

LICENSING SUB-COMMITTEE
28 FEBRUARY 2023

Minutes of the remote meeting of the Licensing Sub-Committee of Flintshire County Council held on Tuesday, 28 February 2023

PRESENT: Councillor Rosetta Dolphin (Chairman)

Councillors: Marion Bateman and Ron Davies

Officers of the Council:

Licensing Officer (Jacqui Dale) Pollution Control Officer (Neil Shellard)
Solicitor (Matthew Powell) Democratic Services Officer (Janet Kelly)

In Attendance

Applicant:

Heron's Lake Retreat Ltd. Mr Andrew Arbour (Manager)

Interested Persons:

Councillor Steve Copple speaking on behalf of the objectors

Objectors

Mrs Swinchatt , Mrs Wynne, Ms Jones, Mr Besford, Miss Morris
and Mrs Forster

1. APOLOGIES

None.

2. DECLARATIONS OF INTEREST

None were received.

3. HEARING AND DETERMINATION OF THE APPLICATION

The Chairman explained the procedure for hearing and determining the application and outlined the order in which speakers would be able to address the Panel.

4. APPLICATION FOR A PREMISES LICENCE

The Licensing Officer presented the report for Members to consider a variation application made under the Licensing Act 2003 in respect to Herons Lake Retreat, Caerwys Hill, Caerwys, Flintshire CH7 5AD with its location highlighted on the plan in Appendix A. The applicant was Herons Lake Retreat Ltd. With the premises currently holding a Premises Licence PA0829 which allowed for the supply of alcohol for consumption off the premises (for an on-site shop) with the opening hours outlined in the report.

The variation application was to change the sale of alcohol to 'on and off sales' and to add a Tipi to the licensed area, which would have a small bar inside and an include an external seating area. The variation also included adding

recorded music to the licence. The times applied for recorded music and sale of Alcohol were outlined in the report.

No application was made to amend the current hours of operation, licensable activities or other conditions endorsed upon the Licence. If granted, the area would then benefit from the provisions of the Live Music Act and Deregulation of Regulated Entertainment. This would also allow for regulated entertainment within the licensed area from 08.00am until 11.00pm daily without the need for a separate licence. The Licensing Officer confirmed the following :-

- Appendix A – included a plan of the site referred to in the application
- Appendix B – this referred to a plan to identify the position of the Tipi
- Appendix C – referred to representations received from Flintshire County Council's Pollution Control Section on 6th February 2023.
- Appendix D – referred to letters of objection which had been received from local residents.
- Appendix E – referred to the steps that the applicant intended to take to promote the four licensing objectives

There were no objections from any further responsible Authorities.

The Licensing Officer then read out the existing licensing conditions to provide some background for committee Members, together with the mandatory conditions imposed for the operating schedule.

The Licensing Officer confirmed that the application was advertised in the correct manner in the local newspaper and on site. There were no resource implications in respect of this report.

Referring to Consultation it was confirmed that a 28-day consultation period was carried out following receipt of the application, as required by the Licensing Act. She referred to the risks which were addressed in the steps taken to promote the four licensing objectives and shown in the Operating Schedule.

The Chair then invited members of the Panel to ask questions.

Upon questioning Mr Arbour, responded to questions on the number of licence holders and staff members who had been trained and the hours security was present at the site

The Pollution Control Officer provided an overview of his work experience specifically his qualifications around acoustics and noise control within licence applications and variations. As a representative of the responsible authority (Environment Health) it was his role to ensure the prevention of public nuisance (Licensing Objective D) was considered during this process. This included the amplification of sound, its control and management together with how this would be realised in the neighbourhood.

This application was for indoor and outdoor recorded and live music and he confirmed that two site visits had been made to the site. He reported on the air gaps at the base and top of the Tipi tent which were a concern as air gaps leaked noise. Reference was made to the proximity of the 17 properties which

were 62 metres away with 5 properties within 50 metres, which were built before the Herons Lake Retreat. The Retreat was located in a valley with a large pond which would allow for noise to bounce off the water and amplify the sound travelling towards these properties.

Referring to the construction of the Tipi it was reported that the material would not adequately insulate or prevent noise from escaping in the same way that a brick-built structure would do, especially if the sides were opened in warmer weather allowing for more noise breakouts. The application did not include any steps to mitigate this such as a noise assessment, noise management plan or acoustic 3d modelling to demonstrate that recorded music or live music would not be an issue. It was unclear if any professional advice had been taken on this with no offer of a noise limiter device and he explained how these devices worked in buildings but felt it would not work here as the facility was so weak. The application did not specify the levels of the background recorded music and he had concerns that this would increase over time. Information was given on the range of decibels levels for conversation and background music and how these could travel and become audible to the neighbouring properties. Normally a noise limiter would be set at 92–94 but again he had concerns at this facility. He summarised by saying he objected to this application to vary the licence as recorded music would cause nuisance to neighbours which could not be overcome by the stipulation of conditions. This was a very quiet rural setting and the intended facility was not fit for purpose in that location. He was of the opinion that audible sound in neighbouring properties and gardens would be intrusive and a detriment to amenity and would not promote the licensing objective.

4.1 REPRESENTATIONS BY THE APPLICANT

Mr Andrew Arbour spoke to say the firm marketed the venue as a quiet retreat with the lodges and studios accommodating two guests, with very few large units. He explained that over the last 9 years people had sat by the lake whilst having a drink and playing music from their phones to watch the sunset and enjoy the scenery. The lodges were within 10 metres of the Tipi and it was not in their interests to disrupt or cause any nuisance to their own customers let alone their neighbours. He was willing to set limits on the background music but their aim was to keep things tranquil. Discussions had been held with companies around directional speakers to limit the sound and he was happy for this to be included as a condition. He reiterated that guests were able to contact the duty manager if disturbances occurred which were always treated as emergencies as it was in their interests as a business to promote harmony

4.2 REPRESENTATIONS BY OBJECTORS

Councillor Steve Copple spoke on behalf of the 12 objectors who strongly disagreed with this application. The main issue across all the letters was around noise from people and amplified music. There were no trees to suppress noise entering the properties and concerns had been raised over the weak fabric of the Tipi. The location of the site was in a valley which was similar to a bowl which trapped sound within it and this was a real concern to residents. There were no proposals specified on how this would be mitigated.

The Solicitor then proceeded to ask questions of Mr Arbour.

He asked where the customers who used the shop consumed the alcohol? Mr Arbour confirmed that most would return to their lodges to sit on the terrace or inside depending on the weather. Customers who did not have a lake view use the benches provided by the lake.

Referring to the concerns raised by Councillor Copple on behalf of residents, with one letter saying that this was a noisy and unruly site, the Solicitor asked Mr Arbour for his response to this. Mr Arbour felt that this was one person's view and that the site was run as a quiet and peaceful retreat saying that their customers would not return if it was noisy. They maintained a good standard which ensured harmony between customers especially when playing music so it did not disturb their neighbour 5 metres away. There was a good policy in place, it was a professional site with excellent reviews. He felt the Tipi would provide that covered terrace during raining weather and provide a better experience for their customers especially if directional speakers were installed to limit the noise to a controlled level.

The Solicitor sought clarification on the point in the policy which stated no noise after 9.30 pm. Mr Arbour confirmed that guests were asked to be quiet after 9.30 pm to ensure that families were not disturbed. This was enforced with guests able to call the duty manager.

Regarding the sales and consumption of alcohol within the Tipi and surrounding area and the Solicitor asked if there was a seating area outside which was part of that application. If the application was granted then the licensing activities would apply to those areas as well as the deregulated activities. Mr Arbour confirmed the seating area had been present for several years and was 5 metres from the Tipi and shop where alcohol could be purchased. Customers could take the alcohol to the seating area or their lodge and this application allowed them to access the seating within the Tipi.

The Solicitor then asked if there were any proposed changes to the on and off sales in the shop and whether the Tipi was in situ and currently being used. Mr Arbour confirmed that the sales in the shop would remain the same. The Tipi was already there but was not currently being used but would be used in March or April when the weather was warmer.

The Solicitor then asked what the Tipi was made of, if the sides could be removed in warmer weather and what was its proposed capacity. Mr Arbour confirmed that the Tipi was a thick canvas structure with a zipped door, which they were considering making into a wooden door, and that the sides could be lifted for ventilation. The proposed capacity was between 12 to 25-30 persons with 10 to 15 seated outside.

The Solicitor asked if consideration had been given to the location of the Tipi, whether it had a fireplace within it and Fire Management Plan. Mr Arbour confirmed the location was determined because it was a central focal point with people navigating to that spot which was why the seating was placed there. There was a fireplace present but as it was not being used there was no Fire Management Plan in place at present.

The Solicitor referred to one of the objection letters which had concerns that it would end up becoming a pub and asked if the sale of alcohol from the Tipi was limited to residents of the site or the wider public. Mr Arbour said with a lot of the local pubs closing there was a lack of amenities for people to visit but for now he would be keeping this for their residents only.

The Solicitor then asked if there was a Noise Management Plan in place. Mr Arbour confirmed there was with customers given information on arrival which included who to contact about any issues especially concerning noise. This number was manned 24 hours 7 days a week. The policy required customers to behave responsibly with guests requested to be especially quiet with low talking voices and levels of music after 9.30 pm.

The Solicitor then asked Mr Arbour having heard the concerns of the residents and the Pollution Control Officer was there anything else you would like to suggest. Mr Arbour said that he would welcome comments on the decibel limiter and directional speakers.

The Chair referred to customers being able to call the duty manager and asked if the local residents were able to call that number too. Mr Arbour believed they could and that one of the local residents was a duty manager at the site. The telephone number was listed on the website which had option 3 as a contact for the duty manager.

The Pollution Control Officer responded to the point made by Mr Arbour around directional speakers saying they were very effective but he still had concerns because the facility was a tent. There was potential for large air gaps and once the zips were open the recorded music would be in open space in addition to the deregulated activities if granted. He said noise limiters and directional speakers were widely used at venues which were buildings of stone etc. but he said this facility would be bleeding noise and he had reservations on how this could be managed without causing problems for the neighbours.

Mr Arbour referred to the practice of residents playing music through their phones which had been going on for several years and asked what the decibel level was for these. The Pollution Control Officer said it was not possible to compare the decibel noise from a noise limiter with music from phone apps as they would not reach 92 or 94 which would be expected in a music facility, wedding venue or pub and that because of the construction of the facility there was no noise barrier, wall or soft furnishings to absorb the noise.

Mr Arbour said that he did not want the level of noise to dominate the setting and not allow conversation to take place. He would wish for the directional speakers to be used at the same level which was currently experienced by the smart phones used by residents. The Pollution Control Officer commented that directional speakers were very effective but with the facility being made of canvas with the sides likely to be lifted in the summer he could foresee problems with this.

A question was asked if the Police had been required to visit because of disturbances at Herons Retreat. Mr Arbour confirmed that over the 8 years they may have been called once or twice a year to a domestic incident which was minimal compared to the number of people who visited each year.

A question was asked on the Retreat's Health & Safety Policy on site especially around the barriers by the lakes. Mr Arbour explained there was a fence in place, with a pathway in front of that before reaching another fence and then the lakes. Light buoys were situated around the lake with a strictly no swimming policy in place. Mr Arbour was asked how often health and safety checks were conducted to which he confirmed that these were undertaken almost daily. The lodges were cleaned daily and the duty manager patrolled the entire site with a maintenance team on site for 12 hours per day. The risk policies were available for anyone to inspect.

4.3 Determination of the Application

4.4 Decision

The Chair read out the Statement. The Licensing Sub Committee had resolved to **refuse** the Application made by Herons Lake Retreat for a variation of its premises licence.

In coming to their decision the Licensing Sub Committee considered the merits of the application, the representations made at the hearing and had regard to the Council's Statement of Licensing Policy and Guidance issued by the Secretary of State under Section 182 of the Licencing Act 2003. The Licensing Sub Committee was satisfied that there was evidence that the variation to include licensable activities within a Tipi and outside seating area would create a public nuisance caused by the escape of noise. In coming to this decision the view of the Pollution Control Officer was given significant weight and the residents' views were also considered. The Licensing Sub Committee had regard to the measures the applicant proposed within the operating schedule and the nature of the current operations but were not satisfied that the proposed measures demonstrated how the licensing objectives, in particular the prevention of public nuisance would be met. The Licensing Sub Committee considered whether they could modify or apply modified conditions but having regard to the evidence of the Pollution Control Officer determined that this would not be effective given the proposed operation and therefore were not of the view that modifying the conditions would promote the licensing objectives. This decision did not affect the current licence held by the applicant and the applicant also had the right to appeal which would be sent to them following the meeting.

RESOLVED:

That the application to vary the licence be refused.

5. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

There was no members of the press and no members of the public in attendance.

(The meeting started at 10.00 am and ended at 11.07 am)