

South Lakeland District Council

Licensing Sub-Committee

Monday, 11 January 2021

Licensing Act 2003 – review of premises licence PL(A)0597 – New Inn, 98 Highgate, Kendal

Portfolio: Economy, Culture and Leisure Portfolio Holder
Report from: Director of Customer and Commercial Services
Report Author: Sean Hall – Principal Specialist (Health & Environment)
Wards: Kendal Town;
Forward Plan: Not applicable

1.0 Expected Outcome

1.1 Cumbria Constabulary have applied to review the premises licence of the New Inn, 98 Highgate, Kendal. The application relates to the licensing objectives Prevention of crime and disorder and Public safety

2.0 Recommendation

2.1 **Members must consider the review application submitted by Cumbria Constabulary, on the 12th November 2020, as well as any relevant representations that were received during the statutory consultation period. Section 52 (3) of the Licensing Act 2003 requires that the authority must, having regard to the application and any relevant representations, take such of the steps mentioned subsection (4) (if any) as it consider appropriate for the promotion of the licensing objectives. The steps are –**

- a) to modify the conditions of the licence;
- b) to exclude a licensable activity from the scope of the licence;
- c) to remove the designated premises supervisor;
- d) to suspend the licence for a period not exceeding three months;
- e) to revoke the licence.

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

2.2 Subsection 11.17 of guidance issued under section 182 of the Licensing Act 2003 (the guidance) states as follows –

“The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder”.

2.3 Paragraph 11.18 of the same guidance goes on to state –

“However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker”.

2.4 Paragraph 11.20 of the guidance also states –

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review

3.0 Background and Proposals

3.1 The New Inn provides licensable activity under premises licence PL(A)0597. The holder of the premises licence and designated premises supervisor is Mr Peter Colin Nicholson. This information was correct as at 9th July 2020 and since this date no applications have been made to change to personal details on the licence.

3.2 The current premises licence authorises the following activities:

1) To provide indoor sporting events between the following hours –

Monday to Sunday between 09:00 hours and 00:00 hours

2) To provide live music indoors** between the following hours –

Wednesday to Friday between 19:30 hours and 23:30 hours

3) To provide recorded music indoors** between the following hours –

Monday to Sunday between 09:00 hours and 23.30 hours.

4) To provide activities classed as anything of a similar description to that falling within e, f or g –

Monday to Sunday between 09:00 hours and 23.30 hours.

5) The sale of alcohol for consumption on and off the premises –

Monday to Sunday between 09:00 hours and 00:00 hours and from 09:00 of New Years' Eve until 00:00 hours of New Years' Day.

6) The listed opening hours on this licence are –

Monday to Sunday between 09:00 hours and 00:30 hours of the following day. Appendix A of this report will show the current premises licence for the New Inn. The conditions attached to the licence can be found in Annexes 1, 2 and 3 of the

premises licence. ****Please note that the effect of deregulation does apply to live and recorded music in respect of this premises. The effect is that no licence is required for live and recorded music where it takes place on premises which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises.**

3.3 Subsections 11.1 and 11.2 of the guidance states:-

'11.1 the proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.'

3.4 Under Section 51 (1) of the Licensing Act 2003, a responsible authority or interested party may apply to the licensing authority for the review of a licence. The grounds for review must relate to one or more of the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

3.5 On 12th November 2020 Cumbria Constabulary submitted an application for the review of a premises licence under section 51 of the Licensing Act 2003 in relation to the New Inn 98 Highgate, Kendal. Cumbria Constabulary states that the grounds for the review is based on belief that the licence holder will fail to meet the licensing objectives of 'The prevention of crime and disorder' & 'Public Safety'. A copy of the application can be viewed at Appendix B.

3.6 Paragraph 2.1 of the guidance -

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).

3.7 Paragraph 11.19 of the guidance states:

"Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps –

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence."*

3.9 Paragraphs 11.24 to 11.28 of the guidance cover the review process in further depth:-

“11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority’s role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

4.0 Consultation

- 4.1 Copies of the application to review the licence were served on the applicant, the Licensing Authority, and all other responsible authorities as per requirements of the relevant legislation. A copy of the application and supporting information is attached to this report at Appendix B.
- 4.2 The Licensing Authority ensured that the notice of review was placed on the Council web site and displayed prominently on the premises concerned for a period of 28 days during which representations may be made. Members please be aware that the prescribed notice was put on display at the premises on the afternoon of 12

November 2020. However, by the morning of 19th November 2020 the notice had been removed. A further notice was attached to the premises later that day and subsequently removed by an unknown person(s) on or around the 24/25th November 2020. During the consultation period, the notice was removed by unknown person(s) and replaced by the Licensing Authority on 9 occasions.

- 4.3 Representations relating to this application have been submitted by the Environmental Protection department and the Licensing Authority at South Lakeland District Council. The representation submitted by Environmental Protection relates to the licensing objective 'The prevention of public nuisance'. The representation submitted by the Licensing Authority relates to the licensing objectives 'The prevention of crime and disorder', 'The prevention of public nuisance' and 'Public safety'. Copies of the representations can be found at Appendix C and D of this report. Appendix E documents email communications received by The Licensing Authority during the consultation period.
- 4.4 A further representation has been received by the Premises License holder and Designated Premises Supervisor which is included at Appendix F.
- 4.5 In accordance with Section 100B(2) of the Local Government Act 1972, copies of Appendix B, C, D, E and F of this report are excluded from inspection by members of the public as the report contains information as described in Schedule 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006, as follows:-

- *Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime (Paragraph 7)*

5.0 Alternative Options

- 5.1 The Licensing Sub-Committee may
- modify the conditions of the licence
 - exclude a licensable activity from the scope of the licence
 - remove the designated premises supervisor
 - suspend the licence for a period not exceeding three months
 - revoke the licence
 - take no action
- 5.2 Further options in relation to decision making are outlined at 2.2, 2.3 and 2.4 of this Document.

6.0 Links to Council Priorities

- 6.1 The review of a premises licence is a mandatory function undertaken by South Lakeland District Council in its capacity as Licensing Authority for the district of South Lakeland.

7.0 Implications

Financial, Resources and Procurement

- 7.1 There are no direct financial implications in making this decision. If Members use their powers under section 52 (3) or (4) they should be aware that there is a right of appeal against the decision and costs may be awarded against the Council should the appeal be upheld.

Human Resources

7.2 There are no human resource implications

Legal

7.3 In accordance with Section 52 (3) and (4) of the Licensing Act 2003

The authority must, having regard to the application and any representations made, take such of the steps mentioned below (if any) as it considers necessary for the promotion of the licensing objectives:

The steps are -

- a) To modify the conditions of the licence;
- b) To exclude a licensable activity from the scope of the licence;
- c) To remove the designated premises supervisor;
- d) To suspend the licence for a period not exceeding three months;
- e) To revoke the licence

and for this purpose the conditions of the licence are modified if any of them are 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 Members attention is drawn to section 8 of the current Statement of licensing policy. This section relates to factors that should be taken in to account when determining a review.

7.3.3 Members attention is drawn to section 52(11) of the Licensing Act 2003. This subsection makes it clear that a determination under section 52 does not have effect –

- a) *until the end of the period given for appealing against the decision, or*
- b) *if the decision is appealed against, until the appeal is disposed of.*

7.3.4 Members attention is also drawn to Schedule 5 Part 8 of the Licensing Act 2003.

1) This paragraph applies where an application for a review of a premises licence is decided under section 52.

2) An appeal may be made against that decision by—

- a) *the applicant for the review,*
- b) *the holder of the premises licence, or*
- c) *any other person who made relevant representations in relation to the application.*

3) In sub-paragraph (2) “relevant representations” has the meaning given in section 52(7).

7.3.5 Members attention is also drawn to Schedule 5 Part 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) [E3 or (3A)], the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.

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.

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.

Risk

Risk	Consequence	Controls required
If Members use their powers under section 52 (3) or (4) they should be minded that there is a right of appeal against the decision.	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 for the review, the holder of the premises licence and the individuals and bodies who made relevant representations in relation to the application.

Contact Officers

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Appendices Attached to this Report

Please note: In accordance with Section 100B(2) of the Local Government Act 1972, copies of Appendix B, C, D, E and F of this report are excluded from inspection by members of the public as the report contains information as described in Schedule 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006, as follows:-

- *Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. (Paragraph 7)*

Appendix No.	Name of Appendix
A	Copy of premises licence
B	Part II - Copy of review application
C	Part II - Representation by Environmental Protection (SLDC)
D	Part II - Representation by Licensing (SLDC)
E	Part II - Copy of email communications between recorded by The Licensing Authority during the consultation period.
F	Part II - Submission by Premises License holder and Designated Premises Supervisor

Background Documents Available

Name of Background document	Where it is available
Licensing Act 2003	https://www.legislation.gov.uk/ukpga/2003/17/contents
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	22/12/2020	23/12/2020
Section 151 Officer	22/12/2020	22/12/2020
Monitoring Officer	22/12/2020	22/12/2020
CMT		

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