Minutes of a meeting of the **Licensing & Regulatory Committee** held via video link on **Wednesday 22 July 2020** at **9:30am** when there were present:

Cllr S Gurney – Chairman

Cllr C Karimi-Ghovanlou Cllr K Kelly

In attendance were Mr D Lowens (the Committee's legal advisor), the Governance Manager, the Technical Officer – the Licensing & Enforcement Officers (SH and CN) and the Committee Officers (DM and LA).

Also present were:

(1) David Tarry – for the applicant

(2) Jeanette Southgate – for the applicant

(3) Ali Pridmore – Environmental Health - objecting

(4) Gemma Faircloth – for David Poole Gotto - Health and Safety - objecting

(5) Angie O'Connor – for Broads Authority - objecting

(6) Mark Smart – for the RSPB – objecting

(7) Philip Pearson – for the RSPB – objecting

1 DECLARATIONS OF INTEREST UNDER PROCEDURAL RULE NO 8

Member	Minute No & Heading	Nature of Interest
Cllr K Kelly	3 – LICENSING ACT 2003 – APPLICATION FOR A PREMISES LICENCE – BERNEY ARMS CAFÉ AND OUTSIDE AREA REEDHAM NORFOLK NR30 1SB	Member of the Broads (2006) Internal Drainage Board – non pecuniary interest

(Mark Smart also declared an interest as Member of the Broads (2006) Internal Drainage Board and site Manager RSPB)

2 APOLOGIES FOR ABSENCE

Apologies for absence were received from David Poole-Gotto and Mr Spanton (objector).

3 LICENSING ACT 2003 – APPLICATION FOR A PREMISES LICENCE – BERNEY ARMS CAFÉ AND OUTSIDE AREA REEDHAM NORFOLK NR30 1SB

The Chairman welcomed everyone to the meeting, confirmed who was in attendance and that they all had effective remote connections. She explained the procedure to be followed for the meeting and sought confirmation from all present that they all had copies of the papers for the meeting. She made reference to the additional papers received from the applicant and the RSPB which had been circulated to all present before the meeting. No other papers were submitted. With regard to the nature of some of the representations made in the papers, she stated she expected a respectful dialogue to take place at the meeting.

The Licensing Officer read out the officer's report and invited the Committee to consider the application for a Premises Licence in respect of The Berney Arms Café and Outside Area Reedham. The proposal did not include the pub premises. She drew attention to an amendment to the recommendations that the word "necessary" be replaced with appropriate". With regard to the options open to the Committee to determine the application, it was noted that it was also possible for the Committee to refuse the DPS if the licence was granted. A number of representations had been received in relation to the application. Attention was drawn to the conditions requested by the Police, which had been agreed by the applicant and these were read out. The Police had subsequently withdrawn their objection but all other persons making representations had confirmed they wished to maintain their objections. The Committee was invited to consider if it wished to have regard to the representations made by Mr Allard who had asked that his address be withheld. Officer's advised that they had received details of a valid address from Mr Allard, he could potentially be affected by the proposal and he had made relevant representations. Following legal advice, Members agreed his representation would be considered. It was noted that the representation from Natural England had been withdrawn.

In response to a point of clarification about the end times proposed for live and recorded music, Mr Tarry advised that he had offered to amend the finishing time for music outside to 10pm and not midnight. Officers confirmed they had not been notified of this amendment. The legal advisor sought confirmation that Mr Tarry understood what this meant in terms of the Committee's decision and Mr Tarry confirmed he wished to amend the finish time for music outside to 10pm

The Committee then heard from Mr Tarry and Ms Southgate on behalf of the applicant. Mr Tarry made reference to the history of the site, the difficulties of the viability of the pub at the site and his proposals for use of the café facility. He was familiar with the boating industry as a boat hire proprietor and the needs for safety equipment and provision for this would be in excess of that required, which would be an improvement for the area which was currently

used for moorings by the Broads Authority with no safety equipment. There had been no fatalities at the site. The facility would be a bistro café (approximately 16 covers) and would run alongside a craft / pottery / gift facility /workshops and offer local history information via a power point presentation about the broads and the local community. The facility would appeal to families and boat owners to escape the hustle and bustle and background ambient music would be played, not loud music. With regard to the representations from the RSPB, Mr Tarry felt these were ridiculous, and he made reference to nature of the wildlife area at Minsmere and that these natural sites could exist alongside other facilities with no detrimental effect. They were very aware of the unique nature of the site and this would be taken into account; he had been a bird watcher for many years and was sympathetic to the nature of the area.

Mr Tarry and Ms Southgate then answered a number of questions and, arising from these, offered the following points of clarification:

- Toilet facilities would be available in the adjoining public house
- The 6am start time was to allow for the serving of breakfast
- The marquee would be used for events too large to be accommodated in the bistro café depending on demand and would include portable toilet facilities
- Further investigations were being undertaken to ensure the quality of the water supply from the bore hole was satisfactory
- Safety measures involving life jackets and safety notices would be in place over and above those required
- Discussions were ongoing with regard to access arrangements. Vehicular access was currently restricted to the owners only but negotiations were continuing to expand this or secure historical access rights. In any event, those attending events would arrive on foot or by boat. In the event of an emergency, the railway crossings were now automated and the Fire Service had no issues with access. In terms of water emergencies, these would be dealt with by the nearby Lifeboat service if needed.
- With regard to protecting children, there would be strict controls in place.
- The 48 hour period sought for New Year was to allow for people celebrating on their boats.
- With regard to measures in place to control underage drinking, these were unclear at this stage but anyone appearing under the age of 18 would be asked for ID.
- Noise control measures would include keeping music at a reasonable level mindful of the nature of the location and the type of facility, no loud or bass music would be played and music would be monitored probably by way of a mobile phone app. No further measures were felt necessary as the nature of the use of the premises was such that these would not be needed.
- With regard to the 10 occasions per year when use of the outside area after 1 am was permitted (police condition) it was anticipated these would not be held consecutively but would be approximately every 2/3 weeks during the summer season.

The following further amendments (in addition to change to finish outside music by 10pm referred to above) were offered by Mr Tarry to the application as submitted arising from the discussions taking place:

- Music in the marquee finishing at 12midnight – later amended again to 10pm
- The proposed end time for all music on bank holidays and Christmas be reduced from 4am to 2am (save for New Year's Eve).
- No alcohol being served before 11am
- No music (other than permitted background music) before 11 am.
- Risk assessments would be undertaken in relation to all events and not just in relation to events with an expected attendance of over 100 as required by the Police condition.

Mr Tarry apologised for the late amendments but he had only become involved in the application at a late stage. In response to a concern that the amendments made by him at the meeting appeared contrary to the additional submissions received from the applicant, in particular, the applicant's "statement of truth" which appeared to be insistent that the hours applied for were necessary, Mr Tarry commented that he had assumed Mr Hollocks (the director of the applicant limited company) had confirmed his agreement to the modified hours, but in any event Mr. Tarry was now overseeing the application and had authority to make the amendments. He operated his current businesses with strict controls in place and would expect to see the same at this site. It was also noted that Mr Hollocks statement confirmed that no amendments to the application would be considered acceptable and that a late license was needed to enable people booking the facility to arrange their own entertainment which might include live music. In response to a question, Mr Tarry confirmed he would be willing to submit a business plan. It was noted this was not a requirement but that the Committee did need to know how the applicant proposed to promote the licensing objectives when operating the premises.

In response to a question about her previous experience running licensed premises and her plans to manage the facility, Ms Southgate stated she had worked in guest houses and a bar and that her daughter and partner would be helping her together with Mr Tarry. She had recently undertaken the DPS training.

Ms Faircloth referred to the potential health and safety concerns raised by David Poole Gotto and questioned why no event safety management plan was in place. The application had made reference to the local authority being "bound" to visit and give recommendations to ensure health and safety but she reiterated that the applicant had a responsibility to plan and safely manage activities proactively and independently. Mr Tarry commented that any event organised would have an individual risk assessment and plan in place as agreed as part of the Police conditions and he also offered to extend this to all events and not just events with over 100 attendees. It was noted

this did not form part of the application or condition. Ms Faircloth also raised concerns that there was little information in the application to assess the scale/scope/frequency and potential impact of events to which Mr Tarry replied that the range of events would continue much as had been done in the past with regattas, ramblers meetings, boat club meetings workshops all involving small numbers of people and no loud music; events which would embrace the area.

Mr Pearson, RSPB, asked about the measures in place to manage the potential adverse effect of the proposals on the area which was a Special Protection Area and a Site of Special Scientific Interest. He was reminded that his concerns needed to relate to one or more of the licensing objectives and he made reference to safety and noise concerns relating to staff living and working at the site, and to the nature of some of the management work carried out at the site (such as ditch work) which could have safety implications for customers of the premises. There was a lack of detail in the application about the management of events. Mr Tarry responded that he had asked Natural England for guidelines but had not received a reply. He did not feel the use of the premises as a bistro would have an adverse impact on the area and that the site of any RSPB works was likely to be fenced off.

In response to questions about the measures proposed to control noise, Mr Tarry reiterated that loud music would not be played, but music would be kept at a reasonable level. This could be monitored by way of an app on a phone. No other measures were felt necessary as there would be no need. It was suggested that the application as applied for was disproportionate for the claimed intended use of the facility and Mr Tarry commented that flexibility and longer hours would allow boat owners to relax and be sociable long into the evening. With regard to the control of music played by hirers of the premises, Mr Tarry confirmed a management plan would be in place and the DPS had power of veto.

The Committee then heard from those present who had submitted representations in response to the application.

Ms O'Connor representing the Broads Authority commented that the application appeared to have changed. She had some concerns about the Police condition which would permit use of the outside area after 1 am on up to 10 occasions per year, particularly if these were compressed into a short period of time during the peak season. The Broads Authority operated moorings in close proximity to the site and she was concerned about the impact of noise on users of these moorings and safety implications associated with the supply of alcohol to boat users, mindful that most accidents on the broads tended to arise as a result of access to / from boats after drinking alcohol. There was a need for safety measures to be put in place.

Mr Pearson representing the RSPB stated that measures were needed to

protect wildlife in this sensitive area and to protect staff living and working at the site. He was concerned about the potential impact of uncontrolled events on the site. He acknowledged the proposals now had more clarity which was helpful. A full risk assessment and further details of how events would be managed would be welcomed, particularly to help manage safety concerns. The RSPB would be willing to work constructively with Mr Tarry.

Ms Faircloth, on behalf of David Poole-Gotto – Health and Safety, referred to the potential safety concerns set out in the representation due to the location of the site near a river, its remoteness and its limitations and the extensive hours applied for (now amended). In the absence of detailed proposals as to how these would be managed, a full assessment of the application had not been possible. There was no detailed management proposal at present although this had since been offered by Mr Tarry and would need to form part of any conditions attached to any licence granted. There was a need for an event safety management plan and for consideration of the Event Safety Guide. There were no public safety measures or conditions offered as part of the application.

Mr Pridmore –Environmental Services welcomed the changes offered to the operational times but was still concerned about the impact of the proposed end time of 4am on bank holidays/Christmas Eve, particularly in this low noise area and with residents who were likely to be affected by noise. He asked that controls be put in place to reduce the impact of noise on noise sensitive locations in the area such as noise limiters and for this end time to be reviewed. Mr Tarry responded by offering to reduce the 4am finish time to 2am other than New Year's Eve. He pointed out that the marquee would have no sound retention qualities. Mr Pridmore referred to the option of using temporary events notices as the application seemed disproportionate and excessive in scope. Mr Tarry responded that he wanted to have the licensing matters fixed as he had other business interests to oversee in addition to this one.

All present were then invited to make their closing statements.

Mr Pearson stated he would have welcomed a dialogue with the applicants prior to the meeting and would welcome this going forward. He had been reassured by the amendments to the application but still had concerns about the proposals, together with further clarity and wider assurance on the type of activities and strong conditions would be needed to control use of the area.

Ms Faircloth stressed that to facilitate proper safety measures, event management plans would be needed in advance to allow sufficient time for a full assessment.

Mr Pridmore stated that noise management plans would be needed to set out how noise would be controlled, in particular late night noise.

All parties present, with the exception of the Committee Members, the Legal Advisor and the Committee Officer, then left the meeting whilst Members discussed the matter. All parties were then re-admitted to the meeting at 2pm and advised of the Committee's summary decision, as follows:

Summary decision of the Licensing Committee 22 July 2020 Berney Arms Café and Outside Area, Reepham

We note that the site is unusual in term of physical location and condition being a largely open area next to a fast flowing, tidal river. There are neighbours who would be affected by the proposal and it is an area of low background noise.

It is the obligation of the applicant to demonstrate in their operating schedule that they have taken account of the site and the necessary measures needed to promote the licensing objectives. Unfortunately the Committee feels there has been a significant failure to provide the necessary data the Committee needs to be confident of the promotion of the licensing objectives, especially regarding noise nuisance concerns and health and safety.

The significant last minute amendment of the application concerns the Committee as it shows a lack of advanced planning.

Noting the operating schedule Committee cannot be satisfied that the licensing objectives will be promoted if the application is granted. It is therefore the decision of the Committee that the application be rejected.

The committee was also concerned that the proposed DPS has insufficient experience to run this isolated site.

All present were advised that there was a right of appeal against the decision, details of which were contained within Schedule 5 of the Licensing Act 2003, and must be exercised within 21 days from the date of the written decision being received.

A full detailed written decision would be provided within 5 working days and circulated to all those making representations.

The meeting closed at 2.10pm