



To be submitted to the Council at its meeting on 27th July 2023

## **LICENSING SUB-COMMITTEE**

**9<sup>th</sup> February 2023 at 1.30pm**

### **Present:**

Councillors Hasthorpe, Callison and Cairns

### **Officers in attendance:**

- Iain Peck (Senior Licensing Enforcement Officer)
- Adrian Moody (Licensing Enforcement Manager)
- Sophie Pickerden (Committee Support Officer)
- Jo Bennett (Licensing Enforcement Officer)
- Eve Richardson-Smith (Deputy Monitoring Officer)

### **Others in attendance:**

- Jonathan Smith (Solicitor)
- Peter Tuck (General Manager of Thorpe Park)
- Mark Peet (Representative)
- Paul Smith (Representative)
- Sarah Palmer (Representative)

There were 22 observers and no members of the press in attendance.

### **LSC.10 APPOINTMENT OF CHAIR**

RESOLVED – That Councillor Hasthorpe be appointed as Chair for this meeting.

COUNCILLOR HASTHORPE IN THE CHAIR

### **LSC.11 DECLARATIONS OF INTEREST**

There were no declarations of interest received in respect of any item on the agenda for this meeting.

**LSC.12**

**APPLICATION FOR A VARIATION OF THE PREMISE LICENCE – “SHOWBAR, CAROUSEL AND OWNERS EXCLUSIVE LOUNGE” THORPE PARK, HUMBERSTON**

The Chair introduced himself, the other members of the sub-committee, and the officers present.

The sub-committee considered an application for a variation of the premises licence in respect of the Premises known as “Showbar, Carousel and Owners Exclusive Lounge”, Thorpe Park, Humberston, DN35 0PW.

Ms Richardson-Smith outlined the preliminary legal issues in relation to the bundle of papers, additional evidence served and the process to follow for the hearing.

Mr Moody summarised the application. He said that the application was for a variation of the premises licence. Mr Moody stated that there had been a total of seven representations received and two other representations that were received outside of the consultation period. Mr Moody outlined what powers were available to the committee. He stated that officers were unable to undertake any mediation regarding the seven representations. Mr Moody said that some of the points raised in the representations were relevant and some were not. Mr Moody stated that the complaints that had been received formally by the council about the premises had been included in the agenda papers, of which there had been a total of 19. Mr Moody referred to section 7.4 of his report and reaffirmed that a statutory nuisance had not been identified, contrary to one of the representations received stating so. Mr Moody reiterated that the sub-committee was present to hear an application for a variation of an existing premises licence. He stated that all premises were subject to a review if needed.

The Chair invited Mr J Smith to address the sub-committee on behalf of his client.

Mr J Smith sought clarification for how long those addressing the committee had to speak. Ms Richardson Smith stated that he would have twenty minutes to address the sub-committee and all those who submitted a representation as well as regulation 8 form would also have twenty minutes each to speak. She informed Mr Smith that he could be given some leniency with longer to address the sub-committee if needed, but that this would be at the Chair's discretion.

Mr J Smith stated that he was present at the sub-committee meeting to represent the applicant. He said that the application was for a variation of the existing premises licence. Mr J Smith stated that the variation included the changing of the names of two of the

venues and alterations to the Showbar. Mr J Smith commented that two of the representations that had been submitted mentioned a change in hours, he commented that this was not the case. He said that the changes would be in regard to the layout. Mr J Smith informed sub-committee members that conditions had been agreed with the Environmental Health Officer and that there had been no representations received from them or from Humberside Police. Mr J Smith stated that the Showbar was undergoing a major refurbishment and that the work would hopefully be completed in May – June. Mr J Smith referred members to the plans outlined in the agenda papers. He explained the various alterations the applicant was asking for regarding the layout of the Showbar. He said that the current position of the stage was to the west and that this would be moved to the east and that the speakers would be reorientated to point away from the Humberston Fitties. Mr J Smith stated that there would be a new food area. Mr J Smith said that there would be a larger outside seating area and that the area would not be licenced for the sale of alcohol, but that there would be speakers out there as background music. He stated that as long as people were able to talk over the music, it was classed as incidental and therefore not a licensable activity. Mr J Smith said that the outside seating area could only be accessed via the Showbar and that you could not just walk onto it. Mr J Smith stated that there had been no refurbishment since 1997 and that the business had grown over the years. Mr J Smith said that you would enter the Showbar by using the main entrance and that the door to the kitchen would be moved away from the Humberston Fitties to the west due to the new Papa Johns. Mr J Smith clarified that the extractors would be refilled and that there would only be one skylight, not eight, and the doors would be self closing. Mr J Smith said that the stage would be relocated to the east and that a noise limiter would be fitted as requested by the Council's Environmental Health Officer. Mr J Smith said that a noise assessment had been undertaken. He said that there had been no complaints relating to the Showbar from the residents of the Humberston Fitties. He explained that the noise assessment was made based on what the levels would be inside the bar and had taken into consideration the existing bar and the changes that would be made. He said that the potential maximum increase had been determined to be 0.2dba which was considered a negligible increase. Mr J Smith said that the highest readings showed a noise level of 34.4dba which was below the maximum level. Mr J Smith said that the internal noise of 19.4dba was below the daytime recommended level of 35dba. Mr J Smith stated that there had not been a single complaint regarding the Showbar as it was now and he said that it was acceptable to suggest that there would be no disturbance following the changes. Mr J Smith explained that the Showbar would have children's entertainment shown throughout the day, bingo in the afternoon and from 8pm onwards, there would be live acts, tribute acts, discos etc. Mr J Smith said that the outside terrace area would not have entertainment other than background music. Mr J Smith said

that there was a suggestion that Thorpe Park had inadequate noise insulation, but the changes made would have a positive impact on the insulation. Mr J Smith said that the kitchen would be moved to deal with any effects on residents regarding odours. Mr J Smith reiterated that 42dba was the maximum noise limit which should not be exceeded and said that even in the worst case scenario, the noise would only reach a maximum of 34.4dba.

Councillor Cairns queried what improvements would be made to the kitchen area. Mr J Smith said that Papa Johns would be moved away from the Humberston Fitties and located in the east of the premises. Councillor Cairns queried whether that would help alleviate the problem with smells from the premises. Mr J Smith said that it would but clarified that there had been no complaints made to the Environmental Health Officer. Councillor Cairns asked if the refurbishment of the premises would lead to Thorpe Park employing more staff. Mr Tuck said that they were hoping it would lead to the employment of a further 30 staff. Councillor Callison queried the noise assessment that had been submitted and whether the calculations had been affected due to the coronavirus and its impact on Thorpe Park. Mr Tuck explained that Thorpe Park was only closed for a short time. Councillor Cairns queried the complaint about empty bottles being thrown into a skip. Mr J Smith stated a complaint was received regarding that but said that Thorpe Park used Biffa and that collections were made after 8am. Mr Tuck further explained that the complaint was about Biffa and that, on that occasion they had been early collecting the bottles. He stated that it was not his staff as the glass bottles were emptied in the afternoon. The Chair queried one of the conditions regarding the closure of doors and windows when necessary. He asked Mr J Smith what constituted necessary. Mr J Smith stated that it was not a condition that was put in by the applicant, he explained conditions of that kind would normally say close doors and windows during regulated entertainment. He said he was unsure what necessary meant as that was a subjective term. Mr J Smith stated he would follow the guidance of Ms Richardson Smith.

The Chair invited Mr Peet to address the sub-committee.

Mr Peet explained that he was speaking on behalf of Ms Holmes who had submitted a representation. Mr Peet stated that he did not object to Thorpe Park as a venue. He said his objections were regarding the noise nuisances and the impact on the environment. Mr Peet stated that the Humberston Fitties and Thorpe Park had a long history of successfully maintaining a balance between people, nature, and the economy. He said that balance was now under threat from Thorpe Park and that their rapid development of creating indoor and outdoor entertainment venues and facilities was creating noise nuisances. Mr Peet stated that he was concerned about the number of variations in the operating model of Thorpe Park that

were creating nuisance noise and that they were not being considered for their combined environmental impacts, in particular nuisance noise and instead were being considered on an individual basis. Mr Peet stated that the noise assessments were not considering all the changes together and the cumulative effect. Mr Peet stated that an increase in static caravans and people using entertainment venues would increase the noise. Mr Peet said that the noise assessment report had been written during the parks closed season and therefore the assessment was flawed as a noise assessment of the current show bar had not been undertaken, which would have given a true baseline for noise. Mr Peet stated that he disagreed with what Mr Tuck had said regarding the noise of emptying bottles and collections. He said the concerns he had was not just about Biffa collections but about the staff at Thorpe Park emptying them at inappropriate times, including before 8am. Mr Peet stated that he had video evidence to prove this was the case. Mr Peet said he was pleased to see a condition added regarding speakers but said that speakers had not been included in the original application and the introduction of speakers should be considered a change to the plans submitted and approved. Mr Peet said that there should be no outdoor speakers allowed without planning consent. Mr Peet concluded by querying the purpose of the roof lights, why amendments to the bottle waste collections had not been considered relevant to the application and why the officer report regarding noise had not considered outside noise. Mr Peet commented that himself and other residents had attempted to communicate directly with Thorpe Park but had received no response or acknowledgement.

The Chair invited Mr P Smith to address the sub-committee.

Mr P Smith stated that the reorientation of the speakers would not be a benefit. He said part of the problem was the vibration from the noise and the reorientation would mean the vibration would be closer to the Humberston Fitties. Mr P Smith stated that there had been unacceptable levels of noise resulting in a statutory nuisance.

Mr Moody stated that a statutory nuisance had not been proven.

Mrs Richardson Smith provided legal advice that only a qualified environmental health officer can determine whether a statutory noise nuisance existed under the Environmental Protection Act 1990.

Mr P Smith further commented that Thorpe Park used to cohabit the area and provide entertainment for all ages but that the latest developments were about footfall. Mr P Smith said the application to extend the Showbar would only add to the cumulative noise. He explained that due to the sound levels, he could no longer use his

garden resulting in a loss of amenity to himself and his family. Mr P Smith said that due to the noise, his health had suffered. He commented that the noise levels had been so high, that he could not relax whilst at the Humberston Fitties. Mr P Smith stated that the company had breached licensing and planning conditions previously and that the issue of the vibrations would get worse with the speakers. Mr P Smith said that the noise mitigator had failed to resolve the issue. Mr P Smith stated that there had been 250 complaints regarding the noise submitted within the planning application.

Mr Moody clarified that only 19 formal complaints had been received by the Council.

He said that the residents at the Humberston Fitties had complained multiple times directly to Thorpe Park regarding the noise. Mr P Smith stated that the variation application would cause further disturbance and would increase noise and activity. Mr P Smith asked the sub-committee to defer the decision on the variation application and instead have a full independent acoustic assessment undertaken and then a decision could be reached at a further hearing.

The Chair invited Ms Palmer to address the sub-committee.

Ms Palmer said that the Humberston Fitties was an historical local area. Ms Palmer said that Mr J Smith and Mr Tuck had spoken about the caravans on site not being bothered by the noise, but she said they benefit from the facilities whilst the residents of the Fitties just get the noise. She said that previously there had been no issue with the noise until last Summer. She said that the noise had caused her to be very upset. Ms Palmer stated that Thorpe Park and the Humberston Fitties were both good for the area and did used to be able to co-exist peacefully but that the two places were now at an impasse. She said that the noise of modern life was taking over the Humberston Fitties. Ms Palmer commented that she was under the impression that things were being rubber stamped to benefit tourism, but she said that the Humberston Fitties was also good for the area. Ms Palmer stated that she did not want to be at loggerheads with Thorpe Park but that she could not bear the noise. Ms Palmer said that the noise being generated by Thorpe Park was a certain type of noise, it was not a tranquil background noise of waves, it was the noise of bottles, and loud music.

Councillor Callison said that he understood the points of view of the residents but that the sub-committee also had to understand that deliveries need to occur for the functionality of a business. Mr Peet stated that he was not objecting to deliveries. He said that the noise being generated at Thorpe Park was not being adequately contained with their boundary.

The Chair invited all parties to make their closing statements.

Mr Peet asked Mr Tuck how often the management team walked the boundaries to see the experience of residents living with the noise. Mr Peet stated that the issue needs to be dealt with. He explained that lots of residents don't know how to complain to Thorpe Park or the council as they have never had to do so before.

Mr Tuck said that he walked through the Humberston Fitties a lot and was aware that there had been a huge upset caused to residents. Mr Tuck stated that he had a meeting scheduled with the Humberston Fitties to look at a way forward.

Mr J Smith stated that an outdoor stage was put up last Summer to provide entertainment. He said complaints were received about it in relation to noise, but that the application was not about the stage and instead about the Showbar. Mr J Smith said that following the complaints, the Environmental Health team visited the site, took further readings and the noise limit was reduced. Mr J Smith explained that there were then further complaints received, and the stage then stopped being used. Mr J Smith stated that Thorpe Park had not been ignoring complaints. Mr J Smith referred to Mr P Smith stating that the licensing conditions had been breached and said he was unsure what Mr P Smith was referring to. Mr J Smith said that the staff at Thorpe Park had responded to emails sent by residents of the Humberston Fitties. Mr J Smith stated that the Showbar would not be accessible without a holiday pass. Mr J Smith said that the noise assessment that was undertaken had considered the existing structure and the new variations. Mr J Smith said that the variation application was about the Showbar and that there had been no issues with the Showbar. He stated that the hearing was not a review of the licence. Mr J Smith stated that the sub-committee had to act on the balance of probability and that the police had not objected to the variation. He said that if there had been a noise nuisance you would expect them to intervene if they were concerned. Mr J Smith stated that the applicant was happy for the skylight to be closed and happy to suggest that there be no disposal of glass outside before 9.00am. Mr J Smith commented that the sub-committee had the power to review. He concluded that the existing Showbar had been at the site since the 1970s and had not caused concern.

Mr Moody clarified that whilst he was not saying that glass bottles were not a concern, the hearing was to determine a variation of an existing premises licence and was not a review.

The sub-committee withdrew to deliberate. After an interval, the sub-committee returned to the meeting.

The Chair thanked everyone for their attendance at the hearing. The sub-committee understood that the issues were emotive for all

concerned. He said that the sub-committee had to make a decision based on the existing Showbar. The Chair said that the change of the names was not an issue. The Chair stated that all representations were considered by the sub-committee. He said that the applicant had listened to the concerns of those making representations as had the sub-committee. The Chair stated that the application was clear and well thought out and reasonable in its aspirations. He said that bearing in mind that there were no recorded complaints on the activities of the existing Showbar and, looking at the details of the application in front of the sub-committee, there was no evidence that the proposed changes would cause any detriment or undermine the licensing objectives. The sub-committee attached great weight to the fact that there had been no representations from the responsible authorities. However, the sub-committee would place further conditions to allay the fears. The Chair stated the conditions. He said it was the sub-committee's collective opinion that the conditions were both proportionate and appropriate and with the acceptance of the conditions, the application for a variance of the licence was granted. The Chair concluded that interested parties be reminded that the power of review existed for any licenced premises that did not operate in a way that promoted the licensing objectives and that this could ultimately result in revocation of a licence.

RESOLVED – That the application for a variation of the existing premise licence be granted with conditions.

1. The external speakers located within the terrace area for the Marina Showbar shall operate via a sound level regulatory device (noise limiter) and the limiter threshold shall be submitted to and agreed in writing by the Environmental Protection Officer of North East Lincolnshire Council. The noise limiter device shall be regularly maintained and calibrated in accordance with the manufacturer's instructions (as outlined in the agenda papers, 2.2 page 16).
2. All windows, external doors and skylights of the Marina Showbar shall be kept closed after 9pm or when at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
3. No collections of waste or recycling materials (including glass bottles) from the premises shall take place between 23:00 hours and 8:00 hours.

There being no other business, the Chair thanked those in attendance for their contributions and concluded the meeting at 4.05 p.m.