

# South Lakeland District Council

## Licensing Sub-Committee

Friday, 9 April 2021

### Licensing Act 2003 - Application for the grant of a variation to an existing premises licence

---

<b>Portfolio:</b>	Economy, Culture and Leisure Portfolio Holder
<b>Report from:</b>	Director of Customer and Commercial Services
<b>Report Author:</b>	Sean Hall – Principal Specialist (Health & Environment)
<b>Wards:</b>	Bowness & Levens;
<b>Forward Plan:</b>	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 to vary an existing premises licence made by Lake District Leisure Pursuits in respect of Fallbarrow Holiday Park, Rayrigg Road, Bowness on Windermere, having taken in to account 14 representations submitted by interested parties.

#### 2.0 Recommendation

2.1 It is recommended that the sub-committee:-

(1) **Consider the representations that have been made, and determine whether or not to grant the application to vary the existing 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 11<sup>th</sup> February 2021 an application for the grant of a variation to an existing premises licence, under terms of section 34 of the Licensing Act 2003, for Fallbarrow Holiday Park, Rayrigg Road, Bowness on Windermere, (PL (A) 0795), was received from Poppleston Allen Solicitors, the agent instructed to act on behalf of the applicant, Lake District Leisure Pursuits Ltd. A copy of the existing premises license is attached at appendix 1.
- 3.2 The application, which is attached at appendix 2, is seeking to vary the existing premises license:

#### **Hours of Trading**

To extend the sale of alcohol and regulated entertainment indoors Monday to Saturday 0800 to 0200 the following morning, Sunday 0800 to 0100 the following morning; sale of alcohol within the deli and shop on Sunday 0800 to 2300 in line with all other days; to add plays indoors Monday to Saturday 0800 to 0200 the following morning, Sunday 0800 to 0100 the following morning and outdoors Monday to Sunday 1130 to 2300; to extend films, live music, recorded music, performance of dance and entertainment of a like kind Monday to Sunday 1130 to 2300 outdoors, to extend opening hours in the venue Monday to Saturday 0800 to 0230 the following morning, Sunday 0800 to 0130 the following morning; within the deli and shop Monday to Sunday 0700 to 2300; extend all activities and opening hours from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day; to add an additional hour to the standard and non-standard timings on the day when British Summertime commences.

#### **Alteration of Licensable area**

The application also seeks to approve alterations at the premises as shown on the layout plans which are attached to this report at appendix 3.

#### **Removal of Obsolete and Outdated conditions**

The application also seeks to remove obsolete and outdated conditions to be replaced with more appropriate conditions.

All other licensable activities, hours, and conditions to remain as existing.

### **4.0 Consultation**

- 4.1 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 for a 28 day period.
- 4.2 A copy of the application has been served on all responsible authorities. None of the responsible authorities have submitted a relevant representation.
- 4.2.1 SLDC Environmental Protection Specialist has reported that there have been no incidents of noise nuisance reported to the Council from this site. They did however raise concern on receipt of the application to vary the existing premises license, with both the applicant's agent and Licensing Authority, about the control of noise from outdoor amplified music. The Environmental Protection Specialist has suggested that a more robust operating condition be offered by the applicant to demonstrate that outdoor music will be carefully managed. The applicant has agreed to both work with The Environmental Protection Team to ensure any noise from the site is carefully managed, and to offer a more robust condition whereby a noise management plan for the site would be agreed with SLDC Environmental Protection Team.

#### 4.2.2 The suggested operating condition is as follows:

'The premises licence holder will supply a Noise Management Plan (NMP) to the Licensing Authority, to be approved by the Health & Environment Specialist, prior to the variation taking effect. The approved NMP shall be adhered to during all regulated entertainment.'

The Environmental Protection Specialist advised the applicant's agent that "...the wording or similar, would go a long way towards demonstrating the premises' actions in respect of the prevention of public nuisance and in doing so will provide evidence to regulators and as a means of protection/defence for the premises operators in the event of a future noise complaint".

If the condition is accepted then the Environmental Protection Specialist would have no further input in this matter. If it is not accepted, then he would have no option but to object to grant of the licence.

Currently, the Environmental Protection Specialist is awaiting confirmation from the applicant's agent whether or not their client will accept the condition.

#### 4.3 There are 14 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 public nuisance' and 'Prevention of Crime and Disorder'.

##### 4.3.1 In total, all 14 representations either mention 'The Prevention of Public Nuisance' or an increase in noise emissions from the site as the reason for making the representation. A total of 4 representations also refer to either the 'Prevention of Crime and Disorder' or an increase in antisocial or drunken behaviour as the reason for making the representation. All persons who have made a representation will be invited to speak at the hearing. Copies of the representations can be found at appendix 4 of this report.

## 5.0 Alternative Options

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

- Grant the application to vary the existing premises licence as requested;
- Grant the application to vary the existing premises licence with modified conditions;
- Reject the application (whole or part).

## 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 human resource implications

## Legal

7.3 The Licensing Act 2003 section 35 states:

### *Determination of application under section 34*

- (1) *This section applies where the relevant licensing authority—*
  - (a) *receives an application, made in accordance with section 34, to vary a premises licence, and*
  - (b) *is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.*
- (2) *Subject to subsection (3) and section 36(6), the authority must grant the application.*
- (3) *Where relevant representations are made, the 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 [F1appropriate] for the promotion of the licensing objectives.*
- (4) *The steps are—*
  - (a) *to modify the conditions of the licence;*
  - (b) *to reject the whole or part of the application;*

*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.*
- (5) *In this section “relevant representations” means representations which—*
  - (a) *are about the likely effect of the grant of the application on the promotion of the licensing objectives, and*
  - (b) *meet the requirements of subsection (6).*
- (6) *The requirements are—*
  - (a) *that the representations are made by [F2a responsible authority or other person] within the period prescribed under section 17(5)(c) by virtue of section 34(5),*
  - (b) *that they have not been withdrawn, and*
  - (c) *in the case of representations made by [F3a person who is not a responsible authority] , that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.*
- (7) *Subsections (2) and (3) are subject to sections [F419 to 21](which require certain conditions to be included in premises licences).*

7.3.1 Alternative options are outlined within section 5 of this document.

7.3.2 Paragraph 3.1 of this report outlines changes to the hours of operation, the premises layout, and the removal of obsolete and outdated conditions.

7.3.3 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.*

7.3.4 Members attention is also drawn to Schedule 5 Paragraph 4 of the Licensing Act 2003.

*(1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.*

*(2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.*

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

*(a) that any variation made ought not to have been made, or*

*(b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section,*

*he may appeal against the decision.*

*(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 35(5).*

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:

*2.15 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.*

7.3.8 Members attention is drawn to the Council's statement of licensing policy at paragraph 8.31 which states:

*The Licensing Authority recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to each individual premises, to avoid the imposition of disproportionate and other burdensome conditions on those premises. Standard conditions, other than mandatory conditions, will, therefore, be avoided and no condition will be imposed that cannot be shown to be necessary for promotion of the licensing objective.*

### **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:

NA

### **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:

NA

### **Risk**

<b>Risk</b>	<b>Consequence</b>	<b>Controls required</b>
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**

Sean Hall Principal Specialist (Health & Environment)

[s.hall@southlakeland.gov.uk](mailto:s.hall@southlakeland.gov.uk)

Tel 01539 793411

## Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Premises License PL (A) 0795 Fallbarrow Caravan Park, Rayrigg Road, Bowness on Windermere
2	Application to vary the premises license PL (A) 0795 Fallbarrow Caravan Park, Rayrigg Road, Bowness on Windermere. Submitted 11/2/21
3	Proposed layout plans attached to application to vary the premises license PL (A) 0795 Fallbarrow Caravan Park, Rayrigg Road, Bowness on Windermere. Submitted 11/2/21
4	Representations received – redacted

## Background Documents Available

Name of Background document	Where it is available
Licensing Act 2003	<a href="https://www.legislation.gov.uk/ukpga/2003/17/content_s">https://www.legislation.gov.uk/ukpga/2003/17/content_s</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 (2016 – 2021. Extended to 5 <sup>th</sup> January 2022)	<a href="https://www.southlakeland.gov.uk/">https://www.southlakeland.gov.uk/</a>

## Tracking Information

Signed off by	Date sent	Date Signed off
Legal Services	29/03/21	29/03/21
Section 151 Officer	29/03/21	NA
Monitoring Officer	29/03/21	30/03/2021
CMT	NA	NA

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