

IN THE MATTER OF:-  
THE TICKETING OF THE  
APPLEBY-IN-WESTMORLAND HORSE FAIR

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ADVICE

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**Introduction**

- 1 I am asked by Westmorland & Furness Council to advise succinctly whether it is most apt to characterise the role of the Council and other public bodies as organisers or regulators of the Appleby-in-Westmorland Horse Fair, and the further question of whether it is practicable to ticket the event. I am expressly instructed not to consider the question of whether, under what powers, and to what extent the Council might lawfully charge for entry to the Fair to recover the cost of the services it provides or for any other purpose; the object of ticketing being solely to better regulate the event in the interests of public safety.

**Background**

- 2 The Appleby Horse Fair was first held in 1775 on land that is now known as Fair Hill in Appleby. The Fair was held by local landowners for the sale of livestock, and it became customary to hold it every second Tuesday in June<sup>1</sup>. During the nineteenth century the Fair evolved to trade exclusively in horses, whose buyers and sellers were mainly gypsies, travellers, and members of the Roma community. The timing and duration of the Fair also changed. By the nineteenth century dealers and their families customarily arrived in Appleby a week or so before the second Tuesday and generally left the town the following Sunday or Monday. The Fair proper now begins on the first Thursday of June, ending on the Sunday.<sup>2</sup>

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<sup>1</sup> Various web sites, including <https://www.visitcumbria.com>; <https://www.bbc.uk>; <http://en.wikipedia.org>; indicate the fair may have much earlier origins, and could be associated with (or might have been begun in opposition to) a fair established by Royal Charter in 1685

<sup>2</sup> <https://www.visiteden.co.uk>

- 3 In the early twentieth century Fair Hill was closed to fair goers. However, the Fair continued, with trading and camping taking place on roads and verges around the town. Fair Hill was eventually “re-opened” to fairgoers for camping in 1965.<sup>3</sup> Other landowners followed suit, renting their fields to campers and stall holders for the duration of the Fair.
- 4 Today the Fair is dispersed across several parcels of land in and around Appleby, including the River Eden and on the public highway. The land that is used is in multiple ownership. None is owned by the Council. So far as I am aware, no one claims they own a franchise to hold the Fair. Nor has anyone openly declared or assumed responsibility for organising and managing it. The event is essentially self-organising. It follows a customary pattern, which is facilitated by landowners and regulated by public bodies, who also provide a range of services to protect fairgoers.
- 5 The arrangements for the Fair are unusual. A fair is a species of market.<sup>4</sup> A market proper is a franchise which confers a right to hold a “concourse of buyers and sellers” to dispose of the commodities for which a franchise is given. Ordinarily, the right to hold a market or a fair is granted by royal charter or by statute (including a general right granted to local authorities<sup>5</sup>), although some may become established by prescription. Someone will own the franchise to a market or fair. Under the law of markets and fairs, “tolls” (a charge on goods brought into a fair), “stallage” (a sum akin to rent) and other charges (“profits”) may be levied. In certain circumstances, the owner of a fair may restrain competing fairs. The public also have certain rights. However, as I have noted, Appleby Horse Fair does not appear to be a franchise, and in law it is doubtful whether it is a market or fair at all. It is an “event”, albeit one which bears some of the hallmarks of a market or fair.

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<sup>3</sup> Appleby-in-Westmorland Town Council’s web site states it holds land extending to 31.13 acres at Fair Hill under a Deed of Conveyance dated 1911, by which it is to be preserved as an open space for the enjoyment of the public pursuant to the provisions of the Open Spaces Act 1906. The Town Council also state “The fields are rented out from the Wednesday before Appleby Horse Fair until the Thursday after the Fair ...” for what appears to amount to a full range of Fair-related activities. The web site does not reveal the identity of the tenant or licensee or the terms on which the land is rented.

<sup>4</sup> A “fair” is a grand market that is usually held once or twice a year.

<sup>5</sup> See Food Act 1984, s.50-s.61 and Animal Health Act 1981, s.54 and s.55

- 6      Whatever its precise legal standing, Appleby Horse Fair has established itself as a major cultural and social event for the Gypsy, traveller and Roma communities (“Gypsy and traveller community”). It is also widely enjoyed by the settled population. A typical fair attracts around 1500 caravans, and up to 20,000 visitors attend on the busiest day. Appleby is a small town of about 3500 people and offers a limited range of services. The pressures exerted by the Fair present obvious risks to law and order, the health and safety of participants and the public, animal welfare and the environment.
- 7      Public bodies have responded by forming the Appleby Fair “Multi-Agency Strategic Co-ordinating Group (“MASC”)”. MASC was established in 2008 as a partnership whose members include Westmorland & Furness Council, the Police, the Environment Agency, the RSPCA, and representatives of the Gypsy and traveller community. Its stated role is, inter alia, to ensure Appleby Fair may be operated safely. To that end, it plans and coordinates the delivery of public services before, during and after the event. Some services impose a regulatory framework on the Fair, such as caravan site and liquor licensing and planning control. Others, such as the Police, the RSPCA, highways and waste collection services maintain public order, the health and safety of people and animals, and protect the environment.
- 8      The Fair presents significant challenges to those charged with the safe running of the event. The Council believes these issues might be addressed by the introduction of ticketing. I am asked whether that would be practicable and lawful.

### **Characterising the Council’s involvement in the delivery of the Fair**

- 9      The Council does not actively promote, market or organise the Fair. Nor does it control the land that is used by the Fair, or expressly or impliedly invite people to visit or participate in it.<sup>6</sup> Instead, under the current arrangements, the role of the Council and other public bodies, such as the Police and the RSPCA, is limited to regulating the event in the interests of public safety and to protect animal welfare.

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<sup>6</sup> With the result that the Council does not owe a duty of care to visitors or trespassers under the Occupier’s Liability Acts of 1957 and 1984

**Does the Council have the power to ticket fairgoers (or anyone else concerned with the Fair)?**

- 10 The purpose of ticketing is to help regulate access to land and buildings by providing a means by which a visitor may evidence they have been granted permission to enter on and remain on the premises.
- 11 A licence is a permission to enter onto land.<sup>7</sup> A “contractual licence” is granted when, for example, a person (the “licensee”) buys a ticket from a seller (“the licensor”) to enter onto land to attend an event, although the notice of a licence (albeit non-contractual) is equally apt to describe the arrangement whereby a person merely gives permission to another to enter onto land. Thus, a ticket may only be issued by a person with a sufficient right in the land on which an event is held. A licensor need not hold a freehold or leasehold interest in the land, but if they do not, they too will require the owner’s permission (licence) to hold and restrict entry to an event on the land. That poses a fundamental problem in this case.
- 12 As I understand the facts, the Council does not own any of the land that is used by the Fair (albeit it controls the highway that is used for the “Flashing Lane” [carriage driving] event). Therefore, the introduction of ticketing would require landowners to authorise the Council to control access to their land. They might agree to do so. However, that would necessitate the grant of multiple leases or licences. The Council would be required to pay rent or a licence fee. Landowners might also be expected to lease or licence the Council’s use of land on terms calculated to transfer cost and liability for risk onto the authority.
- 13 Moreover, the dispersed character of the fair and the many opportunities that affords to gain unauthorised access to it would make it difficult to implement ticketing. Gypsies might also be expected to resist controls placed on access to an event that they regard (rightly or wrongly) as a customary right.

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<sup>7</sup> Which is usually taken to include buildings

- 14 Thus, a decision to introduce ticketing would raise significant legal and practical issues that would be difficult to resolve, whether to promote, better regulate or control the event, or for any other purpose.
- 15 Were the Council to ticket the fair it would also assume control over the land and thus liability for visitors and trespassers under the 1957 and 1984 Acts. That is a further reason why ticketing would be ill-advised.

### **Conclusion**

- 15 I advise as follows:-
- (1) The Council's role is limited to regulating the Fair to protect public safety and the welfare of animals.
  - (2) Ticketing would be difficult to implement because of the dispersed character of the Fair and its extensive perimeter, which would make it difficult to control access to it.
  - (3) Ticketing would also be liable to vest control of the land in the Council and thus transfer risk for the safety of visitors onto the authority.
- 16 I have sought to answer the questions posed in my instructions directly and concisely. If, as a result, any matter requires further explanation or elaboration, or if I may be of further assistance, please do not hesitate to contact me.

TIMOTHY LEADER

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Dated Friday 18<sup>th</sup> April 2025

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ADVICE

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