

LICENSING SUB-COMMITTEE

Minutes of the proceedings at a meeting of the Licensing Sub-Committee held in the District Council Chamber - South Lakeland House, on Monday, 4 February 2019, at 10.30 a.m.

Present

Councillors

Andrew Jarvis

Helen Ladhams

David Webster

Officers

Una Bell

Assistant Committee Services Officer

Anthea Lowe

Solicitor to the Council

Karen Partington

Licensing Officer

Rebecca Pearson

Licensing Assistant

LS/32 ELECTION OF CHAIRMAN

RESOLVED – That Councillor Helen Ladhams be elected Chairman for the meeting.

LS/33 APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

There were no apologies and there were no changes in the membership of the Sub-Committee and, therefore, no reconstitution was necessary.

LS/34 DECLARATIONS OF INTEREST

RESOLVED – That it be noted that no declarations of interest were raised.

LS/35 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS

RESOLVED – That it be noted that there are no excluded items on the agenda.

LS/36 INTRODUCTIONS

The Chairman made introductions and read out the procedure for the meeting.

LS/37 APPLICATION FOR THE GRANT OF A PREMISES LICENCE ESTHWAITE FISHERIES

The Licensing Officer presented a report which requested consideration of an application for a premises licence in respect of Esthwaite Fisheries, Hawkshead, in light of representations which had been submitted by interested parties.

Mrs Jennifer Avery, a local resident, requested permission from the Chair of the Sub-Committee to distribute photographs and maps. Members of the Sub-Committee took a moment to study the photographs and maps. Mr Chris Avery addressed the Sub-Committee and informed them that he and his wife lived in the property which was closest to the fishery. He went on to explain that in June 2017, the fishery had held an event which included a live rock band and that he had approached the applicant, with the

steward from the National Trust property Hill Top, to protest regarding the noise and disturbance being caused by the event. The response they received from Mr Robertson, the applicant, had left them both feeling threatened. In addition he stated that when questioned, Mr Robertson had misinformed them regarding the licensed hours for the event. Mr Avery went on to inform the Sub-Committee that the current premises licence application stated that the nearest residence was at least 500m from the Café and this information was incorrect, as there were residential properties 306m and 370m away. He referred to further discrepancies within the licence application with regard to overnight camping in the carpark and the exclusion of the floating pontoon in the map of the licenced premises. He drew the Sub-Committee's attention to the Site of Special Scientific Interest (SSSI) Regulations and stated that to grant a premises licence for Esthwaite Fisheries could be contrary to SSSI Regulations. He informed Members that Esthwaite Water was a peaceful and tranquil area and stated that any new or intrusive noise would damage the tranquillity. He concluded his address by stating that if the licence was granted he was concerned that there would be an increased risk of crime and disorder and a risk to public safety caused by people consuming alcohol near water.

Mrs Rose Taylor addressed the Sub-Committee and explained that she and the people she was representing lived across the water from the fishery. She explained that the peace, quiet and undisturbed nature of the area, which was much valued by local residents, had been affected by the noise level of music from the fishery, particularly as the noise was amplified over water. In response to a question raised by a Sub-Committee Member, Mrs Taylor clarified that her concern was with regards to the nuisance caused by noise and entertainment and not alcohol.

Mr Guy Brown, a local resident, addressed the Sub-Committee and stated that the licence application was unusual in that it was not often that an application for a premises licence was submitted for such a sensitive site and one which was recognised as a SSSI. He explained that Esthwaite Water was a natural amphitheatre in that it amplified or echoed sound. He explained that he had purchased his house 12 years ago and when he was not residing there he rented it out as a holiday cottage. He had concerns regarding the impact of any negative Trip Advisor reviews which would devastate his business and consequently impact the people he employed in running his holiday cottage. Mr Brown stated that the event held at the fishery in June 2017 had not been the only occasion when loud music had disturbed the peace, there had been similar noise disturbance in June 2018. In response to a question raised by a Sub-Committee Member, Mr Brown clarified that his concern was with regards to the noise and the effect this could have on his family and, when not at his property, the guests the property was rented to.

Mr Richard Lee addressed the Sub-Committee and explained that for 17 years he had owned a Country House on the opposite side of the water to the fishery. The property was available to rent all year and was also used personally. He stated that he was very concerned regarding the amplified noise and music from the fishery and the effect this could have on Trip Advisor reviews and the impact of negative reviews on the occupancy levels of his rental property and consequently the people he employed. He concluded his address by stating that Esthwaite Water was peaceful and tranquil and not an area for such events.

Mr Geoff Barton, a local resident, addressed the Sub-Committee. He began his address by emphasising the previous comments regarding the amplification of sound caused by the geography of Esthwaite Water. He explained that he lived approximately 700m north of the Café and that the sound transmitted directly to his property and that there was no mitigation from the noise of events being held outside. In addition he also had a holiday let and there had been occasions when guests had been disturbed by noise. He went on to

highlight concerns regarding the impact of the noise on nesting Ospreys and concluded by stating that the licence should not be allowed in such a sensitive and quiet area.

Mr Mark Phillips, a local resident, addressed the Sub-Committee. He stated that he endorsed what had already been said and that having spent most of his adult life living in large cities, there was no better place to live than Esthwaite Water and that anything which disturbed the peace and tranquillity should not be permitted.

Mr James Robertson, the applicant, addressed the Sub-Committee. He thanked the objectors for their representations and in acknowledging what had been said, he stated that he was happy that everyone had the wellbeing of the lake at heart. He informed the Members of the Sub-Committee that he was proud of what he was doing at Esthwaite Water and he worked from dawn to dusk seven days a week. He was protecting, enhancing and improving the area and providing a service to customers and locals. He went on to outline the improvements he had made since he had taken over, which included a safety boat, refurbished and additional lifejackets, additional boats on the lake and improvements to the jetty and railings and to disabled access and the provision of two trained first aiders. In addition, he had addressed historic issues such as poaching, fly camping, wild swimming, unlicensed Osprey safaris and disregard for the Environment Authority's fishing licence procedure and stocking limits. There had also, prior to him taking over the operation of the Fishery, been unauthorised and incorrectly licensed boats on the lake and unauthorised motor homes on the carpark and these issues had been completely eliminated. Mr Robertson explained that there had also been longstanding issues with Hawkshead Anglers, which was a group of anglers from Wigan and the surrounding area, and when he had imposed Lake User rules, the group didn't like it and disbanded. He stated that previously there had been no management of the lake and it was now fully managed and had never been in safer hands.

The Solicitor to the Council advised Mr Robertson that his address to the Sub-Committee should focus on the licensing objectives.

Mr Robertson went on to invite those present, who had made representations to the Sub-Committee, to contact him with a view to talking through their concerns. He went on to state that the rock concert event in 2017 had been a mistake and since then he had held five temporary event notices without incident. He explained it was not his intention to open every weekend and that he had submitted the premises licence application to avoid having to submit a temporary event notice application for each individual event. With regard to serving alcohol, he explained that he was regularly asked if he served alcohol and customers often expressed how lovely it would be to sit on the terrace overlooking the lake with a glass of wine.

The applicant answered questions from the Sub-Committee Members and informed them that the forthcoming events were generally two day fishing competitions and in the evening he would provide an evening meal and entertainment in the form of a pool competition with background music. He explained that the evening meal was served in the café at 5.00 p.m. and following the closure of the café at 6.00 p.m. the pool competition would take place on the terrace. He advised the Sub-Committee Members that his approach to serving alcohol for outdoor consumption would be flexible and he would take advice and if the licence were to be granted this would enable him to manage the sale and consumption of alcohol at his premises.

The applicant answered further questions, directed through the Chair of the Sub-Committee, from Mr Lee Fish, Barrister, who was representing Mr Guy Brannon, Mrs Jane Brannon and Mr Richard Lee. The applicant stated that customers were requesting the sale of alcohol and currently with customers bringing their own alcohol, the situation was

difficult for him to manage. In response to a question regarding the need to play music outside and the public nuisance caused by the noise, the applicant reiterated that the rock band event in 2017 had been a mistake and the only music currently played was background music from a small amplifier. He accepted that noise travelled, however, despite his events having limited participant numbers, a full event would have too many people to cater for inside the café. He stated that he would work with the local residents to achieve a noise level which would not cause a public nuisance and agreed that he would be happy to consider the installation of a decibel sound limiter. Further questions were put to the applicant relating to the erection of the marquee and possible breach of planning control and the applicant's awareness of the site being a Site of Special Scientific Interest. In response, the applicant stated that he had the permission of the Trustees to erect the marquee and he confirmed that he was aware that the site was a SSSI. He went on to explain that he had excellent relationships with the Lakeland Osprey project, Natural England, the Environment Agency, Lancaster University and Cumbria Wildlife Trust, all of whom had helped him with his business and to comply with and enhance all of the conditions of the organisations.

In response to questions from a Member of the Sub-Committee, the Solicitor to the Council clarified the Premises Licence Policy in regard to entertainment, confirmed that public nuisance did not include harm to wildlife and also drew Members' attention to statutory requirements imposed by the Countryside and Wildlife Act 1981, whereby, should the premises licence be granted, the Council would be required to notify Natural England prior to confirming its decision.

The applicant answered further questions, directed through the Chair of the Sub-Committee, from Mr Mark Phillips and Mrs Jennifer Avery.

In his closing statement to the Sub-Committee, on behalf of Mr Guy Brannon, Mrs Jane Brannon and Mr Richard Lee, Mr Lee Fish stated that the core principle was the issue of public nuisance and that there had to be an assessment of the location of the premises and its surrounding area and its proximity to local residences and to a sensitive area. A decision in such a case was location sensitive and the heart of the objections heard today was that of the area being one of outstanding natural beauty and tranquillity.

At this point in the proceedings Mr Fish requested permission, from the Chair of the Sub-Committee, to distribute photographs and maps. Members of the Sub-Committee took a moment to study the photographs and maps. Members' attention was drawn to a map which showed the location of properties of those Mr Fish was representing and he reiterated that their livelihoods depended on the area remaining an area of outstanding natural beauty. He went on to state that a public nuisance which could not be addressed by conditions should be refused. Mr Fish went on to explain there was no doubt regarding the applicant's devotion and sincerity on what he was trying to achieve, however, there were genuine concerns regarding the impact of the noise if the licence were to be granted. He went on to question if the applicant could be trusted not to breach a licence and he raised concerns regarding the risks connected to alcohol being consumed outside, amplified music, potential litter and fires being lit, all of which would shatter the peace and tranquillity of the area. He stated that on the grounds of public nuisance, the licence should not be granted. However, if the licence were to be granted, he requested that the Sub-Committee consider appropriate and proportionate conditions and stated if certain conditions were imposed that the majority of concerns could be eradicated. Mr Fish proposed a number of conditions which could be considered by the Sub-Committee and he concluded his address by drawing Members' attention to the Council's statutory duty imposed by section 28G of the Countryside and Wildlife Act 1981.

In his closing statement to the Sub-Committee, Mr Mark Phillips stated that there was no need for the premises licence in any event.

In his closing statement to the Sub-Committee, Mr Chris Avery stated that the consumption of alcohol would always produce noise and any noise in such a sensitive location, would be too much.

The applicant, in his closing statement to the Sub-Committee, stated that he agreed with what had been said, however, he wished that those present could see the premises application for what it was. The application had been submitted to regulate the consumption of alcohol on site and granting of the licence would give him the opportunity to manage and regulate this.

Note – The Sub-Committee passed a resolution to adjourn the meeting to exclude the press and public in making its decision, pursuant to Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006 by virtue of the paragraph indicated:-

Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The Sub-Committee, supported by the Solicitor to the Council, then withdrew to consider the circumstances put forward.

The meeting reconvened at 1.06 p.m. and the Chair of the Sub-Committee asked the Solicitor to the Council to communicate the Sub-Committee's decision.

The Sub-Committee had considered all of the evidence provided to it both orally and in writing. This included the representations made by all parties and the additional documentation provided at the hearing.

In reaching the decision, the Sub-Committee had regard to the following facts:-

The level of noise reported to be attributable to the site during events and the potential for noise disturbance arising out of the grant of a licence.

That there has been issues in the past with regards to the holding of an event in 2017 which caused noise nuisance.

The nature of the site in that it is a SSSI.

The applicant's comments in relation to future intentions for the operation of the site.

The Members also had regard to the Council's Statement of Licensing Policy and, in particular, the following paragraphs:-

Section 5 which dealt with the factors that should be taken into account when representations have been submitted in respect of applications to grant or vary a premises licence.

Subsection 5.6 detailing matters to be taken into account with regard to the Prevention of Public Nuisance.

The Members of the Sub-Committee also had regard to the statutory guidance, especially to those paragraphs referred to in the officers' report. The Panel had considered para

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2.16 which set out what might constitute a public nuisance. Additionally, para 2.15 required Members to consider the effect of licensable activities on persons living and working in the area.

In addition, Members considered the effect of ss.28G and 28I Countryside and Wildlife Act 1981 in so far as they were relevant to the application.

The Panel having considered all representations was minded to grant the application for a premises licence subject to the following conditions:-

Noise Management Plan submitted to, and agreed in writing, by the Environmental Health team and complied with at all times, subject to annual review.

Pontoon not to be used for licensable activities.

Having given consideration to all representations, the Members took the view that the main concern related to noise. Having regard to the licensing objectives and the conditions that could be imposed in order to ensure they were complied with, Members did not feel that it was necessary to refuse the application.

Having taken into account the statutory requirements imposed by the Countryside and Wildlife Act, the Council would need to notify Natural England prior to confirming its decision. Consequently, the hearing was adjourned until a later date to allow Natural England to make any representations. The parties would be notified in due course of the next date.

The meeting ended at 1.10 p.m.