

South Lakeland District Council
Licensing Sub-Committee
Tuesday, 31 August 2021 at 10.00 a.m.
Application for the Grant of a Premises Licence
KD's Café 60 Quarry Rig, Bowness on Windermere

Portfolio: Economy, Culture and Leisure Portfolio Holder
Report from: Director of Customer and Commercial Services
Report Author: Julie Richings – (Licensing Specialist)
Wards: Bowness & Levens;
Forward Plan: Not applicable

1.0 Expected Outcome and Measures of Success

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 KD's Café 60 Quarry Rig, Bowness on Windermere having taken into account the 9 relevant representations submitted by interested parties.

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

3.0 Background and Proposals

3.1 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".

3.2 On the 6 July 2021 an application for the grant of a premises licence, under the Licensing Act 2003, on behalf of KD's Café 60 Quarry Rig, Bowness on Windermere was received from David and Michelle Rodgers. The application (**Appendix 1**) seeks authorisation for the sale of alcohol (for consumption on the premises)

Monday to Thursday 11.00 to 23.00.
Friday and Saturday 11.00 to 00.00
Sunday 11.00 to 22.00

3.3 The opening hours are

Monday to Thursday 08.30 to 23.00
Friday and Saturday 08.30 to 00.00
Sunday 08.30 to 22.00

3.4 On 14 July 2021, Mr Rodgers sent an email to Licensing reducing his proposed hours of for the sale of alcohol to Monday to Sunday 11.00 to 20.00, and his opening hours to Monday to Sunday from 08.30 to 20.00. (**Appendix 2**)

4.0 Consultation

4.1 A copy of the application has been served on all responsible authorities, and no representations have been received.

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 12 representations were submitted from interested parties, and they have been brought to the attention of the applicant. Following further consultation in relation to the reduction of operating hours, 3 representations were withdrawn leaving 9 representation remaining. The representations concerned that the possible effect of granting the licence would undermine the licensing objective of 'Prevention of public nuisance'. A copy of the representations are contained within (**Appendix 3**) of this report.

5.0 Alternative Options

5.1 The Licensing Sub-Committee may

- Grant the premises licence
- Refuse to grant the premises licence, or;
- Grant the premises 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 in relation to a premises licence application, 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 appropriate for the promotion of the licensing objectives.

(4) The steps 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 for the promotion of the licensing objectives, and

(ii) any conditions 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 on the licence as the premises supervisor.

(d) to reject the application

The conditions in subsection (2)(a) are:

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

The conditions under Section 19 are relevant to the mandatory conditions which must be included in the licence, including the condition that no supply of alcohol made be made under the premise licence when there is no designated premises supervisor or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Condition 20 is in relation to the exhibition of films and is not relevant as the applicant does not seek to exhibit films.

Condition 21 is a mandatory condition in relation to door supervisors and again is not relevant to this application as there is no reference to door supervisors in the application or put forward as a possible condition by a responsible authority or interested party.

7.4 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.*
- 2.18 *As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.*
- 2.19 *Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.*
- 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 anti-social 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.*

Health and Sustainability Impact Assessment

- 7.4 Have you completed a Health and Sustainability Impact Assessment? No
- 7.5 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 and Sustainability 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 Analysis, 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 Management	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 to be made aware that the applicant has a right of appeal.

Contact Officers

Julie Richings, Licensing Specialist (Health & Environment) 01539 793140
julie.richings@southlakeland.gov.uk

Sean Hall, Principal Specialist (Health & Environment) 01539 793411
s.hall@southlakeland.gov.uk

8.0 Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Application for the grant of a premises licence
2	Email reducing hours of operation
3	Copy of 9 representations received (NB originally 12 – 3 withdrawn)

Background Documents Available

Name of Background document	Where it is available
Licensing Act 2003	https://www.legislation.gov.uk/ukpga/2003/17/contents

Name of Background document	Where it is available
<i>Section 182 guidance issued under Licensing Act 2003</i>	https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003
<i>SLDC Statement of Licensing Policy</i>	https://www.southlakeland.gov.uk/contentsearcher?q=licensing+poli

Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	13//08/21	16/08/21
Monitoring Officer	13/08/21	16/08/21
CMT	18/08/21	19/08/21

Circulated to	Date sent
Lead Specialist	13/08/21
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