

Rother District Council
DECISION NO: WK/202013005

GENERAL LICENSING PANEL DECISION NOTICE

Date of General Licensing Panel Meeting: 30 March 2021

Venue: Remote, via Microsoft Teams

Date of Decision: 30 March 2021

**NAME AND ADDRESS OF
PREMISES:**

Lakedown Trout Fishery, Swife Lane, Broad Oak,
Heathfield, East Sussex, TN21 8UX

NAME(S) OF APPLICANT:

Mr Jamie Daltrey

**REASON(S) FOR
REPORT:**

The report had been subject to 25 representations, 10 in support and 15 against, on the grounds of public safety and the prevention of public nuisance.

DECISION MADE AND REASONS FOR IT:

Reasons for the Decision

1. The Panel was asked to consider an application for a premises licence in respect of Lakedown Trout Fishery, Broad Oak under S.16 Licensing Act 2003 (the Act). During the consultation period, there were a number of representations made by Interested Parties, both in support of, and in objection to, the granting of the licence. Therefore, the matter had been placed before the Panel to determine the application. In considering the matter, the Panel had a report detailing the application together with photographs and plans, together with all the written representations. In addition, the Panel also had regard to the Council's Statement of Licensing Policy and the Secretary of State's S.182 Guidance (the Guidance) made under the Act.
2. The meeting was held remotely, facilitated by use of Microsoft Teams software. In attendance to support the Panel, there were a number of Council officers. Additionally, the applicant was represented by Mr Ranatunga, Counsel, and there were two of the Interested Parties, Mr Franks and Mr Banks. The Panel also had regard to all the formal representations made in respect of the application.
3. The Chair of the hearing, Councillor Mier, explained the procedure to be followed for the hearing, emphasising that there would be a full opportunity for parties to engage in the discussion led process. The Panel then heard from the Licensing Officer who outlined the report before the Panel, with details of the application, together with an update on a number of representations against the application, which had been withdrawn in the days leading into the hearing. These appeared to follow direct discussions with the applicant about the application. It was stated there had been 25 representations made by Interested Parties, 10 in support and 15 against. Additionally it was stated that an original representation raised by Sussex Police had been withdrawn

following an agreement to accept a number of conditions on the licence in relation to the crime and disorder objective.

4. At the outset of the meeting, it was stated by Mr Banks that he had met with the applicant the evening before, and that he wished to submit 11 proposed conditions he thought should be added to the licence. The document had not been seen by the applicant, or indeed by the Panel. Accordingly, a short adjournment was arranged to allow the applicant to consider the document and express a view whether he wished to consent to its inclusion in the papers, in accordance with Regulation 18 of the Hearing Regulations made under the Act. On the meeting reconvening after 10 minutes, the applicant said whilst he had no objections to the document being included, they did not agree to all the proposed conditions being proposed, which he would deal with in his submissions.
5. Mr Ranatunga then addressed the Panel. He stated the fishery had been operating as a business for over 40 years. In that time, they had created the network of lakes and protected the Area of Outstanding Natural Beauty (AONB) for the promotion of fishing. What they were now seeking to do with this application, was to simply enhance the fishing experience at the site, by offering a locally produced beer at the end of a day's fishing. Additionally, the venue would welcome visitors who wanted to sample the beers with a view to purchasing more thereafter. In essence, he said it was similar to a wine tasting experience that operate at vineyards. He stated that the nature of fishing involved minimal noise, and there was no intention in this application to change that position. It was said, at times there have been up to 100 people a day fishing at the location, and that historically there had been no problems with noise, or with fishing traffic along Swife Lane. The Lodge was simply to be a Tap Room that allowed visitors to test Lakedown Brewery beers. It was not to become a music venue or a wedding destination as stated in some of the letters from Interested Parties.
6. The local brewery, Lakedown Brewing Company LLP, was based in Blackboys. Deliveries were to be limited to one per day between 09.00-17.00 Monday-Friday and they would use a transit van size vehicle, and not a lorry, as stated in some of the letters from Interested Parties. Counsel said the applicant would be happy to accept a condition that stipulated these proposals on deliveries of alcohol. There was no intention to sell spirits, and when asked by one of the Members of the Panel, clarified that there was no intention to sell wine. They would offer non-alcoholic drinks, but the reason for the application, he repeated, was simply to offer low volume high quality local brewed beer. He stated that the hours had been reduced to reflect the concerns raised by local residents, and that the 21.00 closing time between April and September, and 18.00 between October and March were modest hours that reflected the small operation they were proposing.
7. Counsel then addressed the Panel on the main substance of the letters in opposition to the application, that being the narrow lane that provided the main access to the site. Swife Lane was a single-track road, but over the years, it had not provided any real reported concerns for the traffic that went to the fishery. There had been over 100 anglers on some occasions, and in recent times during lockdown periods, there had been a reported increase in DHL, Amazon and grocery deliveries reported by residents. It was said Swife Lane

was adequate to support the nominal increase in customers' traffic owing to the licensable activity, which may visit the premises beyond existing anglers.

8. Some of the Interested Parties had suggested that the inexperience of the management of the proposed premises undermined the licensing objectives. Counsel stated that the applicant himself had three years' experience in the hospitality sector and was intending to obtain a personal licence once current restrictions were relaxed. The Designated Premises Supervisor (DPS) had over 20 years' experience in the hospitality sector, managing several premises, and he would be ensuring that staff were trained and that there would be full compliance with all the licensing objectives. He was the person in day-to-day control of the licensable activity. Such experience, it was said, should re-assure the Panel that the management structure at the premises was responsible and qualified to uphold the licensing objectives. In order to re-assure local residents the applicant, Mr Daltrey, would make his mobile number available, so that people could contact him directly if there were any concerns. Additionally, it was agreed that they would accept a condition for the creation of a social media group so that concerns could be raised directly through the group. Counsel stated that the applicant had met with several of the Interested Parties, and many had retracted their objections. There were still 15 Interested Parties who opposed the application, and their concerns were very much at the heart of the assurances they were offering, to ensure the neighbours would not experience any public nuisance, or issues of public safety. Ten locals had supported the application, many of whom had lived in the area for over 60 years or had visited the fishery over the years. It was said the two nearest neighbours to the fishery had both withdrawn their objections on meeting the applicant in person. It was said, there were key protections with the Act under the powers to review licences that protected residents should any licence holder not manage their premises responsibly. Those powers allowed the Licensing Authority to modify licences and at worse, revoke licences should failings be evidenced by Interested Parties. One significant issue in this application was that there were no representations from any of the Responsible Authorities under the Act, who were considered the experts in their areas. No concerns had been raised by the Environmental Health, Planning or Fire Authorities.
9. In response to the proposed conditions offered by Mr Banks, it was stated that the applicant agreed to condition 1, in respect of life preservers, and condition 10, in respect of the setting up of a social media group. They were not in agreement to the other proposed conditions as they were all covered within the submissions already made, for example, Challenge 25, and risk assessments; or that some were simply not appropriate or proportionate to the application.
10. The Panel asked a series of questions to clarify a number of the points raised. These included the variety of alcohol on offer, the procedure for dispersing customers, outside lighting at the premises, and expected footfall from non-anglers. In response, Counsel stated that only beers from the Lakedown Brewery were on offer. No spirits or wine would be sold. He repeated this was not to be a pub or bar, simply an outlet to sample the produce of that particular brewery. In respect of dispersal, this was not a traditional late night venue where customers tended to stay until the end and then leave all at once. The Act had offered flexibility in closing hours to enable premises to avoid this old practice. It was expected there would be a gradual departure of customers that would not lead to disturbances. Should there be any issues then with the direct

contact number for the licence holder together with the social media group, any issues could be quickly and effectively resolved to prevent any repetition.

11. The Panel was then addressed by Mr Banks. He stated he had met with the applicant the previous evening, and that his intention was originally to support the application at the hearing. However, following the submissions made by the applicant's Counsel, he had now changed his mind. He stated there appeared to be a reluctance to accept conditions designed to protect the AONB. Given the restricted access along Swife Lane there needed to be limitations in place. He stated they had offered in their Operating Schedule that numbers were limited to 50 people, and yet now they did not want such a limit. He stated his main concerns were the protection of the AONB and local residents. He stated they ought to sell wine so that female visitors had a choice. He stated they should be required to carry out and implement a risk assessment, given that customers should be protected. He expressed concerns that as fishing at the site finished at dusk, why did they need longer hours. In April he said, sunset was at 17.20 and yet they would be open until 21.00. He suggested that if the licence were granted then next, they would want to be able to sell food. He then returned to the issue of Swife Lane. He stated had the numbers been limited to 50, then it would not have been an issue. However, with no restrictions then access to the site would be an issue. If closing times were in line with fishing, then that would make sense. He suggested that the applicant's business was not experienced enough to manage the premises. He then concluded by stating that the Dark Skies Policy within the area should be respected. He urged the Panel to accept his 11 conditions if they were minded to grant the licence.
12. Mr Franks then addressed the Panel stating that he had nothing further to add, and that he did not see that the sale of wine would be an issue.
13. In summing up their application, Mr Ranatunga stated that in respect of safety concerns, they had accepted Mr Banks' condition on life preservers, and that as part of the consultation with the Fire Authority, risk assessments had been completed. Had the Fire Authority any concerns they would have made a representation. The S.182 Guidance informed the Panel that they should look to the Responsible Authorities, as being the experts in their field, and that conditions should not replicate existing legal requirements. Furthermore, as an extra measure, unaccompanied minors were not allowed onto the site. In their submissions, they did not believe there was an issue with safety at the site not already dealt with. He repeated that the Act provided a power of review which can be instigated by a single resident with an evidenced application should there be an issue with the management of the premises not upholding the licensing objectives. He was asked by the Panel to explain the apparent offer to limit capacity to 50 people, and he responded by stating that the statement in the Operating Schedule was an attempt to state that the premises had limited car parking. That parking limit would, in itself, restrict the numbers of visitors if they could not park, unless of course they walked, cycled or rode to the venue. He repeated that they were not expecting a significant footfall, and that numbers would be modest. He submitted that any condition attached to the licence had to be appropriate under the licensing objectives, and proportionate to what it was intended to achieve, as set out in the S.182 Guidance. In respect of any exterior lighting, he stated the lights would be downward facing so as not to be intrusive, or to affect the Dark Skies Policy. He emphasised that issues raised by Mr Banks could have been raised by the Responsible Authorities had they

been needed, but none had done so. He stated the Act allowed a light touch on applications where Responsible Authorities had not raised concerns; the applicant was not ignoring the concerns of residents. They had reduced hours and accepted proportionate proposals to alleviate those concerns. They would continue to engage with neighbours should the licence be granted and would respond to any concerns raised.

14. The hearing was then closed, and the Panel considered all the submissions provided by the parties, and all the letters of representation from those who had not attended. The Panel had to be guided by the licensing objectives and, in particular, how would the applicant manage licensable activity at the premises and uphold the licensing objectives, particularly in relation to the Prevention of Public Nuisance and Public Safety.
15. It was accepted by the Panel that the fishery business had been in operation for over 40 years, as stated by the applicant. The Panel accepted that the nature of the sport of angling inherently involved calm and quiet. The proposed licence was said to be an extension of that existing operation. On balance, the Panel accepted that the modest proposals within the application did not represent a shift in the nature and scale of the existing business. Having regard to the nature of the representations against the application, the Panel was satisfied, on balance, that operating hours did not constitute a diversification of the angling business to the extent that neighbours would notice any change in traffic or noise from the licensable activity, particularly following the applicant's amended hours on reading the representations. Many of the supporting representations were from people who had lived in the area throughout the life of the existing angling business, and they appeared to have no concerns for the proposals. There were no representations from any Responsible Authorities, in particular the Fire Authority in respect of safety at the site, and the Environmental Health Team in respect of potential noise. Those objecting to the application had focussed their attentions on the narrowness of Swife Lane, and potential noise. The Panel was satisfied, on balance, that whilst Swife Lane was narrow, it was currently coping with vehicular traffic to a number of properties, their respective delivery needs from courier companies, in addition to the traffic servicing the fishery and other properties in the area. The size of the licensed area would limit numbers using the lane. It was accepted that large wagons would not be suitable, but the Panel was satisfied that assurances offered by the applicant that alcohol deliveries would be in a transit sized van, would prevent any breaches of the licensing objectives feared by residents.
16. The Panel was, on balance, content to grant the application, and therefore they considered the imposition of conditions upon the licence. The applicant had proposed a number of conditions within the operating schedule, and these were accepted by the Panel. They discussed the confusion over the issue of restricted numbers, as proposed by Mr Banks. It was accepted by the Panel that the wording in the Operating Schedule, in relation to 50 people, was easily misunderstood. On first blush, it did appear that they were offering to limit to 50 people. That misunderstanding was clarified by the applicant at the hearing to emphasise that they were merely suggesting the car park had limited capacity, and this capacity would, to some extent, dictate the numbers. Mr Banks suggested this was a change in their minds by promising one figure and then renegeing that promise. The Panel was satisfied, on balance that a condition restricting numbers, at this stage, would not be an appropriate or proportionate condition to impose, given the fishery attracted a sizeable

customer base notwithstanding the grant of the licence. The Panel was clear that conditions could only relate to licensable activity, that being the sale and supply of alcohol at the Lodge.

17. The Panel considered the list of conditions proposed by Mr Banks and were satisfied, on balance, that the majority were not appropriate or proportionate to include on the licence or were already offered by the applicant. Some of the suggested conditions were not lawful, such as the probationary 12-month period of licence mentioned at condition 8. The suggestion that limitations be placed on alcohol at weddings and music events was not appropriate given the current application did not include regulated entertainment. The Panel was fully aware that even were any such conditions imposed, they would not apply to events that were held under the exemptions provided by the Live Music Act 2012.
18. The Panel accepted the proposed condition 11, in respect of lighting, and were satisfied that it was appropriate to restrict the use of lighting to preserve the Dark Skies Policy mentioned in the submissions. Additionally, they also accepted condition 10, which had been agreed by the applicant, that a social media group would be established to allow residents a direct and immediate portal to raise concerns, should they occur. In addition, they would require the licence holder or the DPS to provide a direct telephone number for the same purpose.
19. The Panel gave close consideration to all the representations that had been made. They recognised that often, in applications for licences in unusual settings, there could be real anxieties for Interested Parties that their quiet rural locations will be changed. It was incumbent upon the Panel to look carefully at applications and put into place measures that would protect residents' quality of life, whilst at the same time trying to facilitate the business ambitions of applicants. The Panel was confident that the modest hours and the conditions imposed upon this licence would ensure that the licensing objectives would be upheld. They were re-assured that the applicant, and the Interested Parties attending the hearing, were all fully aware of the process of review under the Act should it be the case that the licence holder failed to uphold the assurances they gave at the hearing.

Decision Made

Premises Licence be granted for the sale and supply of alcohol:

Monday to Sunday 12.00 to 21.00hrs, with reduced hours from 1 October to 31 March to 18.00hrs. (On and off the premises)

Conditions offered by the applicant

a) General – all four licensing objectives

- We will all be trained in licensing and responsible sale of alcohol.
- Cooperation with the local police.

b) The prevention of crime and disorder

- We will cooperate with the local police force.
- Training by the DPS will be refreshed every six months.
- An incident book will be kept and maintained on the premises and will be made available to the police as well as a refusals register.

c) Public Safety

- Signs will be in place warning of nearby lakes.
- Life preservers will be positioned around lakes at appropriate locations.

d) Prevention of public nuisance

- Signs will be in place to keep noise levels to a minimum.
- Numbers will be limited to 50 people owing to car park space.
- Rural position with no neighbours.

e) The protection of children from harm

- We will implement a Challenge 25 policy and staff will be trained to implement this.
- Only passport, photographic driving licence and proof of age card bearing the 'PASS' hologram will be allowed.
- Signage advertising the age verification policy will be displayed in prominent locations around the premises.

f) There will be a maximum of one delivery of alcohol per day, Monday to Friday, 9am to 5pm.

g) We will only be selling Lakedown Brewing Company beer. No spirits will be sold.

Additional Conditions agreed with Sussex Police

CCTV:

Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.

The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.

CCTV footage will be stored for a minimum of 31 days.

The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.

The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.

Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police) for the police without difficulty or delay and without charge to Sussex Police.

Any breakdown or system failure will be notified to the police immediately & remedied as soon as is practicable.

In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Sussex Police or for any other reason, the premises will be expected to install a replacement hard drive, or a temporary replacement drive as soon as practicable.

Training/Authorisation:

The Premises Licence Holder shall ensure that all staff members engaged, or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products: *The lawful selling of age restricted products *Refusing the sale of alcohol to a person who is drunk.

Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.

All such training undertaken by staff members shall be fully documented and recorded and signed by both the employee and the DPS. All training records shall be kept on the premises and made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.

A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date such authorisation commences.

Challenge 25:

The premises will operate an age verification policy set at a minimum of 25 years (e.g. "Challenge 25") whereby any person attempting to buy alcohol who appears to be under the specified age e.g. 25 will be asked for photographic ID to prove their age.

The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age

cards bearing the 'PASS' mark hologram. Signage advertising the age verification or 'Challenge 25' policy will be displayed in prominent locations in the premises.

Incident/refusal Log:

An incident/refusal log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at least once every 4 weeks.

The log book should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the police. An incident will be defined as being one which involves an allegation of a criminal offence.

Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises.

Any refusals made for alcohol service e.g. underage, will also be recorded (either in electronic or written form) and feedback given to staff as relevant. The log will be kept at the premises for a minimum of twenty four (24) months.

Deliveries:

Deliveries of goods necessary for the operation of the business shall be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents. The same applies to waste collections.

All alcohol orders (whether online, completed by the customer on paper, via the phone or verbally face to face) will contain age verification, whereby the customer will be asked to confirm that they are over 18 and a tick box must be marked to confirm this.

All deliveries of alcohol must be made by a person over the age of 18 years and alcohol shall not be delivered to anywhere other than a recognisable permanent business or residential address.

In the event that there is no one to accept delivery alcohol shall not be left on the doorstep or any other place. It can however be left securely with a neighbour as long as they are over 18.

Each and every delivery must be signed for and the person delivering the alcohol must request appropriate photographic ID from the recipient if that person is believed to be under 25 years of age. If no such ID is produced the alcohol will not be delivered.

Delivery staff must be trained in delivery of alcohol and challenge 25 prior to commencing deliveries.

Additional Conditions

- 1 Life preservers will be positioned around the lakes at appropriate locations.
- 2 The licence holder will form a social media group to enable residents to contact the licence holder with any potential concerns of the licensing objectives. There will be an annual meeting, if requested, with the licence holder to discuss any on-going issues under the licensing objectives.

- 3 The licence holder or the DPS will provide a contact telephone number for neighbours to use, should any issues relating to the licensing objectives occur.
- 4 Deliveries of alcohol to the premises will only be once per day between 9.00 - 17.00 hours Monday to Friday and should be in a vehicle no larger than a transit style van.
- 5 Any external lighting at the premises shall be downward facing and shall be turned off no later than 21.30 hours (18.30 hours between 1 October–31 March). Any security system shall use infra-red cameras or similar to prevent visible light pollution after 21.30 hours (18.30 hours between 1 October–31 March)

Rights of Appeal

Under the provisions of Section 181 and schedule 5 of the Licensing Act 2003 there is a right of appeal against the decision of the Licensing Committee if you are aggrieved at the outcome. This right of appeal extends to the applicant in the case of a refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed upon the licence. Full details of all the rights of appeal can be found within Schedule 5 of the Act.

Any appeal should be made to the Magistrates Court, Edward Street, Brighton, within 21 days from the date of notification of the decision. You must contact the Magistrates Court to establish the formal procedure for the appeal.

A written or electronic copy of this Notice will be publicly available to all parties and published on the Council's website.