

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 Friday, 5 April 2019, at 10.00 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

Josie Smith

Solicitor

LS/38 ELECTION OF CHAIRMAN

Councillor Helen Ladhams had been elected Chairman for the meeting before its adjournment on Monday, 4 February 2019.

LS/39 APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

Following its adjournment there had been no change in the membership of the Sub-Committee, and therefore no reconstitution of Membership was necessary when the meeting reconvened.

LS/40 DECLARATIONS OF INTEREST

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

LS/41 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS

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

LS/42 INTRODUCTIONS

The Chairman introduced the Members of the Sub-Committee and those in attendance and read out the procedure for the meeting.

LS/43 APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 - ESTHWAITE FISHERIES, HAWKSHEAD - UPDATE REPORT

The Licensing Officer addressed the Sub-Committee and introduced the update report which included the response received from Natural England in regard of the application for the grant of a premises licence for Esthwaite Fisheries, Hawkshead.

The Licensing Officer outlined the background to the application and highlighted that at the meeting on 4 February 2019 the Sub-Committee, having given consideration to all the

representations, had been minded to grant the premises licence. However, having taken into account that the application site was within a Site of Special Scientific Interest (SSSI) and the statutory requirements imposed by the Wildlife and Countryside Act 1981, Members had felt it was prudent to notify Natural England prior to confirming any decision to grant the application. The Licensing Officer went on to explain that she had written to Natural England and, in accordance with the legislation, they had been given 28 days in which to submit a response. She advised Members that the response received had been included at Appendix 5 to the report. In addition she drew Members' attention to the Noise Management Plan, which had been submitted by the applicant, and the response from the Environmental Health team and she highlighted that both documents had been included within the report at Appendices 6 and 7 respectively.

Mr James Robertson, the applicant, addressed the Sub-Committee. He confirmed that he was up to date with the information that had been submitted by Natural England and he went on to explain that last year Esthwaite Fisheries had seen the most successful osprey breeding season and that the ospreys had recently arrived back and he was hopeful for an even more successful year ahead. He highlighted the details of the Noise Management Plan which he had submitted and he informed Members that he had considered the plan carefully and obtained advice from the Environmental Health team and in addition he would be happy to add to the plan if it was identified that something was missing.

The applicant responded to a request for clarification regarding the seating capacity of the café, directed through the Chair of the Sub-Committee, from Mrs Jane Brannan.

Mrs Jane Brannan addressed the Sub-Committee, she drew Members' attention to the importance of the decision that was being made for a premises which was within a World Heritage Site and an SSSI and she stated that the Lake District National Park Authority's Core Strategy CS25 emphasised the importance of tranquillity. She highlighted the risk of setting a precedent, particularly as within its boundaries the Council was responsible for 16,116.84 hectares of SSSI. Mrs Brannan made reference to the documents and appendices within the report and stated that at the previous hearing the applicant had not provided evidence that the proposed activities would not harm the environment. Mrs Brannan went on to highlight the Noise Management Plan (NMP) which had been submitted by the applicant and explained that the premises used to assess the noise impact was one which was owned by Braithwaite Estates and was therefore not independent. She went on to inform Members that there were dwellings which were closer and which would be more likely to be affected by noise and in addition, the NMP set out that it was for Mr Robertson to determine if the noise was too loud and therefore could not be considered reliable. Mrs Brannan highlighted that the Sub-Committee had identified that noise caused by music was the main concern for potential disturbance to wildlife within the SSSI and to the local residents and that although it had been accepted that as a general principle music had been deregulated, the deregulation did not apply in a SSSI, where a general duty under s28G of the Wildlife and Countryside Act (WACA) must be observed. She went on to state that the sale of alcohol was linked with the playing of music and that at the hearing the applicant had made a case to serve alcohol but had not presented a case that disturbance to breeding birds would not be caused by playing music. Mrs Brannan suggested that imposing the conditions which had been proposed by Natural England would fit well with Mr Robertson's requirements of weekday hours for the sale of alcohol and four events annually. In addition restricting the playing of music to indoors only would enable the Council to fulfil its duties under s28G WACA. Mrs Brannan concluded her address by informing Members that Natural England had stated that music should not reach the wetlands and that Mr Robertson's Noise Management Plan took no account of s28G WACA or the SSSI.

Mr Richard Lee addressed the Sub-Committee and explained that the Noise Management Plan, submitted by the applicant, had the sound assessment measured from a property which was considerably further back from his own property on the opposite side of the water to the fishery. Mr Lee remained concerned regarding the amplification of sound over the water and the impact this could have on Trip Advisor reviews on his rental property.

Discussion ensued between the applicant, the objectors and a Sub-Committee Member regarding consideration of an appropriate property from which to measure the amplification of sound from the fisheries. The applicant stated that he had been advised to measure from a property across the water.

Mr Mark Phillips addressed the Sub-Committee and explained that he had two points to raise: firstly he stated that they had heard, from the applicant, how well everything had been going in regard of the success of the breeding ospreys and the flora and fauna and that it was important that any decision made did not affect the status quo; and secondly Mr Phillips stated that he was very unhappy that the applicant would himself be assessing the impact of noise under the Noise Management Plan.

Mrs Jill Barton addressed the Sub-Committee and informed Members that the residents of the area were respectful, many with jobs and businesses in the area and that it was important that the decision made took into account and was the best for the people in the area, the habitat, the flora and fauna and wildlife. She went on to state that they lived in a wonderful community and that it was possible for everyone to live and respect one another's needs and it was crucial that the correct decision was made.

In response to a request for guidance from a member of the Sub-Committee, the Solicitor to the Council clarified the statutory requirements imposed by s28G of the Wildlife and Countryside Act and the statutory duties imposed by the Licensing Act 2003. She set out that, the statutory duties imposed by the Wildlife and Countryside Act were to be satisfied in the Council's proper exercise of its functions. It was clear, from the Licensing Act, that in properly discharging its functions as a Licensing Authority, the Council could only take into account matters relating to the licensing objectives.

In her closing statement to the Sub-Committee Mrs Brannan informed the Sub-Committee that she could find nothing in s28G of the Wildlife and Countryside Act which suggested that the obligations within the Act were subject to those within the Licensing Act 2003 and she stated that licence applications were not normally submitted for premises within a SSSI and as such there were no Council policies as it was an unprecedented situation. Mrs Brannan highlighted the conditions which had been requested by Natural England which included: restrictions in the sale of alcohol; the number of events per annum with a maximum limit of people; and the playing of music. She went on to refer to the Noise Management Plan and stated that imposing the conditions would allow the Council to reach a compromise to comply with s28G of the Wildlife and Countryside Act and there would be clear safeguards in place which could be easily measured.

The Solicitor to the Council further emphasised the guidance, previously provided to members of the Sub-Committee, regarding the statutory requirements imposed by s28G of the Wildlife and Countryside Act and the statutory duties imposed by the Licensing Act 2003.

Mr Richard Lee, in his closing statement to the Sub-Committee, stated that he hoped the Sub-Committee would view Esthwaite Water as an area of peace and quiet.

In his closing statement to the Sub-Committee, Mr Mark Phillips informed Members that he had attended both hearings and had read all the documentation. He went on to outline

that he felt the most pragmatic solution would be to grant Mr Robertson a licence with specified hours, for music to be confined to the café and for Temporary Events Notices to be issued for the four annual events. Mr Philips stated that if Mr Robertson operated within these parameters he could foresee no future problems.

In her closing statement to the Sub-Committee, Mrs Jill Barton stated that she agreed with the two previous speakers and she also put forward a suggestion to Mr Robertson that he submit details of forthcoming events to the local newsletter, which would enable those with local businesses to advise their residents.

The applicant, in his closing statement to the Sub-Committee highlighted that if local residents had talked to him about their concerns that most areas of conflict would have evaporated. He went on to state that he was aware of his responsibilities and that the fishery was in good hands and this had been demonstrated by his actions and through the money he had spent. Mr Robertson informed the Sub-Committee that he was happy to measure the noise impact from any property and that the advice he had received was to use a property which was neutral and to ensure he did not encroach on any boundaries. He went on to advise that he was completely flexible and valued the input of local residents and that they were very welcome to visit to see how the business was run. Mr Robertson stated that he objected to the proposed requirement to limit music to inside the café and he went on to explain that this would be totally inappropriate to what he was trying to achieve and would not allow him to continue doing what he had already been doing. He concluded his closing statement by stating that other than the sale of alcohol, the licence application was not requesting anything different to what he was already doing.

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, together with the Solicitor, who was in attendance at the meeting for training purposes, then withdrew to consider the circumstances put forward.

The meeting reconvened at 11.46 a.m. and the Chair of the Sub-Committee asked the Solicitor to the Council to communicate the Sub-Committee's decision.

The Sub-Committee considered that this had been an interesting case that had presented its challenges. It was clear that the application had generated some intense scrutiny and that was entirely appropriate. It was the Licensing Authority's role to consider whether or not to grant the licence that had been applied for; in this case opening hours from 0900 – 1800 Monday to Thursday and 0900 – 2300 Fri – Sun with supply of alcohol from 11am to closing hours on each of those days. It was noted that reference had been made to the applicant's comments about the typical opening hours operated at the site. The context in which Members considered this application was set out in the detail of the actual application submitted.

The Sub-Committee considered all of the representations made orally and in writing, both for the last meeting and the subsequent meeting.

It had regard to the Council's Statement of Licensing Policy, as set out at the last meeting and had regard to the statutory guidance issued by government. This statutory guidance, unhelpfully, does not make reference to Sites of Special Scientific Interest (SSSI).

In particular, Members considered para 2.16 which sets out what might constitute a public nuisance as well the fact that para 2.15 requires Members to consider the effect of licensable activities on persons living and working in the area.

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

Section 5 which deals 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 which details matters to be taken into account with regard to the Prevention of Public Nuisance.

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 had 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 need to protect public safety; and

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

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

Having taken everything into account, the Sub-Committee felt it was important to make the following points:-

That the Wildlife and Countryside Act makes it clear that the duty under s.28G is to take reasonable steps consistent with the proper exercise of its functions to conserve and enhance the flora and fauna of a SSSI. In this case, the question that Members considered was what was reasonable in light of the Council's duties as a Licensing Authority. The Panel considered that it was not reasonable to place restrictions on any applicant that are more onerous than those placed upon ordinary members of the public within the same area. For example, it was entirely reasonable for a resident in the area to play music outdoors whilst having a family barbecue.

The Council considered the application of s.28G Wildlife and Countryside Act 1981 and felt that it would help to enhance and conserve the flora and fauna of the SSSI if the application were to be granted. It was the case that, if refused, and the applicant submitted a Temporary Event Notice, then no conditions could be imposed and so there would be potential for greater harm to be caused to the SSSI.

Members considered the reference to the applicant essentially policing his own noise management plan and felt that this was reasonable. This was the approach adopted throughout the District. It was not appropriate, reasonable or viable for the Licensing Authority to attend every licensed premises throughout the district to ensure compliance with the noise management plan. However, the condition to be imposed was for the noise

management plan to be reviewed annually and agreed by the Council's public protection team annually.

Having considered the reference made by a speaker to the evidence provided, the Members felt that there had been no objective evidence before the Sub-Committee in relation to the matters discussed. Indeed, Natural England, in their latest email stated that they did not have any recent data setting out the areas of the SSSI which may be habitat for breeding birds.

Members also considered that the applicant also has duties imposed upon him under the Wildlife and Countryside Act that he was required to comply with.

RESOLVED – That the application be granted subject to the standard mandatory conditions and subject to the conditions mentioned in the last hearing, those being:-

- (1) That a Noise Management Plan must be submitted to, and agreed in writing, by the South Lakeland District Council's Environmental Health team and complied with at all times, subject to annual review and approval by the Environmental Health Team.
- (2) That the outdoor pontoon must not be used for licensable activities.

The meeting ended at 11.51 a.m.