

Response to 8.9 Summary of the Lease Agreements / service Agreements and Financials

This is a brief note correcting the Summary document provided by the Council 10 working hours prior to the commencement of the Licensing Hearing, despite the documents having been provided to the Council in January 2017, some 15 weeks ago.

It is also of concern that Harrison Drury Solicitors, whom acted for CZCL in preparing the legal documents have not been contacted to clarify any concerns or misunderstanding that the Council have regarding the clauses within the documents.

The summary produced by the Council is incorrect in places [REDACTED]
[REDACTED]
[REDACTED]

Set out below is a brief outline of omissions

The parties to the agreement and Leases and Loans are Cumbria Zoo Company Limited, Mr David Gill and South Lakes Safari Zoo Limited

Lease Provisions

Mr Gill has reserved broad right to come onto the land upon "reasonable" unwritten notice (4.1 & 4.3)

This is misleading – and incorrect interpretation

Clause 4 is in relation to the rights excepted and reserved in respect of the "Estate" the Estate is defined as the property belonging to Mr Gill which neighbours the zoo, i.e. Mr Gill's house. This clause allows the owner of the neighbouring property to

- (a) A right of light
- (b) Right to repair services which go over land (i.e. utility services)
- (c) Right to develop his property next door

It also allows for the likes of United Utilities to have access onto the site, to carry out works

It can be noted that the above are not included in the Lease with SLZS

CZCL repairs, insures and decorates

This is not the full details

Clause 23 - CZCL must repair and decorate (excluding animal enclosures) "as often as is reasonably necessary". This is not an onerous clause, but allows CZCL to use its judgement, a standard clause usually states every 3 years.

No buildings or alterations without Mr Gill / SLSZ consent unless required to do so in law or regulatory requirements (25.1)

This is a limited description of the clause which is misleading

25.1 states. The Tenant shall not erect any new building on the Property without the consent of the Landlord such consent not to be unreasonably withheld or delayed save that such consent shall not be required where the Tenant is required to carry out any such works pursuant to operation of law or pursuant to the statutory regulatory requirements of any local authority or other public or regulatory body to which the Tenant is subject. i.e. if a License Condition required a new building or alteration to a building CZCL carry out the work without any reference to Mr Gill.

No cutting destroying or lopping of trees or hedges without the consent of Mr Gill unless required to do so in law or regulatory requirements (25.2)

This is a limited description of the clause which is misleading

25.2 states The Tenant shall not cut down, destroy, lop or top any trees or hedgerows on the Property without the consent of the Landlord, such consent not to be unreasonably withheld or delayed save that such consent shall not be required where the Tenant is required to carry out any such work pursuant to operation of the law or pursuant to the statutory or regulatory requirements of any local authority or other or regulatory public body to which the Tenant is subject to or in the case of an emergency where an arboricultural consultant has advised that such works are immediately required.

i.e. All hedges trees etc can be cut down, destroyed, lopped or topped so as to ensure the perimeter fence is kept clear so as to comply with Condition 3 and 18, without any reference to Mr Gill.

It also ensures that if a tree falls or is damaged it can immediately be removed.

CZCL may end the lease by giving 1 months notice at any time

Totally incorrect and an error by the author preparing the summary

Clause 40 allows CZCL to end the second Lease if the first Lease has been ended. i.e if the 8 year Lease with Mr Gill ends, but the Lease with SLSZ continues, CZCL cannot run the zoo on only part of the site therefore CZCL can end the second Lease. The occasions where any Lease can be ended are in clause 34; these are, failure to pay rent, material breach of a condition in the Lease, or Insolvency.

It is unclear if security of tenure excluded

Totally incorrect,

Security of Tenure means that, at the end of the Lease the Tenant has a right to another Lease granted on the same terms.

To exclude such a right it has to be specifically written into the Lease under the Landlord & Tenants Act 1954 s24-s28

Financial Summary

This is misleading and inaccurate, as the document cannot provide financial figures it allows for misrepresentation

If fails to set out that although CZCL are paying all liabilities (which have been invoiced or yet to be invoiced) which are attributable to the running of the Zoo and as such in the knowledge of CZCL it failed to set out that the **rent payable to Mr Gill and SLSZ is £1 for the first 6 months.**

Once the 8 years Leases come into place, or there is a buy out, Mr Gill and SLSZ are responsible for their own outgoing, **including HMRC**

Service Agreement

Incorrectly interpreted of clauses and misleading

This section has been drafted by the Council in future tense, in that CZCL "will" It fails to state the "Commencement date was the 12th January 2017." i.e all animals have transferred over to CZCL, all staff have transferred over to CZCL

Intention to grant an option to buy

The Council are being misleading in their reading of the clause and their position is incorrect.

The clause states that..... Mr Gill and SLSZ **SHALL** as soon as reasonably practicable after the commencement date grant an option to buy.

The option to buy will lapse on the first anniversary of the Service Agreement

The council are being misleading in this interpretation, or have misunderstood the clause.

The option to buy clause has to be taken up by the first anniversary i.e. CZCL have to write to Mr Gill/SLSZ and confirm their wish to take up the option to buy. This is not the same as completing on the purchase. Therefore CZCL have until the 23rd January 2018 to decide if they wish to buy and to put this in writing to Mr Gill /SLSZ. A standard timescale for such a clause would be 3 months.

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