

BOROUGH OF BARROW-IN-FURNESS
LICENSING REGULATORY COMMITTEE

Special Meeting, Tuesday 5th July,
Wednesday 6th July and
Thursday 7th July, 2016
at 9.00 a.m. (Drawing Room)

A G E N D A

PART ONE

1. To note any items which the Chairman considers to be of an urgent nature.
2. To receive notice from Members who may wish to move any delegated matter non-delegated and which will be decided by a majority of Members present and voting at the meeting.

3. **Admission of Public and Press**

To consider whether the public and press should be excluded from the meeting during consideration of any of the items on the agenda.

4. **Declarations of Interest.**

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

5. **Apologies for Absence/Attendance of Substitute Members.**

FOR DECISION

- (D) 6. Zoo Licensing Act 1981 (as amended)
Zoo Licence for South Lakes Safari Zoo Ltd

Licence Renewal Application - Mr David Gill of South Lakes Safari Zoo Ltd.

- (D) 7. Zoo Licensing Act 1981 (as amended)
Zoo Licence for South Lakes Safari Zoo Ltd

Compliance Report Regarding Current Licensing Conditions.

PART TWO

- (D) Continuation of Part One Item (Agenda Item 6) –

Zoo Licensing Act 1981 (as amended)
Zoo Licence for South Lakes Safari Zoo Ltd

Licence Renewal Application - Mr David Gill of South Lakes Safari Zoo Ltd.

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPHS 1 & 3 OF PART ONE OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AND ACCESS TO INFORMATION (VARIATION) ORDER 2006

NOTE (D) - Delegated
(R) - For Referral to Council

Membership of Committee

Councillors Callister (Chairman)
Seward (Vice-Chairman)
Biggins
Cassells
Derbyshire
Gill
Heath
W. McClure
Maddox
Proffitt
Wall
One Vacancy

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LICENSING REGULATORY COMMITTEE	<u>Part One</u> (D) Agenda Item 6
Date of Meeting: 5th – 7th July, 2016	
Reporting Officer: Principal Environmental Health Officer	
<p>Title: Zoo Licensing Act 1981 (as amended) Zoo Licence for South Lakes Safari Zoo Ltd</p> <p>Licence Renewal Application - Mr David Gill of South Lakes Safari Zoo Ltd</p> <p>Summary & Purpose of the Report</p> <p>Mr David Stanley Gill holds a zoo licence issued on 8th June 2010 to operate a zoo at premises known as South Lakes Safari Zoo Ltd, Crossgates, Dalton-in-Furness, Cumbria, LA15 8JR.</p> <p>Under the Zoo Licencing Act 1981 a Zoo Licence which is not an original licence is issued for a period of 6 years. On receipt of an application for the renewal of an existing licence the Council must make a determination on whether to extend the current licence for a further period of 6 years, or require the licence holder to submit a fresh application.</p> <p>On 11th January 2016 the Council received an application from Mr David S Gill to renew his existing licence.</p>	

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1. Background

The original zoo licence was granted to Mr David S Gill to operate South Lakes Safari Zoo Ltd ("the Zoo") (formerly named South Lakes Wild Animal Park) on 23rd May 1994. The original licence was granted for a period of 4 years as required by s.5(1) Zoo Licensing Act 1981("the Act").

At the time of the application Mr Gill submitted that the Zoo held 290 animals in 12 acres and anticipated visitor numbers of 200 per day.

Over the last 22 years the park has significantly increased in size to its current position of occupying nearly 50 acres and housing over 1000 animals. In 2014 the Zoo recorded over 250,000 visitors which is a fourfold increase in the expectations when the zoo first opened. It generates an income of £3M per year.

1.1. The current licence was granted on 8th June 2010 for a period of 6 years.

2. Licence Renewal Application

- 2.1. On 11th January 2016 the Council received an application from Mr David S Gill to renew his existing licence.

3. Licence Renewal - The Process

- 3.1.** S.6 of the Act sets out the process to be followed where an application for a renewal of an existing licence is made to the local authority.
- 3.2.** An application to renew must be received by the local authority not less than 6 months before the expiry of the existing licence (s.6(1)).
- 3.3.** In accordance with s.6(4) the local authority shall give advance notice to the licence holder of the latest date by which he can make an application for a renewal.
- 3.4.** On receipt of any application the local authority may either:-
 - Extend the period of the existing licence (s.6(1)(a)); or
 - Direct the applicant to apply for a fresh licence in accordance with s.2. (s.6(1)(b)).
- 3.5.** Before extending the period of an existing licence under s.6(1)(a) the local authority shall:-
 - Make arrangements for an inspection to take place in accordance with s.9A(subject to subsection (2) of that section); and
 - Consider the report made to them pursuant to that inspection.
- 3.6.** Where an inspection under s.10 (a periodical inspection) is due in the following 12 months, a s.10 inspection and a renewal inspection may be combined (s.9A(3)).
- 3.7.** In accordance with s.9A(15) a copy of the inspection report shall be sent to the licence holder within 1 month of receiving the report for comment. Those comments will be considered along with the inspection report.
- 3.8.** As part of the inspection the Inspectors shall consider whether the conditions attached to the licence are likely to be met if the period of the licence is extended as required by s.9A(12).
- 3.9.** The various tests contained in s.4 which are applicable to the grant of a new licence shall be applied to the consideration of renewal.
- 3.10.** Where a licence holder is directed to make an application for a fresh licence in the event of an application for a renewal being refused, the existing licence holder must make an application within 6 months of that direction (s.6(2)) failing which the licence will lapse. That application must be made in accordance with s.2.
- 3.11.** The existing licence remains in force until the application for a fresh licence is disposed of or withdrawn. This is dependent on the fresh licence being sought by the existing licence holder (s.6(2)).

- 3.12.** Upon refusal of the application for a fresh licence the Zoo loses its licence and must close to the public, subject to the right of appeal contained in s.18(1).
- 3.13.** Where the local authority resolves to extend the existing licence under s.6(1)(a) they may alter the licence, by varying, attaching or cancelling conditions, to ensure the proper conduct of the zoo during the period of the licence under s.16 of the Act after giving the licence holder the opportunity to make representations.
- 3.14.** S.18 of the Act contains the right of appeal against decisions made by the Council which include:-
- A refusal to grant a licence
 - The addition, cancellation or varying of any condition on the licence
- but does not include the right of appeal against a direction to the licence holder to apply for a fresh licence.
- 3.15.** An appeal must be brought within 28 days from the date on which the licence holder receives the written notification of the local authority's decision.
- 3.16.** The Court may confirm, vary or reverse the local authority's decision.

4. Periodical Inspection & Renewal Inspection - 17th & 18th November 2015

- 4.1. S.10 of the Act deals with Periodical Inspections. A Periodical Inspection is required no later than six months before the end of the sixth year of the period of the licence. In the case of Mr Gill's licence a Periodical Inspection was required to be undertaken no later than 8th December 2015.
- 4.2. Before extending the period of an existing licence under s.6(1)(a) the local authority shall make arrangements for an inspection to be carried out in accordance with s.9A.
- 4.3. Where one or more inspection is required, S.9A(3) allows the local authority to combine inspection required prior to the renewal of a licence. Local authorities are encouraged to combine these inspections unless there are good reasons not to do so.
- 4.4. In accordance with s.9A(3) of the Act a combined inspection comprising of a Periodical Inspection and Renewal Inspection was undertaken on 17th and 18th November 2015.
- 4.5. Where an inspection is undertaken prior to the renewal of a licence under s.6(1A)(a), including an inspection which is combined with another inspection) s.9A(7) requires the inspectors to be nominated, after consultation with the local authority, by the Secretary of State from the list of 25 approved inspectors. The Secretary of State nominated inspectors were:

- Professor Anna Meredith; MA VetMB PhD CertLAS DZooMed DipECZM MRCVS
- Nick Jackson MBE, Director of the Welsh Mountain Zoo.

The Local Authority representatives were:

- Dr Matthew Brash; B.Vet.Med Cert Zoo Med MRCVS Council's professional advisor,
- Richard Garnett. MCIEH

5. Inspectors' Report – November 2015 (Condition 39)

- 5.1.** The Inspectors produced their statutory report of their findings which contained a recommendation that the renewal of the licence be refused unless the "Additional Conditions" listed in their report are complied with, with greater emphasis placed on "Additional Condition" 32 (current licence condition 39):

"32. In order to comply with section 10 of the Secretary of States Standards, a robust management and staffing structure must be in place to the satisfaction of the licensing authority, and in order to allow a new licence to be issued. This new structure must include a competent, suitably qualified and experienced full-time Director (or Senior Manager) with day to day responsibility for the running of the Zoo, the ability and authority to make decisions independent of the owner, and must be fully responsible to the licensing authority for the conduct of the Zoo, all its on-site activities and its compliance with the Secretary of State's Standards. [Please see recommendation/comment 2 regarding recommendation for refusal of a licence. Renewal of a licence is recommended to be dependent on the listed Additional Conditions being either complied with, or satisfactory progress towards compliance being made.] "

- 5.2.** Recommendation/comment 2 referred to above reads :-

"The decision by the inspection team to recommend that a new licence for South Lakes Safari Zoo should not be granted at its due date, unless a Condition regarding the management structure has been complied with, is not taken lightly. It must be emphasised that the inspectors are keen to see the Zoo develop and thrive in line with modern zoo standards.

The inspectors commend Mr David Gill for his initial decision to step back from the running of the Zoo and to concentrate on its conservation role, but do not believe that at the time of the inspection, or subsequently, sufficient progress has been made in this respect, and note that this decision was subsequently reversed during the compilation of this final report.

This is no longer a small zoo and it now houses a large and diverse number of species. Suitable management processes must be in place before a new licence is issued to enable the Zoo to meet all its legal obligations, particularly in respect of Sections 3, 8, 9 and 10 of the SSSMZP."

- 5.3.** In accordance with the requirements set out in s.9A(15) the report was sent to the Zoo for comment on 22nd January 2015. The Zoo's comments were received on 9th February 2016.

6. Licensing Regulatory Committee Hearing - 23rd & 24th February & 2nd March 2016

- 6.1. The Inspector's November 2015 Report and the Zoo's comments were considered by the Licensing Regulatory Committee on 23rd and 24th February 2016 and 2nd March 2016.
- 6.2. Zoo Representative, Ms Brewer, requested that the decision to determine the licence be taken at that meeting to ensure confidence and continuity. This was later retracted and Ms Brewer requested that the decision be deferred to allow them sufficient time to demonstrate compliance with additional condition 32 (current condition 39) and the other imposed conditions.
- 6.3. Mr Brash, as the Council's professional advisor and Defra appointed Inspector made the following representations:-
- *During the process it had become apparent that Mr Gill was overriding decisions made by the Management Team and it is of deep concern should the licence be renewed in Mr Gill's name.*
 - *Should the new CEO and Management Team be allowed to, he was hopeful that they could do a very good job. It is a very lovely zoo but it has just gone too far in some areas.*
 - *He would support the deferring of the decision of the renewal of the licence to a new Committee date but expressed to the Zoo that upon re-inspection, the Inspectors would be looking for whole hearted adoption of all of the conditions.*
- 6.4. This Committee were mindful of the provisions in s.6 of the Act, in particular sub-section 3 which states that any extension of an existing licence shall be granted for a period of 6 years. They formed the view that rather than being forced into making a decision based on the Inspectors' current views they would prefer to afford the Zoo every opportunity to positively react to the recommendations made in the Inspectors' report in order to ensure that they are afforded every reasonable opportunity to extend their existing licence. Whilst the Act is silent on this point the Committee took the view that in the interest of fairness and proportionality it would be preferable to defer the decision on extending the licence until:
- a) the Zoo have been given a reasonable chance to implement meaningful change as required by the inspection team;
 - b) the inspection team are given a reasonable opportunity to review the subsequent efforts of the Zoo by way of further inspection and to report to the Committee accordingly; and
 - c) for the Zoo to have a reasonable opportunity to consider the subsequent findings of the inspection team and to have their views

heard at a subsequent hearing which will be held after the current licence has technically expired.

- 6.5. Having considered the aforementioned and the necessary time required it was the Committee's view that a definitive and final view of the Zoo's efforts could be considered on the 5th & 6th July 2016.
- 6.6. In particular, it was considered reasonable and proportionate that the Zoo be given sufficient time to demonstrate that a new and robust management and staffing structure was in place and that the conditions on the licence were being complied with. The Committee were mindful that in evidence at this hearing the Zoo submitted that management changes were taking place, and had been for some time, in the form of a charity being established, a board of trustees appointed and the appointment of a new Chief Executive Officer.
- 6.7. It was the Committee's view having considered the Inspectors' comments that the full time experienced director or senior manager that will be responsible for the day to day running of the Zoo must be able to make unfettered decisions concerning the implementation of the requirements of the Zoo Licensing Act and associated guidance independent of the owner to ensure the welfare of the animals and the safety of staff and the visiting public. The Committee were keen to identify that this role is full time and held by someone who will not spend large parts of the year absent from the site.
- 6.8. The Committee wanted to receive adequate reassurances that whomever the person is who will have day to day responsibility for the running of the Zoo will not be the subject of unreasonable or disproportionate budgetary constraints which would otherwise effect their ability to implement and operate within the scope of what is required by the inspection team; the Zoo Licensing Act and any supporting statutory guidance.

7. Special Inspection – 23rd, 24th and 25th May 2016

Background and Introduction to the Inspection

The Inspector's Report 2 entitled "Assessment of ZLA Compliance during Special Inspection of 23rd to 25th May 2016" (**Appendix C**) provides an introduction and background to the Inspection.

Below is an extract from this report and relates to condition 39:

7.1. *"As part of a Special Inspection carried out at South Lakes Safari Zoo Between May 23rd and May 25th 2016 by Professor A Meredith, Mr N Jackson and Dr M Brash, the inspectors were asked to evaluate the existing management structure of the zoo, and whether additional condition 32 in the November 2015 inspection report (condition 39 on the zoo license) had been met.*

7.2. *This condition stated;*

"In order to comply with section 10 of the Secretary of State's Standards, a robust management and staffing structure must be in place to the satisfaction of the licensing authority, in order to allow a new licence to be issued. This new structure must include a competent, suitably qualified and experienced full-time Director (or Senior Manager) with day to day responsibility for the running of the Zoo, the ability and authority to make decisions independent of the owner (Mr David Stanley Gill), and must be fully responsible to the licensing authority for the conduct of the Zoo, all its on-site activities and its compliance with the Secretary of State's Standards

[Timescale 22nd May 2016]

7.3. *Furthermore, in recommending that this condition be applied to the licence, the inspection team had written in November 2015;*

"The decision by the inspection team to recommend that a new licence for South Lakes Safari Zoo should not be granted at its due date, unless a Condition regarding the management structure has been complied with, is not taken lightly. It must be emphasised that the inspectors are keen to see the Zoo develop and thrive in line with modern zoo standards. The inspectors commend Mr David Gill for his initial decision to step back from the running of the Zoo and to concentrate on its conservation role, but do not believe that at the time of the inspection, or subsequently, sufficient progress has been made in this respect, and note that this decision was subsequently reversed during the compilation of this final report. This is no longer a small zoo and it now houses a large and diverse number of species. Suitable management processes must be in place before a new licence is issued to enable the Zoo to meet all its legal obligations, particularly in respect of Sections 3, 8, 9 and 10 of the SSSMZP. These have been areas of concern and flagged

as issues repeatedly over a number of years at previous zoo inspections. The inspection of November 2015 has highlighted 32 Conditions that the inspectors believe must be applied to the licence. This is a considerable number of Conditions for a zoo of this size, and many of these result from the repeated failure to implement fully previous Conditions, thus aggravating the situation and determining the inspectors' position. Of particular concern to the inspectors is the fact that as this zoo grows, it relies heavily on the owner's experience implementing out of date practices and refusing to implement modern zoo practices. In the inspectors' opinion this has resulted in animal welfare issues, a higher than expected mortality rate amongst the animals, higher than expected incidents (such as injuries to the public from animals), and places both staff and the public potentially in danger. The new management structure must include a competent, suitably qualified and experience full-time Director (or Senior Manager). This individual will have day to day responsibility for the running of the Zoo, will be able to make decisions independent of the owner and will be fully responsible to the licensing authority for the conduct of the Zoo and all its on-site activities. This will be a full-time post and therefore cannot be someone who will spend large parts of the year absent from the site."

- 7.4. *At the previous inspection in November 2015, the Inspectors were informed that Mr D Gill was taking a step back from running the zoo, and had now put in place two new directors C Fischer, and F Schreiber. However whilst writing their November report, the inspectors were informed that C Fischer was no longer a director."*
- 7.5. *At the February 2016 Licensing Regulatory Committee, where one of the Inspectors, M Brash, was present, the LA were informed that the new management team was in place including Karen Brewer, David Armitage, John McIntosh, and Frieda Schreiber.*

Special Inspection Considerations

The Inspectors' **Report 3** goes on to provide details of their considerations:

- 7.6. *As part of the Special Inspection process, the inspectors examined in detail whether a new management team had been put in place by the required deadline of May 22nd 2016, as specified in the condition. The inspection team wanted to be satisfied that the new management structure was now effectively managing the zoo in such a way that it was now complying, or making concerted efforts and reasonable attempts to comply with, the Secretary of State's Standards of Modern Zoo Practice "SSSMZP" under the Zoo Licencing Act 1981 (as amended) "the Act".*
- 7.7. *In particular, the inspectors wanted to be satisfied that any management structure put in place had led to changes to the zoo such that the observed welfare issues and public safety issues (see November 2015 inspection report) had been resolved or minimised to a reasonable level.*

- 7.8.** *Areas of the zoo were also viewed as part of the Special Inspection. This was to check and verify whether conditions applied had been complied with. Details of these findings can be found in the inspection report .*
- 7.9.** *It must be stressed that this was not a full inspection, and that therefore not all parts of the zoo were looked at.*

8. Inspector's Report – May 2016

8.1. The Inspectors' Report which comprises of 3 parts:

- **Report 1** – DEFRA Inspection Report Form (**Appendix A**);
- **Report 2** - Special Inspection Ancillary Report (**Appendix B**); and
- **Report 3** – Assessment of ZLA Compliance during Special Inspection 23rd to 25th May 2016 (**Appendix C**).

8.2. **Report 3** provides detail relating to the interviews which were undertaken and discussions that took place between the Inspectors and the Zoo Management, including Mr Gill and their subsequent conclusions:-

“During the Special Inspection, the inspection team interviewed staff, including:

1. *Chief Executive Officer (CEO) (KB) [Karen Brewer]*
2. *David Armitage (Animal manager)*
3. *Keeper for approximately seven months*
4. *Keeper since January 2016*
5. *Keeper for five years*
6. *Collection vet (RB) [Rick Browne]*
7. *Veterinary coordinator (FS) [Frieda Schreiber]*
8. *Owner and License Holder (DG) [David Gill]*

(for the test of this report names have been shortened to initials)

The initial conversation carried out was with KB who explained the existing management structure. Further information regarding the current management structure was provided by DA and DG during the process.

The management structure related directly to the animal collection (i.e. excluding retail and catering), as explained to the inspectors over the course of the inspection was as follows;

Karen Brewer CEO

David Armitage (Animal Manager)

Senior Keepers

Keepers etc.

However, KB also explained that, as DA was still relatively new, DG was still very much hands on managing the collection and DA was heavily reliant on him.

DA further explained that DG was mentoring him, and training him. DA explained he was on a 6 month probation period.

DG later informed us that after the November inspection, the then animal manager had been removed from post as DG and KB felt that many of the negative results of that inspection were due to that animal manager's failings.

DG felt that he had personally had to come back to help the zoo (Qu) 'get up and running' and 'back to where we should be'. He explained that he felt that DA, despite his long and broad experience, was (Qu) 'old school' and needed guidance.

Potential future management structures were also explained to the inspectors, although there was no written formalised evidence of the strengthening of any future management team for the zoo. A sketched diagram was produced explaining the potential future structure of the ownership of the site, and how a potential Charitable Company could run the zoo. However this appeared still to be in a development phase. A potential future Zoo curator was proposed, however he was unable to commit at this time. Other potential members of staff were still being interviewed.

However;

1. Although DA had been nominally appointed Animal Manager, he accepted that he was not empowered, and that DG was still making all the decisions.
2. The previous Animal Manager was now working as a cat keeper only, and held no responsible position. This was considered a retrograde step by the inspectors, as they had been impressed by her progress at the November inspection.
3. We were informed by KB that DA was to be made a director of SLSZ Ltd (along with KB, FS, DG), however DA seemed surprised by this news and had not seen or signed any agreement.
4. KB, DA and DG all accepted that the zoo was being run, at this time by DG.

During the process the inspectors did not have confidence that the animal manager, DA, was managing the collection. On a number of occasions he was obviously not 'in the loop' with regards to decisions being made for the animal collection.

For example;

1. He was unable to explain the design for the new baboon housing. He acknowledged that had it been up to him, he would 'not be making the new accommodation out of scrap'. He also acknowledged that the baboon house could have been completed on time for the inspection.

2. *He informed the Inspectors that the movement of birds to the Africa field, without the provision of adequate shelter, was carried out without his knowledge.*

The zoo is clearly being managed directly by DG and the way that the collection is being managed still has a profoundly negative impact on the welfare of the animals kept in this collection, and continues to act as a potential danger to the public.

The above existing management structure of SLSZ is not, in the inspectors opinion, sufficiently robust to ensure that the SSSMZP are being delivered. Nor does it fulfil the requirements of the condition applied by the inspectors back in November 2015. Information supporting this statement comes from the interviews with the staff, from the records examined and observations made whilst walking around the zoo.”

- 8.3.** In **Report 1** the Inspectors made the following comment in relation to condition 39 in the “Additional space” section of the DEFRA Inspection Report form:-

“...it was evident that the robust management and staffing structure and the specific requirements for the (condition 39) are not in place, ultimately leading to ongoing serious concerns over animal welfare, public safety and potential escapes. While recognising the very complex nature of events and situations, including future plans, leading to the current status of the zoo at the time of inspection the inspectors’ findings indicate that failure to comply with condition 39 is at the root of the majority of the ongoing issues. The inspectors were very disappointed that many conditions had not been complied with, and with the number of problems detected during the inspection, resulting in the zoo failing to comply with many of the SSSMZP. See ancillary report for further details.”

- 8.4.** In **Report 2** – Special Inspection ancillary report the Inspectors comments are as follows in relation to Condition 2 (emphasis added) :-

“Not complied with.

It is the inspectors’ findings and opinion that the ongoing serious concerns over animal welfare, public safety and potential escapes are due fundamentally to both the animal husbandry/management regimes and philosophy (ie free-ranging mixed exhibits), and/or the inability by staff, including current management and the vet, to effectively influence or challenge these. Only when a management structure is properly implemented that is able to review current practices independently of the owner, will there be the ability to bring about significant change that will address these issues effectively and enable this zoo to progress and realise its full potential.”

8.5. On page 13 of **Report 3** the Inspectors state:-

"In the circumstances of a signed declaration from DG that he has removed himself from the day to day running of the Zoo, and immediate verifiable evidence that the management team are effectively addressing all the issues highlighted in this report the inspection team recommend that Barrow BC gives consideration to a renewal of the licence to the current licence holder.

8.6. This option is not supported by the Council unless sufficient information is provided that evidences that any new management structure would have full operational and financial control independent of the sole shareholder of the Company, Mr David Gill.

8.7. Page 4 of the same **Report 3** provides the ultimate conclusion to the Inspection Report:-

"Conclusion

Condition 39 has not been complied with, and as it stands, unless circumstances change, the LA should not renew the license, as recommended in the report in November 2015."

9. Zoo's Response to May 2016 Inspection Report 2016

- 9.1. A full copy of the Zoos' response to the May 2016 Inspection Report is attached at **Appendix D**. This includes a letter from the Zoo addressed to the Licensing Regulatory Committee and the Inspectors
- 9.2. Below is an extract (Pages 1, 2, 3 & 4) from their response and relates solely to the management condition (condition 39) which is relevant to this report:-

Condition 39 has not been complied with, and as it stands, unless circumstances change, the LA should not renew the licence, as recommended in the report in November 2015.

"The report fails to recognise and acknowledge the intense work that has been ongoing to recruit and employ senior animal Management for the Zoo to comply with this condition since December 2015. The Zoo gave the inspection team clear detail of proposed new staff and it seemed to be well received and the quality in principal agreed as suitable. We also informed the inspectors categorically that we CANNOT comply unless the Licence is renewed in July simply because no sensible person who holds a senior position in any zoo would give up that position to find their employment terminated by a refused, deferred decision or re application of the Licence. The two new Senior Manager appointment terms are agreed and all that is now required to have these people in place to fully comply with Condition 39 is the renewal of the Licence. It seems we are in "catch 22" We cannot recruit because of the threat to take away the Licence and you will not give a licence until the staff are in place? We require fairness and common sense to prevail in this matter to allow the Zoo to employ these experienced managers by the renewal of the Licence or we shall be faced with a situation where the Condition placed and threat made of refusal by the Authority in November actually prevented us complying with it, thus being unjust and unfair.

- *The CEO (Karen Brewer) has a legally binding contract of employment that gives her full control over the company operations independent of shareholders but subject to the Board of Directors guidance.*
- *This is compliant with the condition as written.*
- *To conclude this matter, we confirm the agreement of terms with two senior animal management prospective employees subject to Licence renewal and the CEO who is in position at this time.*
- *The prospective Director of Animal Management is as previously revealed to inspectors , Andreas has confirmed that he is to begin contracted training and management input in July for 4 weeks. Then he is preparing a regular training and management input in his words:*

“What I can offer at this time, and this is what I told David, is that I, on a consultancy basis, could be at Safari Zoo for several consecutive weeks at certain dates in 2016 to assess current animal management, animal welfare, and work procedures, to eventually come up with a structured operation manual including clear responsibilities, as well as staff training schedule and training. During these times I would also be in a position to either identify a person already working for you or to find someone who may slip or grow into an animal manager position under my supervision. A strategy that I’d be happy to present to and discuss in detail with council as well as work along with you and them to bring things back on track”

He cannot make any full time commitment until the Zoo Licence is fully renewed for 6 years.

The proposed Curator can start early September if the Licence is renewed early July but will not resign until a Licence for 6 years is issued.

We therefor make the request that the Licence be renewed in July and if necessary a Condition applied as suggested by the Inspectors in their report that a Senior Animal Manager must be in place by the end of the year as after notice is given to previous employers and commitments honoured it is stated that they would be able to take up position within that time frame.

We have made other positive developments to strengthen the team and provide that robust structure. Kim Banks who is head keeper and been a senior keeper at Safari Zoo for 7 years has agreed to take the role of assistant to the animal manager along with Mark Conway anks who is senior keeper and been with the zoo for 6 years who has also agreed to the same position. This gives us clear levels and responsibilities moving forward. Until our new Curator starts we shall continue with DG as the external advisor, Kim and Mark will manage the day to day keeper operations as they have for the past 2 months under guidance. As soon as the Curator starts they will take the assistants role and back up the Curator in all aspects of zoo animal management. We have promoted 3 other staff to more prominent positions of responsibility to replace Mark and Kim as Head Keepers.

We shall rely upon Andreas to train, develop and grow all the new staff and promoted staff from his contracted role. DG wishes to be relieved of his role as advisor as soon as is practicable and legal liability issues are covered and signed for by others.

[NAME REDACTED] has not been able to take any lead role after his probation period due to a failure to immerse himself in the needs of a modern zoos H and S requirements and procedures. He has failed to communicate with staff or management and his position is under review. Despite the Inspectors demands for the Zoo to give him full control it would have been irresponsible, illegal and dangerous for DG or the CEO to have given that control without a defined

comprehension of legal requirements and standards. This illustrates further the issue of making major decisions about character and ability based on a few words and a few minutes of interviews. DA may have said what you wanted to hear but he could not match that with any level of acknowledgement of responsibility to staff and public. He remains employed with the zoo.

The new CEO, Directors and staff as a whole are very positive about the new structure along with continued security of the company and they are all looking forward to having a confident and productive future in the zoo.

Further to this comment we can confirm the position of the trading company operating the zoo business.

Whilst the Authority has had numerous possibilities placed in its domain in recent months this exercise has proven to be a long carefully researched and legally advised gathering of the information from Accountants, the Bank and legal counsel. We have had numerous meetings consultations with all affected parties from HMRC, the Bank, employees, overseas dependants and specialists in the industry.

Without going into detail of all the possible structures the only structure that can possibly provide the security and unchanged inherent business success to continue solvent operations into the future with full Bank consent as first charge holders on the property is to operate the Zoo as follows:

South Lakes Safari Zoo Limited will continue as the legal trading entity of Safari Zoo. This is to comply with the Banks arrangements and covenants agreed for very substantial bank loans made based on the structure and success of the company under its management. It also is to guarantee continuity and preserve confidence in the employees and our suppliers and customers. It has been agreed by the Auditing Accountants, Bank legal advisors our Legal advisors and the management that this is the only secure and responsible way forward for the zoo.

In further regard to Condition 39 it is confirmed that the operating company has appointed new Directors and a new CEO to take over the total management of the company. David Gill and his wife Frieda Rivera Schreiber resigned to allow the new Directors full and complete control over the management of the company. The 4 new Directors of the Zoo operating Company are Karen Brewer (CEO), Jayne Birkett (Accountant) Stewart Lambert (Chairman of the Board of Directors) and Claire Lambert (Retail Manager) The two new Senior Animal Management employees will be appointed Directors on completion of the probation periods.

This new company situation is typical of most UK companies and is the most common structure for a company whether private or public. Full legal advice on the companies trading position has been sought and we have taken our position on the matter from legal counsel in relation to the Zoo Licencing Act and the requirements of that Act.

This company fulfils all the requirements under the law to operate a Zoo in that it has a proven track record, consistently positive accounts and constant investment. It employs the expertise to effectively manage and operate under the ZLA.

The Directors have made an application to have the Zoo Licence transferred into the company corporate name with Karen Brewer named as the responsible person to the Local authority in regard to the Zoo Licencing Act.

It is confirmed that the proposed transfer of Zoo operations to a Not for Profit Company is now on hold until financial security is assured by the issue of a new licence to operate. The proposed transfer is still going to happen but only when the bank and advisors give the financial position the green light to change. This is unlikely in the next two years due to unforeseen financial burdens

The inspectors were very disappointed that many conditions had not been complied with, and with the number of problems detected during the inspection, resulting in the zoo failing to comply with many of the SSSMZP. See ancillary report for further details.

We respectfully submit that the zoo was placed in an impossible situation by the deadlines placed on conditions in the February Meeting of the Licencing committee.

Criticisms placed as above do not take in account or acknowledge the vast amount of works done in the zoo between December and May where our team of 9 full time construction and maintenance staff worked every day and over time to try to achieve the requirements of the Local Authority not only the Conditions placed on the Licence but also further unexpected potential safety issues regarding the need to demolish walkways or modify them once the standard of construction was changed from the original design loadings placing Public safety as our utmost priority that took up all the staff time for 14 weeks . Not only did this engage all our staff fully it created an extra financial burden and cost to the zoo of over £60,400 in unexpected costs. Thus preventing other issues being address due to physical time constraints and zero cash availability at a time of negative cash flow in the zoo. As the Zoo has no ability to borrow money from any source prioritisation of safety work had to be done at the expense of other equally important works as we unexpectedly had no funds to contract outside labour to assist.

- It is also of note that ALL the difficulties that have arisen with timescales for completion stemmed from our fencing and fabrication contractor being taken away from the zoos vital work for the whole summer in 2015 when he took on major contracts for Barrow Borough Council at much higher hourly rates than our contract. This placed all our projects behind by 6 months. Contractors from Preston, Chorley and a number of other places were contacted who had*

similar skills to complete our works and they all refused to work in the locality due to 3 hour drive times to and from work. There is a serious shortage of suitable contractors for fabrication and fencing in this region.”

- 9.3. At page 26 of the Zoo's response their Chief Executive Officer, Ms Karen Brewer adds:-

“CEO personal position update

Since both the March council meeting and the recent May inspection the management team inclusive of David Gill have made great strides in a number of areas. What perhaps is hard to perceive for the Inspectors and for myself and the management to portray is the synergistic relationship between Safari Zoo and David Gill. Over 350,000 visitors every year visit and they visit for the varied collection of animals the unique way in which they can encounter them and the unique experience they can get at this zoo they cannot get at any other. That uniqueness is what makes a family drive 3 and a half hours from the North East or 2 hours from Blackpool when they could so easily choose another zoo probably nearer, and definitely much easier to get to. That uniqueness or USP is what sets us apart from Blackpool, Chester or Edinburgh and that uniqueness is borne from David and this is something the current team wants to continue to embrace and are very worried about any suggestion of losing that energy, ideas and business expertise. David has worked solidly on the Conditions his experience, encouragement and personal involvement with individuals has lifted moral to a high level despite the threats made to our future. I for one witness his frustration at staff and their appreciation of legislation and the need to comply and this I now have to deal with. I am confident in my own position to manage the zoo without David here on a regular basis but we do need his ideas and his contribution in this zoo as it is vital to keep its heart alive. It is also vital to keep his enthusiasm for conservation and the teamwork between Safari Zoo and the projects he personally set up and manages.

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I acknowledge Safari Zoo has had issues over keeping within time constraints imposed by the Council for conditions, we have as a team had to find positive strategy and compromise to provide a safe zoo for staff and public whilst putting every effort into complying with deadlines; I do hope the inspectors and the Licencing Committee appreciate fully our obligations to public safety and acknowledge the need to priorities this aspect over all other issues. I and the management team were not prepared to compromise public safety in order to attempt to fulfil a deadline that had a lower priority. The team are committed to continuing to develop this zoo by flying the flag and set high standards for welfare, conservation, animal husbandry within the modern zoo world.

We have in place a management team that includes Jayne, Claire, Paula, Adam, Jen, Emma determined and dedicated, backed up with fantastic staff, many of

which Kim, Mark, and Christina are long standing; they all take more responsibility year after year and they now take more involvement than in previous years. David is just one member of that team that delivers. Everything that has been achieved to this day has been achieved by this team with David in situ.”

10. Summary of Findings – Inspectors’ Report 3, with Zoo’s Responses and Inspector’s Further Comments

10.1. At pages 12, 13 and 14 of Report 3 (**Appendix C**) the Inspectors have provided a summary of their findings which are reproduced below (in red). The Zoo have commented on these findings and these comments can be seen below each of the findings in turn (**in blue**).

- *Since the Renewal Inspection of November 2015 it is apparent that members of staff have been working hard to bring the Zoo up to standard, within limits set by DG. Record keeping, particularly in the veterinary department, is greatly improved.*

(this comment suggests that DG purposely has limited the response in fact all management will support DG and state categorically he has been the MOST proactive and positive responder with ideas and providing the funds as it has become available to us with the season. The only limit we have had is time)

- *There also now appears to be an improved programme of keeper CPD.*

Very little is actually different from November 2015 the only change is the addition to ZIMS of all PM records. We are very proud of this excellent response by Frieda Rivera Schreiber who has work extremely hard to co ordinate the data and the Vets in this matter.

- *Since January 2016 a new, experienced Animal Manager, DA, has been in place.*
- *Since November 2015 DG has taken a much more hands-on approach to the day to day running of the animal collection. In DA’s words DG is “micro-managing” the animal collection. In the presence of DG and other members of the management team DA made clear that he is ready and able to take over managing the collection but has been prevented from doing so by DG.*

(It is agreed that DA was prevented from taking over in full and that was absolutely the correct thing to do for a responsible Zoo management. Any suggestion that we should introduce a new staff member and simply place them in control when they do not know the basic layout, operations, animals, staff , health and safety risk assessments or written procedures would be irresponsible and negligent and to suggest otherwise is not tenable. DG has done a very important and vital job in recovering the zoo from the issues and dramatic adjectives used by the inspection team in November. The investigations into the issues was instigated by the management team as a whole, DG was requested by the team to take control. He then took immediate action to find solutions to as many of the issues as possible within the time constraints made and the financial limits the zoo was bound by. We were operating on a zero cash flow due to the major investments being made

in the African area and other ongoing developments and renewals in the Zoo that were equally as vital from a safety and welfare point of view. DG was not Micro managing he was bringing the whole Zoo back into line as the Inspection and the management required. Personal criticism of this huge effort is not constructive nor fair in the short timescale available to resolve 2 full years of failed management of that department. DA had not acknowledged full understanding or signing off of Risk Assessments, Procedure documents, or shown compliance with written documentation. It is and would be placing a serious liability on the Zoo and its management if DA was given full responsibility before this was acknowledged, signed for and actually in practice. Any pressure from Inspectors or Council to force change before safety issues are full addressed is irresponsible and not acceptable to the Zoo Management. It is of note that Zoo Inspectors make huge judgements of character in just minutes of interviews and walk rounds. We have concerns at the major contradictions the inspectors provide in their comments, it seems untenable to state the inspectors had confidence in the previous zoo manager yet provided a report that was damning of the Zoos animal management in November? We removed that manager due to serious breaches of compliance and failure to comply to standards applicable. It therefore cannot be suggested that that manager had any capability to take the zoo forward positively? Yet the inspectors make that comment?

This is clear to our management that would have been disastrous for the zoo and we have the full time everyday experience to make that judgement.

- *At the meeting at Barrow BC on 25th May 2016 with the three inspectors DG said, in front of his management team, that he would now immediately step back. He also stated that he would sign a document confirming this and would speak to his lawyers to arrange it.*

This was done in a very coercive manner, pressured and giving no alternative but a refusal to renew the licence.

All the management team felt this was uncalled for and wrong to make DG hand over responsibility for the Animal Management within seconds of being demanded in a meeting when DA simply was not in a position to do so. By his own admission DA did not sign and acknowledge the basic Safety documentation for the zoo, thus the Inspectors forced change to a person who placed the Zoo at serious risk of breach of the law and its public responsibilities. There was no benefit to the Zoo, staff or our requirement to comply with the laws governing the Zoo to be forced to hand over full responsibility to a person who could not fulfil his duties in a safe effective manner and how inspectors given the responsibility for standards to be upheld could demand this action is for review. This was not by anyone restricting DA's development but by the volume and complexity of Modern Zoo Practice paperwork and need for compliance. The management team found that the inspectors had an inability to either accept or comprehend the massive contribution to the zoos overall compliance by DG and his wish to hand over this role to a responsible person freely. This cannot be done lightly, by force or by unwarranted criticism from a few hours of inspections. The responsibility

of an animal manager is huge and this zoo will not be pushed to compromise public and staff safety by giving responsibility too early or before full proof of capability to comply.

- *In the opinion of the inspection team failure to comply with Conditions, such as that relating to the perimeter fence, and failure to address issues of animal welfare and public safety as outlined in this report, are directly attributable to DG retaining day to day control and not allowing his animal management team to develop modern, progressive protocols.*

The Management of the zoo feel this personal attack on DG's professional approach is unwarranted and cannot possibly be born out in fact, this personal accusation separates the responsibilities of the other managers placing him at fault for everything. This simply is not the way a company works or how the compliance issues were dealt with or priorities. DG brought back urgency, appreciation of the need to comply, action within the financial and time constraints and he had to balance numerous other enforced needs in the whole zoo placing public safety as the priority. All the management were in total support and agreement with the strategy undertaken, its prioritisation and implementation. This is not something inspectors can lay blame on DG in a few short interviews over a few hours in a year. The whole Zoo management team delivered the works and we all made the decisions together and criticism is so easy to hand out by inspectors when you do not have the pressure of time or finance to comply and deliver so much in such a very short time. It is obvious the appreciation of physical time restraints, workloads and demands are not seen by inspectors who do not have the experience of these works or the time it needs to do them. We would appreciate understanding of the background and stop the personal attacks on DG when he was the hardest working and loudest voice to get the works done.

- *This was certainly confirmed by DA in the meeting with DG and the management team on 25 May 2016. Furthermore, DA made very clear that once enabled he would make changes. In other words, failings to meet modern zoo standards and the conservation requirements as specified in Section 1A of the amended (2002 regulations) ZLA are directly attributable to failure to implement Condition 39.*

The Management find this comment to be unreasonable and unfair. the work load expected was impossible to achieve in such a short period of time. the new Manager DA had no involvement initially for many months as he asked to slowly return to management. We held a prioritisation meeting that had to balance finances with compliance and then public safety. It has been acknowledged that huge strides were made forward, this was down to DG bringing the animal Management back to life and demanding huge changes in attitude towards compliance. The loudest voice in regard to Safety and compliance in the Zoo is and always has been DG. One of the reasons he is known to be a manager with a mission is that he does not accept low standards. However, the management team being lied to about compliance by the animal Department over a long period led to the issues developing as

there is no suggestion of any of these issues arising before 2013/4. It is apparent that the Inspection team do not personally like DG nor his ideas and concepts, they are placing all responsibility for other managers failures at his feet and demanding his removal. This is wrong and shows a very biased view of how the zoo is managed and run overall and the quality of the staff in all other areas under his management. The opinions and impressions gained in a just a few seconds of interviews and placing staff in fear of saying the "wrong thing" is not the most accurate of views. For instance the Inspectors were impressed with the former animal manager and felt she could take the zoo on to better things? Yet under official investigation it was revealed that virtually every aspect of the animal management structure had been let slip, failed to upgrade or even implement under that person. Huge failings from no rat baiting regime to complete run down of dietary review or food management, bringing in animals not agreed or at the best time for their welfare. the list in fact was long and required immediate action as a responsible zoo management to rectify. Yet the Inspectors still insist that that person was doing a good job. And the inspection report of November then is a contradiction as she was in FULL control of Animal Management for more than the year previously. DG spent hours putting back together the dietary regime, the research into new dietary recommendations and replaced and updated 67 new diets sheets. These were then reviewed by AG and RB before implementation. This took a number of months to complete. DG took over new staff training and introduction to work. The difference to staff morale is dramatic, he has brought back enthusiasm, interest and professionalism to the staff and this has been acknowledged by the inspectors, but DG has not had any credit for his work in achieving this and bringing it back from the despondent approach before November 2015. The quality of training has changed from zero to a situation before November 2015 where now keepers actively seek out DG for his wealth of experience and knowledge of the species and individual animals we have in the zoo. Once DA has proven to the Management that he fully comprehends, abides by and supports the written Risk Assessments, Working Procedures and regulations that apply to the Zoo and its staff he will have the backing under the umbrella of the CEO to carry out the Collection plan as it stands or as the new Directors feel fit. The management feel that the personal attacks on DG by the inspectors are unjustified, wholly wrong, aimed to cause damage to personal and company credibility and the whole team takes equal responsibility for the decisions made in management meetings and in the Zoo. DG's contribution should be praised for the hard work dedication and enthusiasm to comply and within time frames but we are all left balancing needs and having to make decisions that in our view are priority and public/staff safety is the priority. For instance, it was DG's idea for automated warning systems, fences round the ducks and the public feeding areas also to remove picnics from the whole zoo. DG's contribution to the zoos forward compliance is constant but all this has to balance against seasonal cash availability to pay for any work required.

- There appear to have been ongoing attempts to formulate and implement the new overall zoo management structure as required by Condition 39. This had not been achieved by the time of the 22nd May deadline and nothing said at the May inspection gave any confidence that change is imminent. Indeed,

DG's own best estimate of completion is November 2016. The inspection team cannot and will not comment on the viability of the proposed changes to the Zoo's ownership and management structure currently under consideration.

The management have made this situation clear. Whilst we have uncertainty about the licence renewal it is impossible to recruit. There is only one way can possibly comply and that is with a full renewal to give confidence to prospective new managers. No other alternative solution such as extensions or requesting a new application would be seen as permanent enough for any prospective manager to give up existing careers. We have sought legal opinion on this situation from Counsel and hold the view that any other option other than renewal would constructively close the zoo by virtue of being unable to comply with Condition 39.

- The inspection team is very keen to emphasise that it does not wish to see the closure of South Lakes Safari Zoo. But without evidence of very rapid changes in animal management practices (to resolve issues as outlined in this report), and due to the failure to comply with Condition 39 by the due date, the inspection team cannot give a recommendation for renewal of the licence to the current licence holder.

The Management and Directors going forward submit that ALL the issues brought up in the report have been complied with or actions taken to find resolution in a long term project, New ideas implemented and new preventative procedures introduced at the instructions of DG and the rest of the team conditions are complied with except 39 that cannot be complied with until the issue of a full licence for 6 years.

- It is the inspection team's hope that from the date of the May 2016 Special Inspection DG will, as he informed us, have immediately stepped back from his day to day hands-on involvement with animal management at the Zoo.

As noted this statement was made under severe duress if not threat in the eyes of the Management team, this was impossible to comply with until DA had shown understanding, acceptance and compliance with Health and Safety Legislation, Zoo Licensing Legislation and signed for these issues. It would have resulted in further litigation or severe criticism of DG and the Zoo if DA was given total control of the Animal Department before he had complied with this absolutely vital aspect of operation need. Any forced change without this in place was illegal and untenable. The suggestion DG has not managed to the SSSMZP is not accepted and this request is not accepted by the zoo. DG has as always was his wish now stepped back of his own choice and was planned. The CEO/Director now takes full responsibility for compliance.

- It is hoped that he will allow his current management team to get on with the urgent job of addressing those issues where, albeit late, compliance might positively influence the decision of Barrow BC Licensing Committee when it meets on 5, 6, 7 July 2016.

The management team can report that with the full support and personal assistance of DG the team have positively and proactively addressed all these issues.

- In the circumstances of a signed declaration from DG that he has removed himself from the day to day running of the Zoo, and immediate verifiable evidence that the management team are effectively addressing all the issues highlighted in this report the inspection team recommend that Barrow BC gives consideration to a renewal of the licence to the current licence holder.*

On 16th June 2016 DG resigned as a Director of the company and is no longer an employee of the SLSZ Ltd as agreed with the management team now that we have completed the compliance issues and resolved the company structure forward as requested by our Management team in December 2015. DG has handed back the running of the Animal Department to the CEO and her management team and it is now the CEO's responsibility to comply and provide the support and ability for the Zoo to operate under the ZLA. It is now the fully delegated responsibility of the CEO to ensure all managers and staff are fully versed and agree with all Risk assessments, working procedures and compliance with legislation.

The management and staff of the Zoo place on record their disagreement and non acceptance of the way DG has been treated, described and his credibility undermined by these words and "conditions" placed. (letter provided)

- In the above circumstances, which would avoid the immediate very serious consequences of closure of the Zoo but would not have ensured compliance with Condition 39, the inspection team's recommendation to Barrow BC is that the licence could be renewed, but must have a number of Additional Conditions/Direction Orders with timelines to ensure compliance with the mandatory conservation measures in Section 1A of the Zoo Licensing Act 1981 (as amended) with specific reference to animal welfare in 1A(c).*

The Management and Directors are in full agreement with this Condition 39 as worded

- To avoid any possibility of the current situation continuing for a further six years, and any possibility of DG not holding to his agreement not to interfere in the running of the Zoo in future, the inspection team recommend that a Direction Order enforcing compliance with Condition 39 should be applied to any renewed licence and that failure to comply fully within six months would result in a Closure Order.*

10.2. Further the Inspectors' have provided to the Council additional comments regarding the Zoo's response which is also reproduced below and attached at **Appendix E:**

“Additional comments from the inspectors regarding SLSZ’s response to the inspection of May 2016

The inspectors have read the response from SLSZ and their additional letter signed by the Management team, Karen Brewer, Jayne Birkett, Paula Mason, and Kim Zee Banks.

It is not our intention to respond in detail to all the comments made by the zoo, nor to add further information to our report. However we feel that it is important the Licensing committee should have a full understanding of the inspection process.

The inspection team would like to make it clear that;

- 1. All three inspectors are Secretary of State Zoo Inspectors, and as such are completely independent of the Local Authority. They have been brought in solely to inspect the zoo, to ensure that it is meeting the Secretary of Standards for Modern Zoo Practice, and advise the Local Authority accordingly.*
- 2. All three Zoo inspectors are highly experienced, having inspected zoos for over 32 years, 20 years and 15 years approximately. Two of the inspectors are or have been members of the Government’s Zoos Expert Committee (ZEC), and one is currently Chair of ZEC.*
- 3. Throughout the process the inspectors have made every endeavour to inspect the zoo in an objective manner. The inspection was carried out uninfluenced by personal feelings or prejudice towards any member of the zoo.*
- 4. The inspection team consisted of the three S of S inspectors plus two members of Barrow BC to assist. The team inspected the zoo itself and interviewed staff over a two day period. However they also spent considerable time prior to the inspection reading relevant documentation, and a number of further days after the inspection in meetings and writing their report.*
- 5. The inspectors would like to stress that they look at, and inspect only the visual and factual information that they are presented with, on the day of the inspection. Contemporaneous notes are made at the time, by all members of the inspection team. They do not compare zoos directly with other zoos and are conscious of not inspecting this zoo to a higher standard than any other zoo. The inspectors are guided by the SSSMZP, the ZEC Guidance for Secretary of State-appointed Inspectors and the ZEC Handbook.*
- 6. The inspection process was undertaken allowing the zoo as much time as the zoo felt was required to present all information and documentation that they wished to supply. At a number of steps during the process, for*

example when interviewing staff, the zoo personnel were each asked if they had any further comments or submissions that they wished to make.

7. On the third day of the inspection process, the inspectors felt it important that the management and the owner should meet with the inspectors to discuss the report, and matters arising.

- Present at that time, including the three inspectors, was David Gill, Frieda Schreiber, David Armitage, Karen Brewer and Jayne Birkett.*
- This meeting was undertaken at the Barrow Borough Council Building, without any council officers present.*
- The inspectors deliberately asked the management team and the owner, whether they felt that the inspection had been carried out fairly and in an objective manner.*
- They all agreed that we carried out the inspection fairly and objectively.*
- They all informed us that they had nothing further they wished to add or submit.*

8. During this meeting;

- The management team assured the inspectors that they, as a team, felt able to take over managing and running the zoo.*
- DG informed the inspectors that he had been planning to take a step back, and that he now felt the management team were in a place where they could pick up the reins.*
- He informed the inspectors that he would hand over the running of the zoo immediately.*
- At no time was any pressure brought on him, by the inspectors to come to this conclusion. Indeed, the background to both the November 2015 and May 2016 inspections was that DG had already announced his intention to step back from running the Zoo. Throughout the process the inspectors have agreed with DG that this was a good idea and the best way forward for the Zoo.*

9. When reading the response from the zoo the inspectors note;

- DG will be an "external advisor" until the arrival of a new Curator.*
- That the management team has again changed and DA's position is now "under review."*
- That DG, despite having informed us that he personally had taken over running the zoo since last November, was laying the blame for any failings at other peoples' feet.*

10. When assessing mortalities at SLSZ the inspectors used their best judgement based on the evidence available. Direct comparison with other zoos when looking at such data is extremely difficult as collections hold different taxa and use different management systems, e.g. small, short-lived species, show very different mortality percentages compared to collections holding larger, longer living

species. Trying to compare statistics between different zoos is not helpful to the process of assessing SLSZ's performance in this respect.

The naming by SLSZ of the three collections with which the inspectors have or have had connection shows a petulant, unprofessional response to the inspection process. The citing of data in a negative tone from a fourth, unconnected zoo demonstrates very poor judgement.

A more detailed analysis of the mortality rates at SLSZ at the November 2015 inspection was made difficult by the records being incomplete and inconsistent across different formats, e.g. day books, post mortem records, ZIMS. Further analysis since November 2015 was not helped by the unexplained disappearance of the 2015 Keeper Day Books.

11. In conclusion the inspectors do not accept the claims made in the report by the zoo about the inspection process. “

11. Health & Safety Prosecution - R v South Lakes Safari Zoo Ltd and David Gill

- 11.1.** On 24 May 2013, Sarah McClay, a 24-year-old woman who had been working at the park, was mauled by a tiger during public feeding time and suffered serious injuries to her head and neck. She died later the same day at the Royal Preston Hospital.
- 11.2.** Both South Lakes Safari Zoo Ltd and David Gill were indicted on 7 Counts under the Health & Safety at Work etc Act 1974. Those Counts were: -

COUNT 1

STATEMENT OF OFFENCE

Contravention of regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 in failing to carry out a suitable and sufficient risk assessment.

PARTICULARS OF OFFENCE

That you, being an employer, did on and before the 24th day of May 2013 fail to discharge the duty imposed on you by Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 in failing to carry out a suitable and sufficient risk assessment in relation to the risks to the health and safety of your employees and/ or of the risks to the health and safety of persons not in your employment arising out of and/ or in connection with the keeping of big cats at the South Lakes Wild Animal Park in Dalton in Furness whereby you are guilty of an offence by virtue of the provisions of Section 33(1) (c) of the Health and Safety at Work etc. Act 1974 and are liable to penalty as provided by Section 33(2) and Schedule 3A to the Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

COUNT 2

STATEMENT OF OFFENCE

Contravention of section 2 (1) of the Health and Safety at Work etc. Act 1974 in failing to ensure, so far as was reasonably practicable, the health, safety and welfare at work of your employees.

PARTICULARS OF OFFENCE

That you, did on and before the 24th day of May 2013, being an employer within the meaning of the Health & Safety at Work etc. Act 1974 ("the Act"), fail to discharge the duty imposed upon you by section 2(1) of the Act in that you failed to ensure, so far as was reasonably practicable, the health, safety and welfare at work of your employees, including a Sarah McClay, arising out of and/ or in connection with the keeping of big cats at the South Lakes Wild Animal Park in Dalton in Furness, whereby you are guilty of an offence under Section 33(1)(a) of the said Act and are liable to a penalty as provided by section 33(2) and Schedule 3A of the said Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

COUNT 3

STATEMENT OF OFFENCE

Contravention of section 3 (1) of the Health and Safety at Work etc. Act 1974 in failing to conduct an undertaking in such a way as to ensure, so far as was reasonably practicable, that persons who were not in your employment, who may be affected thereby, were not exposed to risks to their health or safety.

PARTICULARS OF OFFENCE

That you, did on and before the 24th day of May 2013, being an employer within the meaning of the Health & Safety at Work etc. Act 1974 ("the Act"), fail to discharge the duty imposed upon you by section 3(1) of the Act in that you failed to ensure, so far as was reasonably practicable, that persons not in your employment were not exposed to risk to their health and safety arising out of and/ or in connection with the keeping of big cats at the South Lakes Wild Animal Park in Dalton in Furness whereby you are guilty of an offence under Section 33(1)(a) of the said Act and are liable to a penalty as provided by section 33(2) and Schedule 3A of the said Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

COUNT 4

STATEMENT OF OFFENCE

Contravention of section 2 (1) of the Health and Safety at Work etc. Act 1974 in failing to ensure, so far as was reasonably practicable, the health, safety and welfare at work of your employees.

PARTICULARS OF OFFENCE

That you, did on and before the 18th day of July 2014, being an employer within the meaning of the Health & Safety at Work etc. Act 1974 ("the Act"), fail to discharge the duty imposed upon you by section 2(1) of the Act in that you failed to ensure, so far as was reasonably practicable, the health, safety and welfare at work of your employees, including a Yasmin Walker, whilst carrying out and/or associated with working at height at the South Lakes Wild Animal Park in Dalton in Furness, whereby you are guilty of an offence under Section 33(1)(a) of the said Act and are liable to a penalty as provided by section 33(2) and Schedule 3A of the said Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

COUNT 5

STATEMENT OF OFFENCE

Contravention of regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 in failing to carry out a suitable and sufficient risk assessment.

PARTICULARS OF OFFENCE

That you, being an employer, did on and before the 18th day of July 2014, fail to discharge the duty imposed on you by Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 in failing to carry out a suitable and sufficient risk assessment in relation to the risks to the health and safety of your employees, including a Yasmin Walker, whilst carrying out and/or associated with working at height at the South Lakes Wild Animal Park in Dalton in Furness whereby you are guilty of an offence by virtue of the provisions of Section 33(1) (c) of the Health and Safety at Work etc. Act 1974 and are liable to penalty as provided by Section 33(2) and Schedule 3A to the Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

COUNT 6

STATEMENT OF OFFENCE

Contravention of a prohibition or requirement imposed by an Improvement Notice contrary to section 33(1)(g) of the Health and Safety at Work etc. Act 1974.

PARTICULARS OF OFFENCE

That you, did fail to comply with the requirements of an Improvement Notice (reference TH/HIN/04/14) served on you on the 15th August 2014, pursuant to the provisions of section 21 of the Health and Safety at Work etc. Act 1974, by failing to make a suitable and sufficient assessment of the risks to the health and safety of your employees and others who may be affected by live Sumatran tiger keeping at the South Lakes Wild Animal Park in Dalton in Furness and then, from the assessment, identifying what preventative and protective measures you needed to take in order to eliminate or adequately control the risks to your employees and others who may be affected by such live Sumatran tiger keeping, whereby you are guilty of an offence pursuant to Section 33(1)(g) of the said Act and are liable to a penalty as provided by section 33(2) and Schedule 3A of the said Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

COUNT 7

STATEMENT OF OFFENCE

Contravention of a prohibition or requirement imposed by an Improvement Notice contrary to section 33(1)(g) of the Health and Safety at Work etc. Act 1974.

PARTICULARS OF OFFENCE

That you, did fail to comply with the requirements of an Improvement Notice (reference TH/HIN/03/14) served on you on the 25th July 2014, pursuant to the provisions of section 21 of the Health and Safety at Work etc. Act 1974, by failing to make a suitable and sufficient assessment of the risks to the health and safety of your employees which arose out of or in connection with the routine placing of animal food at height on poles for big cat carnivores in their outdoor enclosure at the South Lakes Wild Animal Park in Dalton in Furness and then, from the assessment, identifying what preventative and protective measures you needed to take in order to eliminate or adequately control the risks to your employees of working at height and comply with the relevant statutory provisions imposed upon you (along with making a decision to determine if the said activity could be done more safely without working at height), whereby you are guilty of an offence pursuant to Section 33(1)(g) of the said Act and are liable to a penalty as provided by section 33(2) and Schedule 3A of the said Act (as amended by section 1 of the Health and Safety (Offences) Act 2008).

- 11.3. Following an indication from the Defendants on the day before Trial that the Company were minded to consider guilty pleas to Counts 2 & 3 if no evidence was offered against Mr Gill, the Council entered into plea bargaining negotiations.
- 11.4. After lengthy deliberation and consultation with Miss McClay's family a decision was made to accept the offer of pleas from the Company in return for offering no evidence in relation to Mr Gill. Part of this 'agreement' was that the Company's insurers would pay the sum of £150,000 as a contribution towards prosecution costs.
- 11.5. This decision was made having regard to the associated public interest considerations of proceeding individually against Mr Gill having secured adequate convictions for the offences against the Company. Key factors in this consideration were the fact that Mr Gill was the sole director and shareholder of the Company at the date of the offence and that the predicted Trial against Mr Gill, individually, was expected to last 4 weeks: incurring significant public expense and further emotional strain on Miss McClay's family.
- 11.6. On 8th June 2016 at a Hearing at Preston Crown Court, guilty pleas were duly entered on behalf of the Company (SLSZ Ltd) in relation to Count 2 and Count 3 on the following basis: -

In relation to **Count 2** the company accepted that:

- Its risk assessment did not address sufficiently the risks arising from a failure to maintain door D2.
- A more proactive maintenance and inspection regime should have been in place to ensure that the dark den door D2 functioned efficiently, and that its self-closing mechanism worked properly.
- The failure of the door to self-close was a more than trivial cause of harm

In relation to **Count 3** the company accepted that:

- Its risk assessment did not sufficiently address the risks arising from the escape of a big cat from the keepers' enclosure into the public area.
- The view into the keeper area from outside was limited thus reducing the opportunity to identify a cat in the corridor when seek to gain entry into the keeper area.

This possible risk to public safety is directly linked to the Zoo Licensing Act 1981 (as amended) because of the public safety provisions contained within it.

11.7. The Company, South Lakes Safari Zoo, had already pleaded guilty to Counts 4 and 5 on the Indictment relating to working at height. Specifically they failed to ensure the safety of employees and failed to carry out a suitable and sufficient risk assessment regarding working at height in relation to placing meat on a 5 metre pole for big cat feeding. This followed an incident in which a keeper fell from height and broke her collar bone.

11.8. Members should note that in relation to the other counts:

- a) Count 1 was rolled into Count 2 and they were dealt with together; and
- b) Counts 6 and 7 were allowed to rest on file so they could be considered in the future if any further matters are brought before the court.

11.9. In sentencing on 10th June 2016 High Court Judge Mr Justice Turner QC stated that he had decided to award 15% credit for the late guilty pleas.

11.10. Mr Justice Turner QC referred to Sentencing Council guidelines for health and safety offences and to the aggravating feature that the death of Sarah McClay was particularly shocking and was foreseeable.

11.11. Mr Justice Turner QC referred to the failure to maintain the dark den doors comprising a significant contributory factor in the death of Sarah McClay

11.12. Mr Justice Turner QC referred to the accident involving work at height as "an accident waiting to happen".

11.13. In all of the circumstances he imposed the following sentence:

- Count 2 – a fine of £127,500
- Count 3 – a fine of £127,500
- Count 4 – a fine of £21,250
- Count 5 – a fine of £21,250
- Costs - £150,000 towards the prosecution costs.

This makes a total of £297,500 which must be paid by instalments of £30,000 per annum over 10 years. The first payment was ordered on or before 31st July 2016.

Members should note that contrary to Mr Gill's claims (in a newspaper article outlined below) that the Judge was enforcing the fine over 10 years to save the Zoo, no such reasoning was given in Court. They should further note that there is a general rule that payment of fines should not result in companies going out of business and people losing their jobs. The Judge had earlier indicated that he has previously allowed 10 years for payment of fines therefore it was anticipated.

Post Sentence - Actions and Comments from Mr Gill and the Management of South Lakes Safari Zoo Ltd

11.14. Facebook posts

11.15. On 8th June 2016 David Gill posted the following on his personal facebook account (Emphasis Added). This was supplied to the Council by a number of third parties. Mr Gill's page was open to public viewing.

"To my friends a personal and private message.

*Recent events in the Crown Court have been of deep concern to us all an in particular to my family when I was accused of so many breaches of law. I am relieved and pleased to say that today I was declared NOT GUILTY OF all charges placed by our local authority. The Company pleaded guilty to a very limited charge that was related to a failure to have a written risk assessment of maintenance on the door in the tiger house and for not having a risk assessment or sufficient safe operations in an emergency via the tiger house front door. This was after the company was also accused of a staggering long list of crimes. 95% of all accusations were dropped and agreed on a limited pleas basis to the two counts for the doors and one for a keeper who fell off a ladder as whilst we had a risk assessment it did not mention working in high winds. **None of these charges had any direct connection whatsoever with the death of the Zoo Keeper in May 2013 contrary to press reporting that is clearly sensationalising and false reporting of the facts.***

It is still clear that sadly she failed to follow the written agreed and trained protocol and let tigers into the house without closing and locking the doors first.

No blame is being attached to the zoo for the tragic event but the press and the media are clearly doing their best to link the two issues. *We regret the failure of paperwork to record the maintenance and do have concerns in that the local authority inspected the doors and risk assessments a minimum of 14 times in 18 years and indeed a few days before the accident and always approved our doors and risk assessments as being correct and adequate and fit for purpose. the same local authority that have declared £500,000 of public money was spent on this prosecution where most of the charges were dropped. This is an outstanding waste of public funds that could have made a huge contribution to public safety on the streets of the borough. I am certain someone will have to investigate the role of individuals in the Council who so blindly pursued this with public funds. I would be grateful for you not copying this to anyone as because sentencing is Friday.*

It was a tragedy and we sympathise with her family and hope that lessons are learned by everyone in the zoo world to avoid the hell we have all been put through in the zoo and my family in trying to lay blame. I will be releasing a full statement to the press on Friday”

11.16. The post was later removed.

11.17. **Westmorland Gazette Article – 16th June 2016**

11.18. On 16th June the Westmorland Gazette reproduced a copy of a Management Statement which had been submitted to them. The full article can be view at **Appendix F**. Their statement asserts that Sarah died as a result of her own errors:-

“This week, the Gazette received a statement from the management team who said they felt that the public perception following the court case was that the zoo was primarily to blame for the tragic death of Mss McClay.

They claimed that prior to the tragedy the zoo had all the correct protection and protocols in place to ensure Miss McClay’s safety and that she had made errors which led to her death.

...If Sarah had done any of these three actions the tiger could not have accessed her in the corridor. It was a tragic set of errors to make but there were many safeguards and opportunities to prevent the tragedy.”

11.19. **Zoo’s Response – Pages 32 and 33** (Emphasis Added)

*"For over two whole years Barrow Borough Council made serious accusations against DG in all aspects of his involvement in the zoo, be it design, risk assessment, compliance, working practices etc. 7 charges were brought against him **and yet not one charge could be upheld or proven in a Court of Law** and DG was declared by the Judge innocent and Not Guilty of any of the accusations made against him. The company also had similar attempts to undermine it with a huge number of allegations and charges laid. In the end only two minor issues remained out of so many that were dropped and unable to be proven. We also must not allow the media cover up the reality of the final situation, the Company pleaded guilty to failing to provide a risk assessment for the tiger House door D2 that adequately covered the maintenance of that door. In fact it was that we did not have a proactive maintenance regime of a person greasing/checking every month or so and signing for it, but we relied upon keepers to grease and maintain themselves. This historic practice was in full and open agreement with DEFRA Inspectors and Barrow Council Inspectors, but we accepted this suggested change a very long time ago, not at the court and put that proactive regime in place. Our expensive failure was that in all our procedures and working practice documents we only mentioned locks and slides and failed to mention doors.*

The second charge we pleaded guilty to was of concern to every zoo in the UK and has set a precedent and new standard for all UK Zoos.

The fact we had a double door system for the Tiger house that was to the exact standard as written in HSE Guidelines for Zoos and that it had been approved and inspected on 14 separate DEFRA inspections and numerous other Council inspections when everyone agreed its suitability and it was fit for purpose, the Courts position was that in the event of a tiger accessing the keeper corridor due to keeper error or major failure of systems there was no opportunity to control the tiger without opening the door to the public domain, thus potentially placing the public at risk. This of course never actually happened but it was decided the risk was there.

Of course in 2014 we did change our Tiger House completely in the works due to our expansion project and the door was changed to comply with all the requirements set out in the Court. However, it is apparent that many other Zoos still have the HSE/DEFRA SSSMZP compliant access to big cat houses and this will require universal change to comply with this new precedent ruling. At no stage in any of the Judges summing up or comment did he attempt to lay any blame on the company for the events and made it clear that the actual cause of the keepers death was not the door or the outer door. As the inquest fully concluded with witness evidence and a Jury verdict it was a tragic accident and no one was to blame. The Judge was very careful to point out the company's safety record, good practices and risk assessments as a whole and the proactive safety we have. He also commented clearly on how valuable the Zoo is the region as a whole and it

educational and conservation value. Stating openly in court he wanted the Zoo to move forward with confidence and to assist us as much as possible giving an unprecedented 10 years to pay the fine so it had a little effect on development as possible.

We feel very much that the past two years of Council involvement with the zoo regarding the ZLA has similar appearance and a multitude of allegations are made against the Company but very much against DG. The Council spent £500,000 of costs (net £350,000) they had to pay themselves from the public purse of tax payer money yet not one allegation against DG was able to be proven or upheld.

We certainly do not wish for this situation to end up in a Court room for costs to escalate beyond logic over what are easily resolvable issues if we can all see the reality, move away from conflict and acknowledge the fact we all wish to move forward positively and constructively.

*We noted the official press release of the Council reported after the Court hearing that stated" we wish to work with the Zoo to a positive future" or words to that similar effect. **[There was no basis for this assertion. The Council's press release is attached at Appendix G and makes no reference to the sentiments expressed.]***

We would certainly hope that once the new Licence is issued in early July then we can all draw a line in the sand and start again ending conflict and the waste of valuable public funds."

- 11.20.** The comments of David Gill and the Zoo's Management are clearly indicative of their unrepentant attitude post guilty pleas.
- 11.21.** Despite the admission of guilt on behalf of the Company via a basis of a plea signed by Mr David Gill, which acknowledged the faults with the Dark Den Door, the lack of proactive maintenance in relation to the door and the failure to risk assess the problems that may arise from a poorly maintained door, outside of the court system, Mr Gill and the Management of South Lakes Safari Zoo Ltd continue to deny the extent of the role they played in the death of Sarah McClay.
- 11.22.** Mr Gill and the Company (SLSZ) acknowledged that the problem with the door was a cause of the incident leading to Sarah's death. Causation in the Sentencing Guidelines is defined as a factor that contributed in a way that was more than minimal, negligible or trivial.
- 11.23.** At no point did the Zoo mitigate sentence on the basis that Sarah was at fault. Indeed the legal team gave an assurance that no blame was to be attached to Sarah following Mr Gill's Facebook post becoming public.

11.24. The guilty plea was meant to indicate acceptance by the Company that they had breached the law and also, for the benefit of the family, that they showed genuine remorse.

11.25. Sarah McClay's partner has stated (as printed in the Westmorland Gazette article):-

What mattered was what was said at the inquest and the court hearings.....the safari zoo's statement was 'hurtful to the family'.

11.26. It is the Council's view that the deviation between what took place at Court and said on their behalf with their subsequent public pronouncement on the issue is of significant concern. It belies a willingness to distort factual events for the Zoo's own purposes. This has become a repeated theme of the Council's dealings with the Zoo over a number of years which has made the process of enforcement increasingly challenging. Only recently the management team indicated to the inspection team at their wash up meeting on 25th May 2016 following their inspection that they felt that the inspection had been carried out fairly and in an objective manner, only then in their responses to the Inspectors' Report to adopt a far more critical view (see para.7 of the Inspector Additional Comments and in particular the Zoo's comments of "coercion" on page 22 of the Zoo's response).

12. Conduct and Compliance History 8th June 2010 to date

12.1. Mr David Gill's licence was last renewed on 8th June 2010. Set out below are details regarding the conduct and management of Mr Gill as the licence holder which shall form part of the considerations contained in s.4 of the Act.

Convictions

S.4(4) states that's the local authority may refuse to grant a licence if the applicant or (where the applicant is a body corporate) the body corporate or any director, manager, secretary or other similar officer of the body or any person, or any person employed as a keeper on the zoo has been convicted of an offence under this Act or under of the enactments mentioned in subsection (5) or any other offence involving the ill treatment of animals.

The enactments listed under subsection (5) are: -

- the Protection of Animals Acts 1911 to 1964;
- the Protection of Animals (Scotland) Acts 1912 to 1964;
- the Pet Animals Act 1951;
- the Animal Boarding Establishments Act 1963;
- the Riding Establishments Acts 1964 and 1970;
- the Breeding of Dogs Act 1973;
- the Dangerous Wild Animals Act 1976;
- the Endangered Species (Import and Export) Act 1976; and
- Part I of the Wildlife and Countryside Act 1981

Wildlife and Countryside Act 1981

12.2. On 19th November 2014 Mr David S Gill and South Lakes Wild Animal Park Ltd ("SLWAP Ltd") were convicted of three counts of releasing or allowing to escape into the wild an animal which is a species that is not ordinarily resident or a regular visitor to Great Britain in a wild state, contrary to s.14(1) Wildlife & Countryside Act 1981. SLWAP Ltd was fined £5000 plus £370 costs and David Gill was fined £2000 plus £870 costs.

12.3. Between July 2013 and October 2013 there were a number of sightings of Sacred Ibis in the Furness Peninsula at Roanhead Beach and Aldingham. Sacred Ibis are not birds that reside naturally in Great Britain. In fact they pose such a significant threat to the natural fauna of Britain, should they invade, it is one of only 3 species that the government has developed an action plan to deal with. In addition out of the multiplicity of pathways by which invasive species arrive, the Government's Programme Board chose escapes from zoos as their first priority.

12.4. The matter was heard by District Judge Chalk at Kendal Magistrates' Court on 19th November 2014. In summing up his findings were as follows:-

- 1) Sacred Ibis were not birds that were resident or regular visitors to Great Britain in a wild state;
- 2) Sacred Ibis birds had been escaping from SLWAP;
- 3) None of the birds should have been capable of flight however 13 birds were shot by Mr Gill because they could fly. This is despite Mr Gill initially telling the Police that only 4 had been capable of flight;
- 4) Some of the escaping birds flying out of the Park were 4 years old despite Mr Gill claiming that only young birds could fly;
- 5) The species poses a significant threat to the British countryside but it is accepted that it had not colonised on this occasion; and
- 6) No due diligence had been shown by Mr Gill or SLWAP and the Judge commented that it was unbelievable that nobody at the Park knew the birds were able to fly and flying out of the Park.
- 7) Judge Chalk did not accept Mr Gill's version of events. He said he found it "inconceivable" that owner Mr Gill was not aware the birds were flying in and out of the park.

12.5. After giving Mr Gill a right to be heard on 27th January 2015, at a meeting to determine whether a zoo closure direction should be made, the Licensing Regulatory Committee decided to issue Mr Gill with a warning. In the Record of Decision for that meeting it states that the Committee's intention behind the warning is to permit the Committee to reserve the right to refer to this hearing and the matters which were under consideration should they be asked to consider Mr Gill's suitability to hold a Zoo Licence in the future.

12.6. It important that Members note that they only considered the conviction in respect of Mr Gill in his capacity as the Licence Holder and not the conviction which was also imposed against the Company is a relevant consideration for any transfer application to South Lakes Safari Zoo Ltd.

12.7. An application has been received from Mr Gill to transfer the licence to South Lakes Safari Zoo Ltd however due to an incomplete application and insufficient information to support it the application cannot yet be processed. The Council has written to Mr Gill request a complete application and further information.

Health and Safety Enforcement

Handwashing

12.8. In 2010 an informal inspection took place under the Act and contained within the subsequent report is a concern that the handwashing facilities in the Zoo were inadequate. The facilities were deemed to be below the standard recommended in the Griffin Report published following the Godstone Farm Outbreak.

- 12.9.** The Godstone Farm Escherichia coli O157 outbreak in August/September 2009 was a failure of health protection. Some 93 cases, the vast majority of whom were children, were affected by this devastating disease causing great pain, the requirement for intensive invasive medical support and immense family disruption. Of the 93 cases, 17 (all of whom were children) suffered the most severe complication of this infection, namely haemolytic uraemic syndrome (HUS), requiring intensive hospital renal and haematological support.
- 12.10.** In their recommendations in 2010 the Health Protection Agency stated that primary control measures should be aimed at preventing faeces and faecal material passing on to the public rather than aimed at the public washing off faeces.
- Reducing faecal contamination should primarily be the responsibility of the farm operator
 - Handwashing however remains the principal control measure available to the public and must be actively encouraged by the farm operator; a multi layered approach is the safest way of reducing harm.
 - To support effective handwashing, facilities should be directly located at areas of high risk, such as animal contact. Facilities should provide warm water, soap and paper towels and be at the correct heights for adults and children to use. Visitors should be prompted to wash their hands.
 - Animal contact areas should be supervised, and staff should be trained in how to promote handwashing.
 - Sanitising gels may be used only after thorough handwashing.
- 12.11.** Although the outbreak referred to Open Farms is akin to the situation at the Zoo where a number of animals are free to roam and therefore there is the possibility of members of the public having contact with faecal contamination and there are animal contact situations.
- 12.12.** The Zoo was given a time limit of 3 months to provide adequate hand washing facilities. On 18th August 2011 the Zoo was inspected by Officer's from the Council together with a representative of the Health Protection Agency (now Public Health England) and the following day a Prohibition Notice was served due to the lack of handwashing facilities.

Rhino Enclosure (1997 and 2016)

- 12.13.** In 1997 the Mr Gill as sole trader of South Lakes Wild Animal Park Ltd was prosecuted at Kendal Magistrates' Court under Section 3 of the Health and Safety at Work etc. Act 1974 for failing to ensure the safety of people not in his employment. The basic facts of the case were that a Rhino enclosure design was not suitable. The Rhino escaped from its enclosure and subsequently into the Zoo's public car park where it

became lodged in a ditch. Unable to be rescued the animal was euthanised.

- 12.14.** In April 2016 the Zoo chose to dismantle the platform at the rear of the Maki Restaurant that overlooked the Rhino and Giraffe field and replaced it with the Boma Picnic Area at ground level. The fencing along the edge of the Boma Picnic Area was not suitable to contain the Rhino and two Prohibition Notices were served on 12th April 2016. The first Notice required the rhinos to have no access to the paddock, and the second Notice required the rhinos to have no access to their hardstanding. The reason was that had the Rhino been let out they would have been prevented from escaping their enclosure by a small 1m high wooden fence (**photograph 1**). Thus the public were placed at risk.



- 12.15.** At no stage was the Licensee available to discuss the matter and the Zoo's Consultant Vet was also out of the country.
- 12.16.** Whilst the Council referred to the 2012 EAZA Husbandry Guidelines which states "the Primary Barrier should always have a minimum height of 1.75m" the Zoo chose to contact the author of the guidelines to determine if the minimum height was flexible.
- 12.17.** On 19th April the Council received an email from the Zoo's Veterinary Consultant which stated that the fencing installed was not suitable.
- 12.18.** The Zoo has chosen to appeal the Prohibition Notices.

- 12.19.** Members should note that both Prohibition Notices have been complied with and the risk removed from the area however the Zoo has lodged an appeal with the Employment Tribunal. The appeal does not suspend the Prohibition Notice.
- 12.20.** Members should also note that the Health & Safety at Work Act 1974 does not permit the withdrawal of a Prohibition Notice which takes effect immediately or with an expiry date (i.e. when the Notice has to be complied with) that has passed.
- 12.21.** The Tribunal can either cancel the Notice or affirm it in its original form or with modifications.
- 12.22.** The appeal however can be withdrawn at any time.
- 12.23.** Other Health and Safety notices that have been served include
Prohibition Notice 2012 – Display of snakes in eating area
Prohibition Notice 2014 – Use of straw chopping machine

Improvement Notice 2010 – inspection of miniature railway
Improvement Notice 2013 – entering paddock when baboons are present
Improvement Notice 2013 – working time (young people)
Improvement Notice 2015 – risk assessment in relation to walkways (non slip)
- 12.24.** All Health and Safety Notices served on the zoo have been complied with.

Non-payment of Inspection Fees

- 12.25.** Under Section 15(2A)(a) of the Zoo Licensing Act 1981 the Local Authority may charge to the operator of the zoo such sums as they may determine in respect of reasonable expenses incurred by them in connection with inspections;
- 12.26.** The Zoo have made no contribution to the costs incurred for the
- Special Inspection that took place in January 2014 (£8,002.43) and this matter is currently undergoing formal debt recovery action in the County Court
 - Periodical Inspection of November 2015 (£7,936.75)
- 12.27.** The Zoo therefore owes the Council £15,939.18 in unpaid Inspection Fees.

Annual Maintenance Fee

- 12.28.** An annual maintenance fee is payable by the holder a zoo licence. The fee is set based on work undertaken by the Council and costs incurred in ensuring compliance at the zoo in accordance with the Zoo Licensing Act 1981.
- 12.29.** The fee payable on grant of a renewal, should Members decide to extend the licence, will be **£11,487.34**. This some is reflective of the amount of compliance work the Council has undertaken in relation to the Zoo.

Theft of Animals and Possible Keeper Involvement

- 12.30.** In January 2016 the Zoo reported the loss of a pair of Scarlet Ibis birds from the Amazonia aviary. At the same time they admitted that 3 Squirrel Monkeys had also been lost in two separate incidents over the New Year period. The monkeys had been secured in an internal enclosure with no access to their external area due to the weather. The Ibis had free access to their free flight aviary.
- 12.31.** Although not reported as escapes at the time it has to be considered if the animals could have escaped from their enclosure and then either left the Zoo's perimeter or got lost within the Zoo's grounds. This is unlikely in the case of the Ibis as their aviary was inspected soon after the report of them missing and found to be secured. The birds were counted at the end of the previous day and were found missing when counted the next morning. The double door system to the aviary couldn't have been accidentally held open, and if it had then presumably more than two birds would have left, also there were no feathers or a carcass that might indicate predation. The monkeys were in a locked internal enclosure.
- 12.32.** It is not beyond the bounds of possibility that the animals were taken by a member of the public but this would require a very determined visitor to firstly capture the Ibis without being challenged and then walk through the park with a pair of birds, however docile they may be. Again one is reminded that the monkeys were in a locked enclosure.
- 12.33.** The Zoo's final report on the issue, delivered to the Council on 19th April 2016, surmised that the animals were more than likely stolen and that the theft perpetrated by an ex-employee. No security system is going to guarantee be 100% effective especially if people have knowledge of the systems in place. However, if the Zoo is correct then on three occasions a person was able to enter the site at night and remove a number of different animals without fear of being caught.
- 12.34.** The zoo have stated in the report that they are going to increase security in some areas following these incidents.

Failure of Management to take Responsibility

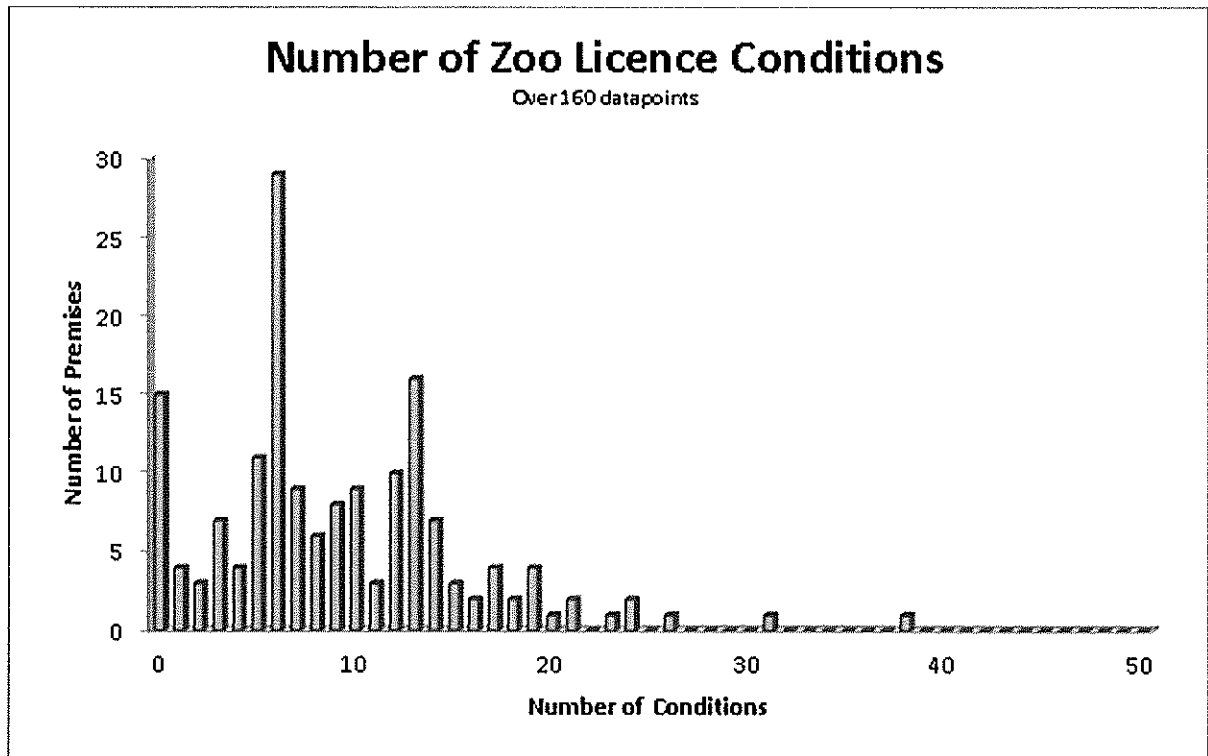
- 12.35.** On 13th May 2016 Karen Brewer emailed a document entitled “Report Prior to Inspection”. The document sought to place on record the Zoo’s impression of their compliance with the current licensing conditions following the November Inspection.
- 12.36.** Under C39 requiring a robust management to be in place the Zoo state
“It came to light during the internal investigations that ALL the issues raised at the inspection as unsatisfactory were in fact under the sole delegated duties of the Animal Department Manager.”
- 12.37.** However a number of failings highlighted were stated by the Zoo as to be the decisions of the Animal Manager: -
- 1 The arrival of the Nyala before the accommodation was ready – having had the explanation that this was due to welfare concerns at the originating zoo
 - 2 The securing of the Nyala and other animals behind straw bales – when the blame for the delay in providing the proper enclosures was placed on the Council for offering the steel fabricator more
 - 3 The building of the Andean Bear enclosures with a half-height door meaning that keepers had to crawl inside to clean the enclosures, when David Gill had already explained why he had deviated from the initial plans in this regard
 - 4 The baboon’s internal enclosure being substandard when David Gill had stood in front of this Committee in 2014 and argued that he would not compromise on animal welfare issues
- 12.38.** The Zoo’s Management was called into question during the inspection and within the subsequent report. This followed a period in which David Gill had resigned as a Director and then been reinstated.
- 12.39.** The Zoo’s Management in their response to the November 2015 Renewal Inspection stated: -
“What lies within appears to be a somewhat sweeping unsubstantiated claims and false facts. The inspection team mislead the public and committee by stating that the decision for David Gill to step down as Director was in any way changed at any time. “
- 12.40.** In the Zoo’s report of May 2016 they state:
“The Zoos management unanimously decided to then approach David Gill personally and requested that he return back to direct zoo animal management to restore former standards, provide systems efficiency and strong experienced management, it was essential to lift the quality

and standards in the Animal Management department to the levels of two years ago when the role was fully delegated to the newly appointed animal Department Manager. David agreed to perform this role until David Armitage had broad experience of this zoo and a further senior Animal Department appointment was made.”

- 12.41.** The Zoo has singled out an individual upon whom all of the failures found during the November Inspection were blamed. A number of issues were found that covered all areas of the Zoo and it is inconceivable that these were all the sole responsibility of one manager.
- 12.42.** It is also inconceivable that in a well-managed organisation the failings of one manager could go unchecked and uncorrected. It should be made clear that these are not mistakes or isolated errors of judgement; these are matters that would have been reflected in many different areas and yet never challenged.

13. Benchmarking

- 13.1.** The Council have felt it important to try and place the proposed number of licence conditions sought in this report in to some form of context. There are over 350 licensed zoos in the UK and Officers have accordingly obtained a snapshot of how many conditions other zoos presently have imposed upon them.
- 13.2.** The Act recognises that Open Farms and Petting Zoos are Zoos but do not present the same issues as premises that contain Dangerous or Wild species. These premises are therefore excluded from this exercise.
- 13.3.** The guide to the Act suggests in Annex F (page 51) a model zoo licence template which includes 6 "**statutory conditions**" dealing with conservation measures (required by s.5(2A)) and 5 "**other conditions**" which set certain standards arising from the SSSMZP. In addition there is capacity for any "**additional conditions**" which may be necessary and proportionate to deal with failings identified through the inspection regime.
- 13.4.** It would therefore be reasonable to conclude that any zoo with more than 12 conditions attached to its licence has had some shortcomings identified during their inspection process which has resulted in their Licensing Authority imposing "additional conditions" by way of consolidation or enforcement.
- 13.5.** Out of 165 zoo licences reviewed only 47 (28%) had more than 12 conditions on their licence. Further, only 8 (5%) of zoos reviewed have over 20 conditions. The chart below sets out how many conditions were assigned to each of the 165 zoos that were reviewed.



13.6. By way of example:

Blackpool Zoo	6 Conditions
Chester Zoo	5 Conditions
Flamingo Land	13 Conditions
Chessington	17 Conditions

13.7. The history of the Zoo's Licence starts from 1994 which, as the first licence, ran for 4 years. The first renewal was undertaken in June 1998. The licences then run for 6 years and hence the licence was renewed in 2004 and 2010.

13.8. As can be seen from the table below the Zoo Licence has always carried a large number of conditions despite the assertion from the Zoo itself that enforcement action has increased over recent years.

<u>Date of Licence</u>	<u>Total No. of Conditions</u>
23 rd May 1994	38
11 th June 1998	27
11 th June 2004	48
8 th June 2010	24
22 nd August 2014	29
5 th September 2014	29
10 th December 2015	29
10 th March 2016	39

- 13.9.** The current licence for South Lakes Safari Zoo Ltd contains a total of 39 conditions of which 28 are "additional conditions" of these 3 have been escalated to Directions Orders (2 are under appeal).
- 13.10.** If the Licence were to be reissued 6 conditions would be removed and a further 3 brought to this Committee to be considered for removal. Leaving a total of 30 Conditions
- 13.11.** However 5 Conditions would be considered for escalation to Direction Orders.
- 13.12.** From the benchmarking this still constitutes an unprecedented level of conditions being sought against a zoo licence holder.

**COMPLIANCE WITH CONDITIONS ATTACHED TO THE LICENCE SINCE 8TH
JUNE 2010**

13.13.

	06/2010	09/2013	09/2014	09/2015	12/2015	03/2016
Notification if Escape Policy changes	C	C	C	C	C	Ongoing
Review of Veterinary Care	C	Replaced				
Adhere to SSSMZP	C	C	Removed			
Site and Facilities maintained to CEHO's satisfaction	C	Removed				
Annual review of safety procedures for all dangerous wild animals	C	Removed				
Roles and Responsibilities for management and work activities	C	Removed				
Routine structural and maintenance plan reviewed annually	C	Removed				
Training for new Hazardous Animals	C	C	C	C	C	Ongoing
Firearms details of users and training	C	Replaced				
Defrosting of meat	C	C	Complied			
Annual Stock inventory	C	C	Removed			
Ethic's Committee meeting and minutes	C	C	C	C	C	Ongoing
Review of Veterinary Program	C	C	D	C	C	D
Delivery of Veterinary Services		C		C	C	D
Control of rodent vermin			C	C	C	Ongoing
Removal of muck heap			C	C	C	C
Keep Public Walkways Safe			C	C	C	D
Electric and gas installations checked			Complied			
Firearms and Protocol agree with Police			C	C	C	Ongoing
Zoonosis Policy			Complied			
Clinical Waste disposal contract			C	C	D / Complied	
Protocol for using anaesthetics			Complied			
Sufficiently trained staff			Removed			
Formal staff development program			C	C	C	C
Pygmy hippo pool			C	C	D / Complied	
Clearance of perimeter fence						C
Escape assessment for prairie dogs						C
New accommodation for baboons						C
Shelter in Africa Field						C
Flooring in Caribbean Flamingo House						C
Review of diets and nutrition						C
Future design of enclosures						C
Yellow anaconda removed from show						C
Review of public feeding						C
Written Protocol for quarantine						C
Review of animal bites						C
Management and Staffing structure						C

C – Condition
D – Direction Order

14. Summary of Current Licence Conditions / Direction Orders

- 14.1. Below is a summary of the conditions and Direction Orders that appear on the current licence and that should have been complied with.
- 14.2. The second report on the agenda for this Committee presents the information upon which Members will be asked to make a decision.

***C21 Keep public walkways safe
Elevated to Direction Order 18th December 2015
Compliance Date 31st May 2016***

On 17th December 2015 the Direction Order this Committee resolved to escalate Condition 21 to a Direction Order requiring compliance within 28 days from the effective date.

At a meeting of the Licensing Regulatory Committee on 4th February 2016 Members accepted a report from the Zoo compiled by R.G. Parkins and Partners Ltd that considered 2 out of an identified 7 walkways and platforms.

The remaining 5 were to be either demolished, or scheduled to be demolished.

The Zoo had failed to consider walkways that were less than 300mm and this matter was reported to LRC in March 2016.

The decision of the Committee was that the Direction Order served on the Zoo referred to all timber walkways and platforms. This included those that are less than 300mm in height. No distinction had ever made by the Committee in relation to the height of the walkways or platforms. The Committee instructed the Zoo to close every public wooden walkway/platform, regardless of its height above ground until the full terms of the Direction Order were met.

The following walkways have been released from the Direction Order following compliance: -

- Walkway around the Andean Bear enclosure released by the Environmental Health Manager on 4th March 2016; and
- Walkway in the Worldwide safari released by the Environmental Health Manager on 8th March 2016
- A number of low level platforms have since been replaced by compacted hard core and this has been witnessed by Officers.

Currently the Zoo have closed off:-

- The Anteater viewing platform – scheduled to be demolished
- The Wolf / Snow Leopard access and viewing platform – the viewing platform was to be remodelled and the access walkway strengthened

C28 Perimeter Fence
[Timescale 22nd May 2016]

“In accordance with 8.7 and 8.29 of the SSSMZP all vegetation, shrubs, bushes and trees in proximity to the perimeter fence must be cut back and maintained to ensure they remain clear of the electric fencing. All shrubs, bushes and trees overhanging or near the perimeter fence must be kept cut back to prevent animals from escaping.”

The Perimeter Fence is also the primary barrier for the free-ranging species. Although significant progress has been made towards compliance with the Condition there are still sections where vegetation has not yet been cut back or has been cut but is re-growing, that could aid escape. There are also sections identified that that need replacing.

The Condition was not complied with within the required time frame.

C29 Black Tailed Prairie Dogs – Escape Assessment
[Timescale 6 months]

*“In accordance with 8.10 and 8.29 of the SSSMZP a suitable and sufficient written risk assessment carried out by a suitably qualified professional on the effectiveness of the perimeter fence must be undertaken and the recommendations be implemented.
 Copies of these reports must be sent to the Local Authority.”*

The Condition as originally drafted requested a report to be drafted by the Zoo’s Veterinary Consultant, however he responded by saying that he was not qualified to draft such a report. The Council have been provided with a report drafted by the Zoo’s Education Officer and reviewed by the Zoo’s Veterinary Consultant Vet.

The report does not cover the escape risk. In no section does it appear to accurately discuss the horizontal burrowing habits of these animals and there is no corresponding discussion regarding the depth to which the animals may burrow and depth of the external fence. There is also no discussion on how these animals are managed at other collections by under wiring the enclosure.

The deadline for the report to be submitted is September 2016

C30 Hamadryas Baboon Indoor Accommodation
[Timescale 22nd May 2016]

"In accordance with 2.2, 4.3 and 4.4 of the SSSMZP, the indoor facilities for the baboons must be upgraded or replaced to meet the current recognised husbandry guidance. The indoor quarters must also allow for a developed programme of enrichment, e.g. deep straw litter and scatter feeding."

At the Licensing Regulatory Committee hearing on 23rd and 24th February and 2nd March the Zoo's Management agreed to a compliance date of 22nd May 2016 and gave a firm commitment to the new accommodation being completed by 22nd May 2016.

On 24th May the Inspectors saw that building work had started.

On 17th June the Council were provided with photographs that served to demonstrate that the new enclosures had been completed.

C31 Shelters In Africa Field
[Timescale 22nd May 2016]

"In accordance with 2.2 of the SSSMZP, shelter providing sufficient space for the accommodation of all the animals having access to the African Field must be made available at all times.

A written protocol detailing how this will be achieved must be made, adhered to, and a copy forwarded to the Licensing Authority."

Mammals in Africa field have keeper-controlled access to the house for shelter, there are no built shelters in field. This is acceptable however there is no written protocol.

It was noted on day 1 of the inspection (23rd May 2016) that several species of bird (stork, crowned crane, sacred ibis, hornbill, cattle egret) had been moved to the African field. After questioning the Keepers, Animal Manager, and the Owner the exact timescale and decision making process behind this move remains unclear. Irrespective of when the birds were moved no perching or shelter had been made available.

On day 2 of the inspection (24th May 2016), Inspectors were informed that the construction of shelters had commenced. The Zoo was unable to provide the design/structure for these when requested.

It is not acceptable that the animals were moved onto the field before a shelter was made available.

On 17th June the Council were provided with photographs that served to demonstrate that the new enclosure had been completed.

C34. Future Design of Enclosures
[Timescale – Immediate]

"In accordance with 1.5 and 5.1 of the SSSMZP the design of any new or remodelled accommodation for Category 1 animals must be sanctioned by a suitably qualified person and submitted to the Licensing Authority prior to the accommodation being built. The design must ensure that keepers do not have to enter an enclosure with a Category 1 animal.

A written document detailing the animal management practices, including risk assessments, must be forwarded to the Licencing Authority before the accommodation is occupied."

This Condition has not been complied with in respect of the internal enclosure for the Hamadryas Baboon. Very preliminary work has started on developing part of the adjacent rhino house to provide larger indoor baboon accommodation, but there were no written plans/diagrams, lack of input into the design process by animal staff and vet, and the Animal Manager had no knowledge of the exact structure and working arrangements for the planned accommodation.

C36 *Review of Public Feeding*
[Timescale – Immediate]

"In accordance with paragraphs 1.5 and 1.10 of the SSSMZP, any organised sessions involving members of the public preparing food or feeding animals that involves raw meat and fish must be the subject of a written risk assessment and protective gloves must be worn by all participants."

The handling of raw meat by members of the public has been part of a paid for experience and therefore adequately controlled in terms of the use of gloves when handling the meat.

The Inspectors witnessed a feeding experience with the penguins during the May Inspection and were satisfied that the condition has now been complied with

C38 *Review of Animal Bites*
[Timescale 22nd May 2016]

In accordance with paragraph 6.14 of Appendix 6 of the SSSMZP, a full written review of the risk of bites or injury to members of the public by animals must be carried out and an action plan adopted to eliminate bites and injuries. A copy of the report and action plan must be forwarded to the Licensing Authority.

In accordance with 8.14 of the SSSMZP, all contact injuries to visitors from animals must be reported to the Local Authority within 14 days.

The Inspectors are not content that this condition has been complied with.

C39 Management and Staffing Structure
[Timescale 22nd May 2016]

In order to comply with section 10 of the Secretary of State's Standards, a robust management and staffing structure must be in place to the satisfaction of the licensing authority, in order to allow a new licence to be issued. This new structure must include a competent, suitably qualified and experienced full-time Director (or Senior Manager) with day to day responsibility for the running of the Zoo, the ability and authority to make decisions independent of the owner (Mr David Stanley Gill), and must be fully responsible to the licensing authority for the conduct of the Zoo, all its on-site activities and its compliance with the Secretary of State's Standards.

The Inspectors are not content that this condition has been complied with.

16. Officer Recommendation

- 16.1. That the Licensing Regulatory Committee do not extend the Zoo Licence currently held by David Gill; and**
- 16.2. Direct Mr David Gill to apply for a fresh licence in accordance with section 6(1)(b) within 6 months from the date of decision.**

17. Reason for the Recommendation

- 17.1.** In accordance with s.9A(12) of the Act, as part of their inspection, the Inspectors considered whether it was likely that the conditions attached to the licence would be met if the current licence was extended.
- 17.2.** The Inspectors were not satisfied that under the current management structure, and with Mr Gill still having full operational and financial control over the day to day running of the Zoo, that the conditions would be complied with should the licence be extended, in particular condition 39.
- 17.3.** Condition 39 requires that a robust management and staffing structure be in place and that that structure have the ability and authority to make decisions independent of the Zoo's owner, Mr Gill. The new structure was required to be in place by 22nd May 2016.
- 17.4.** In **Report 1** the Inspectors recommended that the licence be refused.
- 17.5.** In **Report 2** the Inspectors state (emphasis added) :

"Not complied with.

*It is the inspectors' findings and opinion that the ongoing serious concerns over **animal welfare, public safety and potential escapes** are due fundamentally to both the animal husbandry/management regimes and philosophy (ie free-ranging mixed exhibits), and/or **the inability by staff, including current management and the vet, to effectively influence or challenge these**. Only when a management structure is properly implemented that is able to review current practices independently of the owner [the licence holder Mr Gill], will there be the ability to bring about significant change that will address these issues effectively and enable this zoo to progress and realise its full potential."*

- 17.6.** In **Report 3** the Inspectors gave their reasoning for this recommendation:

"The zoo is clearly being managed directly by Mr Gill and the way that the collection is being managed still has a profoundly negative impact on the welfare of the animals kept in this collection, and continues to act as a potential danger to the public.

The above existing management structure of SLSZ is not, in the inspectors opinion, sufficiently robust to ensure that the SSSMZP are being delivered. Nor does it fulfil the requirements of the condition applied by the inspectors back in November 2015.”

- 17.7.** At the Licensing Regulatory Committee hearing on 23rd & 24th February and 2nd March 2016, having heard in evidence from the Zoo that management changes were taking place and had been for some time, the Committee resolved to defer a decision on renewal, at the request of Zoo Chief Executive Officer, to allow the Zoo sufficient time to make the necessary changes.
- 17.8.** Members considered that it was reasonable and proportionate that the Zoo be given sufficient time to demonstrate that a new and robust management and staffing structure was in place and that the conditions on the licence were being complied with.
- 17.9.** The Committee were keen to identify that the new full time role of an experienced Director or senior manager was not held by some who will not spend large parts of the year absent from the site.
- 17.10.** The Zoo in its submission has stated that the only structure possible, due to the constraints imposed on them, by the Bank for example, is for South Lakes Safari Zoo with its newly appointed directors to operate the Zoo without Mr Gill being present on a regular basis.
- 17.11.** In the absence of a successful transfer application, consideration of the renewal application can only be made on the basis that Mr Gill is the licence holder.
- 17.12.** Council officers have been in discussions with the Zoo regarding a management restructure for a protracted length of time and despite the Zoo's reassurances that changes, which allowed operational and financial control independent of the owner, were in the process of being implemented, those changes have not been forthcoming. The Council has not received any evidence to support these statements. This is in spite of several requests being made for this information to the Zoo and their legal representatives.
- 17.13.** There has been insufficient evidence from Mr Gill and/or the management of the Zoo, to provide the reassurances and guarantees needed, that the level of change required can and will be implemented on renewal of the licence with appropriate conditions.
- 17.14.** How much weight can be given to the statements made by Mr Gill and the Zoo Management is questionable at best. As members heard in section 11 of the report, Mr Gill and the management demonstrate willingness on occasions to distort factual events for their own purposes.

17.15. The conduct of the licence holder and the management of the Zoo since the renewal of licence to date is questionable. Officers spend a significant amount of time monitoring and enforcing compliance which is reflecting in the level of the annual maintenance fee payable by the Zoo. Based on 2014/15 "activity", the figure that would be payable on renewal of the licence, if Members were so minded, would be in excess of £11,000 (£11,487.34). The figure for next year (2017) will be significantly higher based on the numbers of officer hours already worked.

17.16. In addition to the concerns raised in the Inspectors' comments reproduced above (paragraph 17.3) in relation to escapes and public safety, the Zoo and Mr David Gill were found guilty of offences under the Wildlife and Countryside Act 1981. S.4(2) states that:

"The local authority shall refuse to grant a licence for a zoo if they are satisfied that the establishment or continuance of the zoo would injuriously affect the health or safety of person living in the neighbourhood of the zoo, or seriously affect the preservation of law and order."

Further, s.4(4) states that:

"The local authority may also refuse to grant a licence if

- (a) The applicant or*
- (b) (Where the applicant is a body corporate) the body or any director, manager, secretary or other similar officer of the body, or*
- (c) Any person employed as a keeper in the zoo*

Has been convicted of an offence under this Act or under of any of the enactments mentioned in subsection (5) or of any other offence involving the ill treatment of animals"

S.4(5) includes offences committed under part 1 of the Wildlife and Countryside Act 1982 such as that committed by Mr Gill in 2014.

17.17. On 10th June 2016 South Lakes Safari Zoo Ltd were found guilty of offences under the Health and Safety at Work etc. Act 1974. In relation to Count 3 the company accepted that its risk assessments did not sufficiently address the risks arising from the escape of a big cat from the keepers' enclosure to the public area is directly linked to the Zoo Licensing Act 1981 because of the public safety provisions contained within it (s.4(2)).

17.18. Both Mr Gill and the Zoo Management continue to deny the extent of the role they played in the death of Sarah McClay despite pleading guilty.

17.19. The Committee have heard of a number of failings since the licence was renewed in June 2010. Other than the mandatory and standard

conditions required by the DEFRA guidance the Zoo has had 37 separate conditions applied to the licence in the last 6 years and a number being escalated to Direction Orders.

- 17.20.** The Management fail to take responsibility for any failings at the Zoo choosing instead to single out employees upon whom they lay blame. This is not accepted by Council Officers. The Zoo is responsible and liable for the actions of its employees.
- 17.21.** Except for the introduction of a new Animal Manager albeit on a self-declared 6 month probation period, the management team in place is the same management team that have overseen the running of the Zoo for the last 6 years and therefore responsibility for any recurrent failings must also borne by the same individuals.
- 17.22.** The financial stability of the Zoo is concerning and is germane to the assessment of the Zoo's ability to comply with condition 39 and the tests contained in s.4:
- i. Whether the zoo can afford to satisfy s.1A Conservation Measures (s.4(2A));
 - ii. Whether the standard of management is adequate for the proper care and wellbeing of the animals or for the proper conduct of the zoo (s.4(3)); and
 - iii. Whether the Zoo can afford to implement the necessary change to comply with the remaining conditions on the licence (s.9A(12)).
- 17.23.** There is an inordinate amount of uncertainty regarding the management, structure, financial stability and day to day operational responsibility of the Zoo and in the absence of sufficient evidence being provided by the Zoo or Mr Gill, despite repeated attempts by Officers to obtain such evidence, Officers are unable to assure Members that the conditions of the licence will be complied or that considerations contained in s.4 relating to:
- Accommodation and staffing standards;
 - Proper care of the animals; and
 - Proper conduct of the zoo.

can be satisfied. Officer therefore cannot recommend to the Committee that the existing licence be renewed for 6 years on the basis of the unacceptable current status quo at the Zoo.

- 17.24.** By deciding not to renew, the only statutory consequence would be that the local authority would need to direct Mr Gill to apply for a fresh licence within the next 6 months. This would provide Mr Gill and the Zoo with a fixed window of opportunity to implement meaningful and lasting change to the Zoo's systems of operation in order to meet the necessary standards required for a zoo to be licensed in England and Wales. The consequence of failing to respond adequately would be that the Zoo

would have to close to the public until a point when the Zoo was deemed fully compliance.

18. Options Available to Committee

- a) To not extend the licence and to direct a fresh application be made; impose appropriate conditions and direction orders to the licence (as to be determined by agenda 8)
- b) To extend the existing licence subject to appropriate conditions and direction orders (as to be determined by agenda 8)

(i) Legal Implications

The Zoo requires a licence to be able to open to the public and the Zoo Licencing Act 1981 (ZLA) makes the local authority responsible for administering the Licence. Anyone running a Zoo without a licence is guilty of an offence.

6 Renewal of licence.

- (1) Where application for the renewal of an existing licence is made to the local authority not later than six months before the end of the period of the licence or such shorter time as the local authority may in special circumstances allow the local authority may either—
 - (a) extend the period of the existing licence; or
 - (b) direct the applicant to apply for a fresh licence in accordance with section 2.
- (1A) Before extending the period of an existing licence under subsection (1)(a) the authority shall—
 - (a) make arrangements for an inspection to be carried out in accordance with section 9A (subject to subsection (2) of that section); and
 - (b) consider the report made to them pursuant to that inspection.]
- (2) Where application for a fresh licence is made by the holder of an existing licence, the existing licence shall, if the application is made before the end of the period of that licence or within six months after notice of a direction given to the applicant under subsection (1)(b), continue in force until the application is disposed of or withdrawn.
- (3) Any extension of the period of an existing licence under subsection (1)(a) shall be granted for a period of six years beginning with the end of the period of the existing licence; and the local authority shall take reasonable steps to secure that the holder of the licence is notified in writing of the extension.
- (4) The local authority shall give notice to the holder of any licence granted by that authority, not later than nine months before the end of the period of the licence, of the latest date on which application for renewal may be made under this section.

The Local Authority's power to alter a licence is contained within Section 16 of the same Act:

- (1) *At any time after the grant of a licence under this Act, it may be altered by the local authority if in their opinion it is necessary or desirable to do so for ensuring the proper conduct of the zoo during the period of the licence (whether their opinion arises from an inspectors' report or an alteration of standards specified under section 9 or otherwise).*
- (1A) *Subsection (1B) applies where—*
 - (a) *the authority have made a direction under section 16A(2) in respect of a zoo;*
 - (b) *the period specified in that direction by virtue of section 16A(2)(c), including such a direction as varied under section 16A(4), has expired; and*
 - (c) *the authority are satisfied that a condition specified in that direction which requires any conservation measure referred to in section 1A to be implemented at the zoo is not met in relation to*
 - (i) *if the zoo was specified under section 16A(2)(b)(i), any section of the zoo;*
 - (ii) *if a section of the zoo was specified under section 16A(2)(b)(ii), that section of the zoo or any smaller section of the zoo included in that section.*
- (1B) *The authority shall make such alterations to the licence as they consider to be necessary or desirable to ensure that the section of the zoo in relation to which they are satisfied that the condition is not met is closed permanently to the public.*
- (2) *Before exercising the power under subsection (1), the local authority shall give the holder of the licence an opportunity to make representations.*

The Local Authority powers to issue a direction order are contained in section 16A of the ZLA as follows:

- (1) *Subsection (2) applies where the local authority, after giving the licence holder an opportunity to be heard, are not satisfied that a condition attached to a licence granted by them under this Act is met in relation to the zoo or a section of it.*
- (2) *Unless subsection (3) applies, the authority shall make a direction specifying—*
 - (a) *the licence condition which they are not satisfied is met;*
 - (b) *whether they are not satisfied that that condition is met in relation to—*
 - (i) *the zoo; or*
 - (ii) *a section of the zoo, and if so, which section;*
- (c) *steps to be taken by the licence holder to ensure that that condition is met in relation to the zoo (or, if a section of the zoo is specified under paragraph (b)(ii), in relation to that section) within a period specified in*

- the direction, which may not exceed two years from the date of the direction; and*
- (d) *whether the zoo or a section of it is required to be closed to the public during that period or any part of it specified in the direction.*

There is a right of appeal under Section 18 to the Magistrate's Court if the holder of the licence wishes to challenge the decisions of the Committee.

(1) *A person aggrieved by*

- (a) *the refusal to grant a licence;*
(b) *any condition attached to a licence;*
(c) *any variation or cancellation of a condition;*
(d) *the refusal to approve the transfer of a licence;*
(e) *a direction under section 13(8)(c) or 16A(2) or any variation of such a direction;*
(f) *a zoo closure direction;*
(g) *the refusal to approve a plan prepared under section 16E(2);*
(h) *a direction under section 16E(6) or any variation of such a direction; or*
(i) *any arrangements under section 16E(7) or (8),*

may appeal to a magistrates' court acting for the petty sessions area in which the zoo is situated.

(ii) Risk Assessment

Not Applicable

(iii) Financial Implications

The Council may be subject to an appeal against the Committee's decision in the Magistrates' Court under Section 18 of the Zoo Licensing Act 1981.

(iv) Key Priorities or Corporate Aims

None identified

(v) Equality and Diversity

Not applicable

(vi) Other Human Rights

All licence holders have a right to a fair and public hearing

(vii) Health and Well-being Implications

The ZLA contains requirements to ensure the public who visit zoos can do so in a safely and to ensure that the wider public are not put at risk by the Zoo's operation.

Background Papers

Current Zoo Licence held by South Lakes Safari Zoo Limited.

Table of Decision from Licensing Regulatory Committee

- 23rd June 2014
- 1st July 2014.
- 13th August 2015.
- 15th October 2015.
- 17th December 2015.
- 22nd February 2016
- 10th March 2016
- 12th May 2016