

South Lakeland District Council
Licensing Sub-Committee
Monday, 11th January 2021
**Licensing Act 2003 - Application for the grant of a
premises licence**

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: Bowness and Levens;
Forward Plan: Not applicable

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 Hideout Boutique House, Quarry Brow, Bowness on Windermere having taken in to account three 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*”.

2.3 Members attention is drawn to section 7 of the Statement of licensing policy. This section relates to factors that should be taken in to account when determining applications of this type. The Policy is listed as a background document at the conclusion of this report.

3.0 Background and Proposals

3.1 On 18th November 2020 an application for the grant of a premises licence, under the Licensing Act 2003, for The Hideout Boutique House, Quarry Brow, Bowness on Windermere was received from Naphens Solicitors, the agent instructed to act on behalf of the applicant, The Cranleigh Boutique Limited. The application is seeking

authorisation for the Supply of alcohol (on and off the premises) Monday to Sunday from 00.00 hours to 23.59 hours. No other licensable activities are sought by the application.

3.2 The opening hours specified by the application mirror the timings sought for the supply of alcohol.

3.3 A number of conditions have also been offered by the applicant to support them in promoting the four licensing objectives. The application can be viewed at Appendix 'A' and further information relating to it is contained within the legal section of this report.

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 three 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 '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.

5.0 Alternative Options

5.1 The options available to the Licensing Sub-Committee includes –

- Grant the licence as requested;
- Grant the licence with modified conditions;
- Exclude from the scope of the licence any of the licensable activities applied for;
- Refuse to specify the person in the licence as the designated premises supervisor;
- Reject the application.

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 subject to -

- (i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers [appropriate]² for the promotion of the licensing objectives, and*
- (ii) any condition which must under section 19, 20 or 21 be included in 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.

Subsection (5 -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 Alternative options are outlined within section 5 of this document.

7.3.2 Paragraph 3.1 of this report outlines that the only licensable activity sought by the application is Supply of alcohol (on and off the premises) Monday to Sunday from 00.00 hours to 23.59 hours. As part of the decision making process Members should take in to consideration that the alcohol held at the premises is intended to only be available for consumption by guests staying at the accommodation and not the general public.

7.3.3 In considering the information at paragraph 7.3.2 of this report Members attention is drawn to Section 190 of the Licensing Act 2003.

(1) This section applies where the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract.

(2) For the purposes of this Act the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.

7.3.4 Members attention is drawn to Schedule 5 Paragraph 1 of the Licensing Act 2003.

Where a licensing authority—

(a) rejects an application for a premises licence under section 18,

(b) rejects (in whole or in part) an application to vary a premises licence under section 35,

(c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or

(d) rejects an application to transfer a premises licence under section 44,

the applicant may appeal against the decision.

7.3.5 Members attention is also drawn to Schedule 5 Paragraph 2 of the Licensing Act 2003.

1) This paragraph applies where a licensing authority grants a premises licence under section 18.

2) The holder of the licence may appeal against any decision—

(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

4) In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).

7.3.6 Members attention is also drawn to Schedule 5 Paragraph 9 of the Licensing Act 2003.

1) An appeal under this Part must be made to [a magistrates' court].

2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the [designated officer] for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

3) On an appeal under paragraph 2(3), 3(2)(b), 4(3), 5(2), 6(2) or 8(2)(a) or (c), the holder of the premises licence is to be the respondent in addition to the licensing authority.

4) On an appeal under paragraph 7(3) [F3or (3A)], the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.

7.3.7 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.*

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.*

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 decision may be overturned on appeal to the Magistrates Court. | Costs awarded against the Council should the appeal be upheld. | The Sub-Committee to be made aware of the right of appeal on the part of the applicant. |
| Should members be minded to grant this application and in doing so impose conditions or take any step mentioned in section 18 (4) their decision may be overturned on appeal to the Magistrates Court. | Costs awarded against the Council should the appeal be upheld. | The Sub-Committee to be made aware of the right of appeal on the part of the applicant. |
| Should members be minded to grant this application their decision can be contested and overturned on appeal to the Magistrates Court. | Costs awarded against the Council should the appeal be upheld. | The Sub-Committee to be made aware of the right of appeal on the part of those that submitted a relevant representation |

Contact Officers

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Appendices Attached to this Report

(delete if no appendices attached)

| Appendix No. | Name of Appendix |
|--------------|--|
| A | Appendix A - Redacted copy of the application |
| B | Appendix B - Relevant representations_redacted |

Background Documents Available

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

Tracking Information

| Signed off by | Date sent | Date Signed off |
|---------------------|-----------|-----------------|
| Legal Services | 21/12/20 | 22/12/2020 |
| Section 151 Officer | 21/12/20 | 21/12/2020 |
| Monitoring Officer | 21/12/20 | 21/12/2020 |
| CMT | 21/12/20 | |

| Circulated to | Date sent |
|---------------------------------|-----------|
| 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 |