became frustrated or were “jostled” by others. This would negatively affect the promotion of the Prevention of crime and disorder objective should fighting or assaults occur.

- g) In making their decision Members considered s 4.2 of the Council’s policy which requires the Applicant to ensure they have had due regard to any planning restrictions on the use of the premises. Members read the objection from the Planning Officer for the Council and the Appeal decision in the Agenda pack. There is no planning permission for use of the premises for anything other than holiday accommodation. Members did not believe this was what the Applicant intended to use the venue for and felt that by granting a licence to a venue without the proper planning permissions to operate would contravene the Council’s policy which is designed to ensure promotion of the licensing objectives
- h) Paragraph 6.5.7 of the Council policy requires members to have as a “fundamental consideration” the characteristics of an area and the impact that the premises may have upon that area. Members were familiar with the village of Wellow and its setting and nature as a quiet rural village. They considered the impact of licensing the venue (as proposed) would not have a positive impact on the area but would cause a negative impact. This would be particularly true if, as the advertising on the Applicant’s website suggested, it would be attracting Stag and Hen parties as well as describing the cellar as “the music club” implying regular bands/musicians performing attracting crowds of visitors.
- i) Policy 2 of the Council’s policy also required Members to take account of various factors (as set out on p 12-13 of the policy document) and this includes
- the area within which the premises are located,
 - the nature, type and frequency of the proposed activities,
 - the nature (in terms of age and orderliness) and number of customers likely to attend the venue
 - means of access to and exit from the premises
 - the provision of adequate seating and the restriction of standing areas
 - Noise from the premises or people visiting the premises
- By taking into account those relevant factors the Members determined that the application did not support the Licensing Objectives mentioned above.
- j) Paragraph 7.6, 7.7 and 7.8 relating to levels of noise from licensed premises was also considered relevant by Members and informed their decision. This was particularly true in terms of the opening of the premises until the early hours of the mornings, the provision of alcohol, late night refreshment and musical entertainment until the same hour.

- k) As set out above, in relation to seating areas, congestion and disorder Members determined that the venue did not comply with significant points from paragraph 7.12 of the policy.
- l) Members did consider the positive representations made by members of the public however, they felt these did not counter balance or outweigh the concerns members had of the negative impact on the licensing objectives the premises would have.

Those were the reasons for the Panel's decision.

Meeting closed at 1.12 pm.