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LICENSING & APPEALS SUB-COMMITTEE

Minutes of a Meeting held on Monday 09 September 2019 in the Council Chamber, Town Hall, Matlock DE4 3NN at 10.30am

PRESENT

Councillor Tom Donnelly - In the Chair

Councillors Mark Wakeman and Steve Wain

Eileen Tierney (Licensing Manager), Lee Gardner (Legal Services Manager) and Simon Johnson (Democratic Services Officer)

Mr Piers Warne (TLT Solicitors - Applicant's Representative), Mr Terence Ncube (Director of Hospitality – Gulliver's Kingdom Ltd).

Mrs Helen Keay (Representation), Mr & Mrs Cresswell (Representations), Mr Michael Trier & Ms Joan Nicholson (Representations), Mrs & Mrs Bowmer (Representations), Ms Jacqueline Mitchell (Representation), Ms Jane Linfoot (Representation), Mr Phil Cushway (Representation), Mr Dave Mole (Representation), Mr L. P. Dargavel (Representation), Mr Philip Sunderland (Representation), Mr & Mrs Windsor (Representations), Mr N. Wiltshire and Ms P Thomas (Representations).

5 Members of the Public

1 Member of the Press – Matlock Mercury & Derby Evening Telegraph

134/19 – ELECTION OF CHAIRMAN

It was moved by Councillor Steve Wain, seconded by Councillor Mark Wakeman and

RESOLVED
(Unanimously)

That Councillor Tom Donnelly be elected as Chairman of the Sub-Committee

**135/19 – LICENSING ACT 2003 - APPLICATION FOR PREMISES LICENCE:
EXPLORER’S RETREAT, GULLIVER’S KINGDOM, MATLOCK BATH DE4 3PG**

The Sub-Committee considered an application for a Premises Licence made under section 17 of the Licensing Act 2003, by the Gulliver’s Kingdom Limited, to allow the sale of alcohol for consumption on the premises.

The Chairman invited the participants to introduce themselves, asked whether any party wished the Sub-Committee to consider the application in private and confirmed that the Sub-Committee was quorate.

The Licensing Manager gave an outline of the application.

The Sub-Committee and the other parties were afforded an opportunity to request clarification of the Licensing Manager’s report.

The Sub-Committee then heard representations from the following:

- Mrs Helen Keay and on behalf of Mr & Mrs Cresswell
- Mrs Trier
- Mr Trevor Bowmer and on behalf of Mrs Francombe
- Mr Dave Mole on behalf of Mrs Bowmer
- Ms Jacqueline Mitchell
- Ms Jane Linfoot
- Mr Phil Cushway
- Mr L. P. Dargavel
- Mr R. O. Windsor
- Mrs P. Wiltshire

With the permission of the Chairman and in agreement with the Applicant’s Representative, Mrs Helen Keay distributed a letter received from TLT Solicitors to those making representation and photographic evidence.

Also with the permission of the Chairman and in agreement with the Applicant’s Representative, Mr Trevor Bowmer distributed an environmental health guidance leaflet.

For clarification Lee Gardner, Legal Services Manager, informed the Sub-Committee and all present that the provision of late night refreshment did not include alcohol, but referred only to hot or cold food and light beverages such as tea or coffee.

The Sub-Committee had the opportunity to question any of those making representation. The Applicant’s Representative, Mr Piers Warne and the Director of Hospitality for Gulliver’s Kingdom Ltd, Mr Terence Ncube were also afforded the opportunity to request clarification of any points.

Mr Piers Warne and Mr Terence Ncube then presented the case for Gulliver’s Kingdom Limited.

The Sub-Committee had an opportunity to question the Gulliver’s Kingdom Representatives.

All parties were afforded an opportunity to request clarification of any points.

The Sub-Committee members confirmed that they had sufficient information to make a

decision and withdrew into private session to discuss their findings.

136/19 – DECISION

The Sub-Committee resumed in public session.

It was moved by Councillor Donnelly, seconded by Councillor Wakeman and

RESOLVED That under the power given under section 26 of The Licensing Act
(Unanimously) 2003 (Hearings) Regulations 2005 the Sub-Committee will make its
determination within 5 working days beginning with the day of the
hearing and will notify parties of the decision (attached below) and
reasons in writing.

Rights of Appeal against this decision should be made to the Magistrates' Court acting for the petty sessional area in which the premises are located. You must do this in writing within 21 days of the date of the written Notice of Decision.

Meeting Closed 2.05pm

136/19 LICENSING & APPEALS SUB-COMMITTEE DECISION (Licensing Act 2003)

**Record of proceedings of the Derbyshire Dales District Council's
Licensing & Appeals Sub-Committee held on Monday 09 September 2019
at 10.30am.**

Full name of Applicant: Gulliver's Kingdom Limited

Premises Address: Explorer's Retreat, Gulliver's Kingdom, Temple Road, Matlock
Bath DE4 3PG

Reason for attendance at the Sub Committee: To determine an application for a Premises Licence made under section 17 of the Licensing Act 2003, to allow the sale of alcohol for consumption on the premises.

CONSTITUTION OF COMMITTEE

Councillor Tom Donnelly (Chair)
Councillor Mark Wakeman
Councillor Steve Wain

REPRESENTATIONS MADE BY

Mrs Helen Keay and on behalf of Mr & Mrs Cresswell
Mrs Trier
Mr Trevor Bowmer and on behalf of Mrs Francombe
Mr Dave Mole on behalf of Mrs Bowmer
Ms Jacqueline Mitchell
Ms Jane Linfoot
Mr Phil Cushway
Mr L. P. Dargavel
Mr R. O. Windsor
Mrs P. Wiltshire

NAMES OF OTHERS PRESENT (WRITE "NONE" WHERE APPROPRIATE)

Eileen Tierney – Licensing Manager
Lee Gardner – Legal Services Manager
Simon Johnson – Democratic Services Officer

PREMISES REPRESENTATIVES

Mr Piers Warne – TLT Solicitors
Mr Terence Ncube – Director of Hospitality

1. The meeting was conducted in public, with the agreement of all parties.

The Sub-Committee withdrew into private session to consider its decision and were advised by the Sub-Committee legal representative that only evidence that was relevant to the four licensing objectives could be taken into consideration and that it was important that any conditions attached to a licence should be to promote the licensing objectives.

2. Chairpersons note of evidence (i.e. concise details of all oral and written details put before the Committee)

The Sub-Committee considered the report and comments made by the Licensing Manager including details of the application seeking to allow the sale of alcohol for consumption on the premises, the provision of regulated entertainment and the provision of late night refreshment at the hotel which is situated in the grounds of the Gulliver's Kingdom theme park. The hours the premises will be open to the public during which the licensable activities will take place will be 08:00 to half past midnight every day of the week. Resident of the hotel and bona fide guests will have access to the premises 24 hours per day.

The Sub-Committee heard from the Licensing Manager that there had not been any objections from the responsible authorities during the consultation period.

The Sub-Committee listened carefully to the representations by those present on current levels of light pollution, noise nuisance, disruption from traffic congestion and the smell of cooking food to the residents living by Gulliver's Kingdom.

With the permission of the Chairman and in agreement with the Applicant's Representative, the Sub-Committee considered the letter distributed by Mrs Helen Keay that had been received from TLT Solicitors to those making representation and photographic evidence.

Also with the permission of the Chairman and in agreement with the Applicant's Representative, the Sub-Committee considered the environmental health guidance leaflet distributed by Mr Trevor Bowmer.

For clarification Lee Gardner, Legal Services Manager, informed the Sub-Committee and all present that the provision of late night refreshment did not include alcohol, but referred only to hot or cold food and light beverages such as tea or coffee.

Mr Warne informed the Sub-Committee that the application would be for the licensing of the upper floor of the premises only which would have a capacity of 80 people. That the rooms below were designed for families and not for large single sex parties which would be discouraged or refused from booking accommodation or use of the premises. Furthermore the premises had its own carpark which would alleviate congestion on access for residents and that preparation of food is by a commercial ventilated kitchen.

Mr Warne and Mr Ncube were questioned by both the Sub-Committee and those making representations on the following points:

- Likely capacity figure of licence premises.
- Traffic travelling access road.
- Potential of disruption from events such as weddings with the supply of alcohol

- Location of a smoking area
- Management of guests arriving and leaving the building
- Management of intrusion of food odours

3. Findings of the Sub-Committee on questions of fact material to the decision (i.e. the relevant facts accepted from the evidence available)

The Sub-Committee found that:

- 1) That to refuse the licence would be in contradiction of government guidance.
- 2) That this application is separate from the licence held for the theme park as the fundamental operation of the businesses are different and therefore the licencing considerations are different.
- 3) That the Council cannot take the complaints regarding Gulliver's Kingdom into direct consideration, it can however use this as evidence as to how the applicant has acted in the way they run their business which is subject to a Licensing Act 2003 licence.
- 4) That from the evidence those who made representations that the applicant has operated their other licenced premises in a way that has caused nuisance with, noise, odour and has failed to respond to complaints and therefore it is reasonable on the evidence for the Sub-Committee to impose conditions to deal with these issues.
- 5) By placing such conditions on the licence the Sub-Committee will address the aims of the Licensing Act 2003 as stated in 1.5 of the s182 guidance in protecting the community from noise.
- 6) As the evidence put forward as to the nuisance includes those from patrons and that live or recorded music is unregulated before 11pm then conditions imposed on the licence will be aimed at minimising nuisance from patrons up to 11pm and not from live or recorded music, unless the condition was offered by the applicant.
- 7) That unless a compromise is reached to balance the competing aims of the s182 guidance then the Sub-Committee believe that local residents will review the licence at the first sign of nuisance, and therefore consider that more stringent conditions are needed in order to reduce the possibility of the licence being subject to a review in the near future and cause disruption to the business.

4. Full text of unanimous decision

RESOLVED (Unanimously) The Sub-Committee has heard from the Licensing Manager, Ms Eileen Tierney, Mr Piers Warne the Applicant's Representative, Mr Terence Ncube, Director of Hospitality for Gulliver's Kingdom Ltd and those making representation objecting to the application. The Sub-Committee has also considered the written representations appended to the Report.

Following careful consideration of the representations put forward the Sub-Committee has resolved to grant the licence with the following conditions

- A) Sale of Alcohol for consumption on premises Monday - Sunday 11am – Midnight.
- B) Exhibition of Films Every day (indoors) 24 hours – for residents within their accommodation.
- C) Live and Recorded Music, Dancing and anything similar - Every day (indoors) At any pre-booked wedding or function 11am – Midnight.
- D) Provision of Late Night Refreshment - Monday - Sunday 11pm – 5am, for residents and bona fide guests only for Hot Drinks and Beverages Only.
- E) Opening Hours to Members of the Public.
- Monday to Sunday 8am to 12:30am (next morning) for members of the public.
- Open 24 hours for residents
- Monday to Sunday 8am to 5.00am (next morning) for bona fide guest.
- F) At appendix 2 of the Sub-Committee report the Applicant offers 12 conditions under the heading “The Prevention of Crime and Disorder”. These are approved by the Sub-Committee as conditions on the licence. In addition the Sub-Committee imposed the further condition that the CCTV records both visual and audible recordings.
- G) At appendix 2 of the Sub-Committee report the Applicant offers 12 conditions under the heading “The Prevention of Public Nuisance” the Sub-Committee approve conditions number 1,3,7,8,9,11 and 12 as offered as conditions on the licence. The Sub-Committee amend the following offered conditions.
- Conditions 4, 5 and 6 are amended to 6pm to 8am.
 - Waste glass bottles are not emptied into containers for collection between the hours of 8pm to 8am.
 - The applicant keeps a complaints register. The register must be kept for 2 years and must be made available on request by the Police, Environmental Health or a Licensing Officer.
 - There be a contacts register which is to contain at least 2 local telephone numbers so that local residents are able to

contact the premises. This register be reviewed every 6 months for accuracy to make sure the numbers do not become out of date and the contact register be circulated to local residents and published on the Explorer's Retreat website.

- No lights to point directly towards residential properties and to be directed towards the ground so as not to cause a nuisance with the exception of intermittent security lights operating by motion sensors.
- H) At appendix 2 of the Sub-Committee report the Applicant offers 3 conditions under the heading "The Protection of Children from Harm". These are approved by the Sub-Committee as conditions on the licence.
- I) The applicant also offered 2 further conditions in the letter dated 5th September 2019 which are accepted as Conditions on the licence, namely:-
- There will be no bookings taken from groups identifying themselves as hen or stag parties.
 - After 8pm no music or entertainment provided by the premises will be audible at the boundary of any residential premises in the immediate vicinity.
- J) The following conditions are imposed
- All doors and windows to be closed from 5pm onwards except for entry and exiting the building.
 - No drinks to be consumed outside after 5pm.
 - That a designated area for smoking be provided on the opposite side of the licensed premises away from residential premises.
- K) That from 5pm onwards the licensee inspects the boundary of the premise every hour to monitor noise and records in a register if sound is audible from the premises and records what steps they took to reduce the sound. The records to be kept for 1 year and to be produced on request from the Police, Licensing Officer or Officer from Environmental Health.
- L) That if a pre-booking is taken for an event, this is published no later than 72 hours before the event on the website and the local parish council is informed.

A full decision was notified to parties within 5 working days starting with the date of the hearing.

Rights of Appeal against this decision should be made to the Magistrates' Court acting for

the petty sessional area in which the premises are located. You must do this in writing within 21 days of the date of the written Notice of Decision.

Reasons for Decision

When considering the application, the Sub-Committee took into account all the evidence contained in the papers provided in the report and by all parties. It took into consideration the verbal evidence it heard and further took into consideration the statutory guidance issued under section 182 of the Licensing Act 2003 (“s182 Guidance”) and the Council’s Licensing Policy.

The Sub-Committee in considering all the evidence and guidance before them concluded that the main licensing objective they needed to consider was the prevention of public nuisance.

The Sub-Committee had to consider the competing aims as contained in paragraph 1.5 of the s182 guidance, namely the objective of protecting the public from noise nuisance and encouraging greater community involvement in licensing decision and allowing local residents to have their say regarding licensing decisions that may affect them, against the aims of minimising the burden on business and encouraging innovation and supporting responsible premises.

The Sub-Committee in reaching their decision had to balance the obligation to encourage innovation by Explorer’s Retreat in adding hotel facilities to Gulliver’s Kingdom which will increase visitors to the park and local area, increasing jobs and income into the local economy, as set out in the s182 Guidance, and the aims of protecting the public from noise nuisance and allowing the residents to have their say and that say was whole heartedly against the granting of the licence.

As raised by the applicant’s solicitor this is a separate application from the licence already held by the theme park Gulliver’s Kingdom. The Sub-Committee accepted following legal advice that the application was separate from the other licence as the types of entertainment offer were different in nature.

The Sub-Committee firstly had to consider what evidence they heard from the objectors could be taken into consideration when determining this application. The Applicant clearly pointed out that this was a new and separate application from Gulliver’s Kingdom. It was further explained that all decisions have to be based on evidence and as the property had not operated as a licenced premises there was no evidence that it could not be operated in a responsible manner as not to cause nuisance.

The Sub-Committee accepts that there is no specific evidence that this premises will cause a nuisance to the neighbourhood, however it is reasonable to consider the evidence of how the applicant operates other premises that require a licence as direct evidence as to how they may operate the new licence.

It is not unheard of that responsible authorities, for example the Police will object to a new licence on the basis that the applicant operates a licence elsewhere and that premise is causing problem. It is therefore reasonable for the Sub-Committee to put some weight to the complaints it heard from the neighbours, especially with the strength of the representations with 18 people making representations and approximately 30

people attending to either support their representations or to witness the Sub-Committee.

This also has to be balanced against the fact no responsible authorities made representations, especially Environmental Health who has responsibility for monitoring noise nuisance. As this is a new licence then it is understandable that Environmental Health would not have received numerous complaints about the Explorer's Retreat if any. But also the Sub-Committee had no reason to disbelieve those that made representations in their evidence saying they had made complaints over noise nuisance, a fact that was not denied by the applicant.

The Sub-Committee also had to consider the potential issue of noise nuisance. Representations against the granting of the licence cited nuisance from live and recorded music as well as from patrons. Due to the deregulation of live and recorded music up to 11pm the Sub-Committee cannot place restrictions on the licence to limit noise nuisance until 11pm on a new application unless that condition has been offered by the applicant.

Further as this is a new application, government guidance expects that licences should be granted and any concerns should be addressed with conditions applied to the licence to seek to restrict nuisance to the surrounding neighbourhood as specified in section 2 of the s182 guidance.

This guidance is imposed in this way as responsible authorities and members of the public can seek to review the licence if the premises caused nuisance after it is granted.

Taking all these issues into consideration the Sub-Committee concluded the following:-

- 1) That to refuse the licence would be in contradiction of government guidance.
- 2) That this application is separate from the licence held for the theme park as the fundamental operation of the businesses are different and therefore the licencing considerations are different.
- 3) That the Council cannot take the complaints regarding Gulliver's Kingdom into direct consideration, it can however use this as evidence as to how the applicant has acted in the way they run their business which is subject to a Licensing Act 2003 licence.
- 4) That from the evidence those who made representations that the applicant has operated their other licenced premises in a way that has caused nuisance with, noise, odour and has failed to respond to complaints and therefore it is reasonable on the evidence for the Sub-Committee to impose conditions to deal with these issues.
- 5) By placing such conditions on the licence the Sub-Committee will address the aims of the Licensing Act 2003 as stated in 1.5 of the s182 guidance in protecting the community from noise.
- 6) As the evidence put forward as to the nuisance includes those from patrons and that live or recorded music is unregulated before 11pm then conditions imposed on the licence will be aimed at minimising nuisance from patrons up to 11pm and not from live or recorded music, unless the condition was offered by the applicant.
- 7) That unless a compromise is reached to balance the competing aims of the s182 guidance then the Sub-Committee believe that local residents will review the licence at the first sign of nuisance, and therefore consider that more stringent

conditions are needed in order to reduce the possibility of the licence being subject to a review in the near future and cause disruption to the business.

- 8) For clarification when referring to residents, the Sub-Committee means paying guest of the hotel and local residents mean those living in private houses in the vicinity of the premises.

Therefore considering the conditions applied for and offered by the applicant the Sub-Committee decided.

- M) The Sale of Alcohol for consumption on premises Monday - Sunday 11am – Midnight be granted.
- N) Exhibition of Films Every day (indoors) 24 hours – for residents within their accommodation be granted.
- O) Live and Recorded Music, Dancing and anything similar - Every day (indoors) At any pre-booked wedding or function 11am – Midnight be granted.
- P) Provision of Late Night Refreshment - Monday - Sunday 11pm – 5am, for residents and bona fide guests only. The letter dated 5th September 2019 from the applicant's solicitor stated that "Late Night refreshment inside only between 11pm and 5am. This is required to allow the applicants to serve hot drinks to guests of the hotel 24 hours". It is therefore envisaged that the Late Night Refreshment Licence will only be required for hot drinks, this is granted for Hot Drinks and Beverages Only.
- Q) Opening Hours to Members of the Public.

Monday - Sunday 8am – 12:30am* (* next morning) and residents and bona fide guest 24 hrs a day. The Sub-Committee could not understand why bona fide guest should have 24 hour access to licenced premises when they are not staying at the hotel. Therefore the Sub-Committee granted the premises to be open Monday to Sunday 8am to 12:30 am next morning for members of the public. Open 24 hours for residents and Monday to Sunday 8am to 5.00am* for bona fide guest if they want to stay and have hot drinks. The Sub-Committee was concerned not to allow non-residents to stay on the premises for 24 hours as they may hang around the premises and ground and cause late night nuisance to local residents.

- R) At appendix 2 of the Sub-Committee report the Applicant offers 12 conditions under the heading "The Prevention of Crime and Disorder". These are approved by the Sub-Committee as conditions on the licence. In addition the Sub-Committee imposed the further condition that the CCTV records both visual and audible recordings.
- S) At appendix 2 of the Sub-Committee report the Applicant offers 12 conditions under the heading "The Prevention of Public Nuisance" the Sub-Committee approve conditions number 1,3,7,8,9,11 and 12 as offered as conditions on the licence. The Sub-Committee amend the following offered conditions.
- Submissions were made by those who opposed the application that to have deliveries and waste collection from 6am up to 10pm at night would cause a nuisance to the local residents. The Sub-Committee agreed and therefore conditions 4, 5 and 6 are amended to 6pm to 8am.

- Further it is a condition that waste glass bottles are not emptied into containers for collection between the hours of 8pm to 8am.
- The Sub-Committee welcomes the offer from the Applicant that there will be a telephone number made available to residents, however they were concerned with the amount of comments from local residents that complaints had been made to the applicant in respect of Gulliver's Kingdom and the telephone had not been answered and complaints not addressed. The Sub-Committee felt that the recording of complaints and the ability of local residents to contact someone was vital to deal with any issues to avoid the risk of a Review. As such the Sub-Committee imposed a condition that the applicant keeps a complaints register. The register must be kept for 2 years and must be made available on request by the Police, Environmental Health or a Licensing Officer.
- Further the Sub-Committee imposed a condition that there be a contacts register which is to contain at least 2 local telephone numbers so that local residents are able to contact the premises. This register be reviewed every 6 months for accuracy to make sure the numbers do not become out of date and the contact register be circulated to local residents and published on the Explorer's Retreat website.
- The Sub-Committee noted a number of representations made about nuisance from bright lights. The Sub-Committee saw no reason as to why lights should be pointing towards local residents and therefore imposed the condition that no lights to point directly towards residential properties and to be directed towards the ground so as not to cause a nuisance with the exception of intermittent security lights operating by motion sensors.

T) At appendix 2 of the Sub-Committee report the Applicant offers 3 conditions under the heading "The Protection of Children from Harm". These are approved by the Sub-Committee as conditions on the licence.

U) The applicant also offered 2 further conditions in the letter dated 5th September 2019 which are accepted as Conditions on the licence, namely:-

- There will be no bookings taken from groups identifying themselves as hen or stag parties.
- After 8pm no music or entertainment provided by the premises will be audible at the boundary of any residential premises in the immediate vicinity.

V) The Sub-Committee was further concerned about noise from patrons. The premises are being offered for weddings and functions and if a sit down meal is being offered then it would be likely that this meal would have finished by then and patrons would be outside in the courtyard and balcony area before the music entertainment starts. This has a potential to cause nuisance. The applicant offered to close all doors and windows from 8pm onwards while regulated entertainment is provided. The Sub-Committee consider this time to be too late and therefore impose the following conditions.

- All doors and windows to be closed from 5pm onwards except for entry and exiting the building.

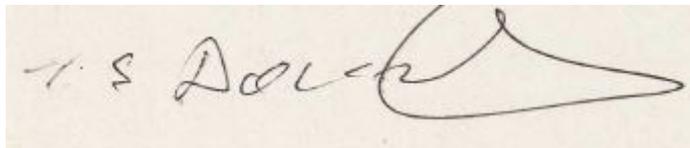
- No drinks to be consumed outside after 5pm.
- That a designated area for smoking be provided on the opposite side of the licensed premises away from residential premises.

- W) That from 5pm onwards the licensee inspects the boundary of the premise every hour to monitor noise and records in a register if sound is audible from the premises and records what steps they took to reduce the sound. The records to be kept for 1 year and to be produced on request from the Police, Licensing Officer or Officer from Environmental Health. The Sub-Committee believe this is proportionate as it will not only reduce noise from the premises, but provide evidential records to support the licenced premises of their actions if they do face a Review.
- X) The Sub-Committee believe that good communication is key in making these premises work with and for the community and by having notice of pre-booked events, local residents can plan their activities around those nights. Therefore the Sub-Committee imposed the condition that if a pre-booking is taken for an event, that this is published no later than 72 hours before the event on the website and the local parish council is informed.

The Sub-Committee believes that these conditions and proportionate and necessary in order to allow the premises to operate but elevate the concerns of the local residents. The Sub-Committee believes that if these conditions are not imposed then this premises will received numerous complaints and request for Reviews of the licence.

If any party is dissatisfied with this decision they have the right to appeal this to the Magistrates Court within 21 days of receiving the written decision.

Chairman

A handwritten signature in black ink on a light-colored background. The signature appears to be 'T. S. Doulton' with a large, stylized flourish at the end.

Date 09/09/2019