

**South Lakeland District Council**  
**Licensing Sub-Committee**  
**Friday, 12 June 2020**  
**Licensing Act 2003 - Application for the grant of a**  
**premises licence**

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**Portfolio:** Cllr Robin Ashcroft - Economy, Culture and Leisure Portfolio Holder  
**Report from:** Simon Rowley – Director of Customer and Commercial Services  
**Report Author:** Patrick Cantley – Specialist (Licensing)  
**Wards:** Ambleside & Grasmere;  
**Forward Plan:** Not applicable

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**1.0 Expected Outcome**

1.1 The purpose of this report is to enable members to determine whether or not to grant the application for a premises licence in respect of The Giggling Goose, North Road, Ambleside having taken in to account two relevant representations submitted by interested parties.

**2.0 Recommendation**

**2.1 Members are requested to consider the representations that have been made, and determine whether or not to grant the application for a premises licence, with or without conditions.**

2.2 Subsection 1.17 of guidance issued under section 182 of the Licensing Act 2003 states” *each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case*”.

**3.0 Background and Proposals**

3.1 On 9<sup>th</sup> March 2020 an application for the grant of a premises licence, under the Licensing Act 2003, for The Giggling Goose, North Road, Ambleside was received from Mike Nickson of Inn Confidence, the agent of the applicant, on behalf of the applicant, Mr Philip Henderson. The premises is situated in close proximity to Ambleside Town Centre and shown for identification purposes only on a plan at **Appendix C**. The application (**Appendix A**) seeks authorisation for the following – Supply of alcohol (on and off the premises) Monday to Sunday from 11.00 hours to 23.00 hours and on New Year’s Eve from 11.00 hours to 01.00 hours on New Year’s

Day. Live Music, Recorded Music & Late Night Refreshment (Indoors) on New Year's Eve from 23.00 hours to 01.00 hours on New Year's Day. A number of conditions have also been offered by the applicant to support them in promoting the four licensing objectives and are included in Appendix D.

#### **4.0 Consultation**

- 4.1 A copy of the application has been served on all responsible authorities. None of the responsible authorities have submitted a relevant representation.
- 4.2 The applicant advertised the application in a local newspaper within the first 10 working days of consultation as required by legislation. They also displayed a 'blue notice' at the premises from the first day of the consultation period.
- 4.3 There are two representations to consider in respect of this application and they have been brought to the attention of the applicant. The representations are concerned that the possible effect of granting the licence would undermine the licensing objectives of 'Public safety', 'Prevention of crime and disorder' and 'Prevention of public nuisance'. Copies of the representations can be found at Appendix 'B' of this report.
- 4.4 Members may wish to refer to the legal information within this report as well as the additional measures and revised premises plan outlined within an email at Appendix 'D' of this report.

#### **5.0 Alternative Options**

- 5.1 The Licensing Sub-Committee may
- Grant the licence as requested
  - Refuse to grant the licence or;
  - Grant the licence with modified conditions.

#### **6.0 Links to Council Priorities**

- 6.1 Working together to make South Lakeland the best place to live, work and explore.

#### **7.0 Implications**

##### **Financial, Resources and Procurement**

- 7.1 There are no financial implications.

##### **Human Resources**

- 7.2 There are no issues in this respect.

##### **Legal**

- 7.3 Licensing Act 2003 section 18(3) states that where relevant representations are made, the Licensing Authority must –

*(a) Hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and*

*(b) Having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.*

The relevant steps in subsection 4 are:

- (a) to grant the licence;

- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application.

and for the purpose of subsection (4)(a)(i) the conditions of the licence mentioned in subsection 2(a) are modified if any of them is altered or omitted or any new condition is added.

- 7.3.1 Members' attention is drawn to the following sections of the Section 182 Guidance to the Licensing Act 2003, which states:

***“2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).***

***2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.***

***2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.***

***2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.***

***2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they***

wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

**8.35** Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale and any conditions that relate to off-sales would apply.

**8.36** In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).

**8.37** If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed application form requires the applicant to provide a description of where the place is and its proximity to the premises.

**9.42** Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

**9.43** The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

**10.8** The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.

**16.36** Any existing licence conditions (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

**16.37** *Whether a licence condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of regulated entertainment all doors and windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.*

**16.38** *More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.*

**16.39** *Chapter 9 of this Guidance sets out how a licensing authority must determine applications for a new licence or to vary an existing premises licence. Licence conditions imposed, in accordance with paragraphs 9.41 to 9.43, for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and/or the activities are taking place between 23.00 and 08.00.*

**16.40** *These conditions will, in effect, be suspended between 08.00 and 23.00 if a performance of live music or the playing of recorded music takes place before an audience of 500 people or fewer, but will remain on the face of the licence for when these activities may take place under other circumstances.*

**16.42** *Beer gardens are often included as part of a premises licence or club premises certificate. Live amplified music that takes place in a beer garden is exempt from licensing requirements, provided the beer garden is included in the licence or certificate applying to the relevant licensed premises, and the performance takes place between 08.00 and 23.00 on the same day before an audience of 500 people or fewer.*

**16.43** *Where a beer garden does not form part of the relevant licensed premises and so is not included in plans attached to a premises licence or club premises certificate, it is nevertheless very likely that it will be a workplace<sup>67</sup>. Paragraph 12B of Schedule 1 to the 2003 Act says that a performance of live music in a workplace that does not have a licence (except to provide late night refreshment) is not regulated entertainment if it takes place between 08.00 and 23.00 on the same day in front of an audience of no more than 500 people. Note that the exemption in paragraph 12B does not apply to the playing of recorded music.”*

**16.52** *If appropriate for the promotion of the licensing objectives, and if there is a link to remaining licensable activities, conditions that relate to non-licensable activities can be added to or altered on that premises licence or club premises certificate at review following problems occurring at the premises. This has been a feature of licence conditions since the 2003 Act came into force. A relevant example could be the use of conditions relating to large screen broadcasts of certain sporting events which, combined with alcohol consumption, could create a genuine risk to the promotion of the licensing objectives. It is also not uncommon for licence conditions relating to the sale of alcohol to restrict access to outside areas, such as unlicensed beer gardens, after a certain time.”*

## **Health, Social, Economic and Environmental**

7.4 Have you completed a Health, Social, Economic and Environmental Impact Assessment?

No

7.5 If you have not completed an Impact Assessment, please explain your reasons:  
No assessment has been completed as the hearing is in line with legislative guidance, the impact of which has deemed as having a neutral impact.

7.6 Summary of health, social, economic and environmental impacts:  
N/A

### Equality and Diversity

7.7 Have you completed an Equality Impact Analysis?  
No

7.8 If you have not completed an Impact Assessment, please explain your reasons:  
No assessment has been completed as the hearing is in line with legislative guidance, the impact of which has deemed as having a neutral impact.

7.9 Summary of equality and diversity impacts:

### Risk

Risk	Consequence	Controls required
Should members be minded not to grant this application, their decisions may be overturned on appeal to the Magistrates Court.	Costs awarded against the Council should the appeal be upheld.	Members made aware that the applicant has a right of appeal.

### Contact Officers

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### Appendices Attached to this Report

(delete if no appendices attached)

Appendix No.	Name of Appendix
A	Completed Application
B	Relevant representation from interested party
C	Map overview of Ambleside town centre
D	Additional measures and revised plan

### Background Documents Available

Name of Background document	Where it is available
Licensing Act 2003	<a href="https://www.legislation.gov.uk/ukpga/2003/17/contents">https://www.legislation.gov.uk/ukpga/2003/17/contents</a>
Revised Guidance issued under section 182 of the Licensing Act 2003	<a href="https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003">https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003</a>
SLDC Statement of Licensing Policy	<a href="https://www.southlakeland.gov.uk/media/5689/sldc-statement-of-licensing-policy.pdf">https://www.southlakeland.gov.uk/media/5689/sldc-statement-of-licensing-policy.pdf</a>

### Tracking Information

Signed off by	Date sent	Date Signed off
Legal Services	13.05.2020	21.05.2020

<b>Signed off by</b>	<b>Date sent</b>	<b>Date Signed off</b>
Section 151 Officer	13.05.2020	20.05.2020
Monitoring Officer	13.05.2020	20.05.2020
CMT	13.05.2020	19.05.2020

<b>Circulated to</b>	<b>Date sent</b>
Lead Specialist	N/A
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	N/A
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A