

South Lakeland District Council

Licensing Sub-Committee

Tuesday 5 July 2022

Application for the Grant of a Premises Licence at 5 Cavendish Street, Ulverston

Portfolio:	Economy, Culture and Leisure Portfolio Holder
Report from:	Director of Customer and Commercial Services
Report Author:	Donna McCarthy – Specialist (Licensing)
Wards:	Ulverston East
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 5 Cavendish Street, Ulverston having taken into account the 5 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 to:**

(1) Grant the premises licence as applied for;

(2) Grant the premises licence with modifications to the conditions; and

(3) Refuse to grant the application.

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*’

3.0 Background and Proposals

3.1 On 27 April 2022, an application for the grant of a Premises Licence, under the Licensing Act 2003, for 5 Cavendish Street, Ulverston was submitted by Inno Hospitality Collective Limited. The original application was invalidated due to the advertising of the blue notice being incorrect and the application process was restarted on 12 May 2022.. The application (Appendix 1) seeks authorisation for the following:

1. Sale of alcohol (for consumption on and off the premises) 7 days a week between the hours of 11:00-23:30. Extended hours on New Year’s Eve from 11:00 to 01:30.
2. Late Night Refreshment 7 days a week between the hours of 23:00-23:30. Extended hours on New Year’s Eve from 11:00 to 01:30.

- 3.2 5 Representations have been received from residents in the vicinity. The representations contain concerns relating to the 'Prevention of Public Nuisance'.
- 4 of the representations (Appendix 2) were withdrawn/resolved as the applicant has agreed to amend their application as follows:
1. Cease the sale of alcohol at 10:30pm and to have everyone exited the building by 11:00pm. Doors and windows will be closed at 9pm.
 2. We are happy to have use of the outside courtyard conditionally and keep this as a non-smoking area where by we would have it cleared of customers by 9pm and only used for dining (drinks with food).
 3. We are happy to only have bottles collected between the hours of 8am - 6pm
- 3.3 A representation was received from Environmental Health, however this representation resulted in agreed amendments to the application as follows:
1. Rear yard area reserved for the use of smokers and shall not be used as a beer garden/drinking area and be vacated by 22:00. Adequate notices shall be displayed to inform patrons of this requirement.
 2. The disposal of empty bottles/glass into external receptacles shall not occur between the hours of 21:00 and 08:00
 3. No amplified music between 23:00 and 08:00. Any amplified music shall not be played at a level that will cause unreasonable disturbance to the occupants of any properties in the vicinity.
 4. Noise or odour from any ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.
- 3.4 As a result of negotiations, conditions have been offered and the application amended. Amendments are contained at Appendix 4. For example, the application seek authorisation for Late night refreshment but as the applicant has reduced the sale of alcohol to 22:30 and their opening hours to 23:00 the requirement for late night refreshment is no longer required.
- 3.5 One of the Representations was not withdrawn. A copy of this representation can be found at Appendix 3 A phone call was made by a Licensing Specialist to the Objector and it was explained that the applicant had amended the operating hours to the application and that the hours applied for would not be conducive to a night club. The Licensing Specialist explained that should the licence be granted and a future license holder wish to extend the opening hours of the premises, then they would need to submit an application to vary the approved hours, which would be further considered by the Licensing Authority. The objector was not prepared to withdraw the objection unless the hours of operation were reduced to daytime hours only.

4.0 Appendices Attached to this Report

Appendix No.	Name of Appendix
1	Completed Application and Plans
2	Representations and responses - Resolved
3	Representation and response - Unresolved
4	Agreed conditions and amendments

5.0 Consultation

5.1 A copy of the application was served on all the relevant authorities and a 28 day consultation period took place. This commenced on 12 May 2022 and ended on 09 June 2022. The applicant advertised the application in a local newspaper within the first 10 working days of consultation as required by Licensing Act 2003. They also displayed 'blue notice' on the premises from the first day of the consultation period.

The representations to consider in respect of this application have been made by 5 interested parties and they have been brought to the attention of the applicant. They concern the possible effect the application would have on the licensing objective 'Prevention of public nuisance'. The applicants have responded to the representations and their comments were forwarded, via email, to the objectors. The representations, comments and responses are attached as Appendix 2 and 3.

During the consultation process the applicants have agreed to additional conditions to be added to the premises licence. The agreed conditions can be found at Appendix 4.

The representations that have been received are from residents and nearby businesses.

No representations were received from the Responsible Authorities.

Members may wish to refer to the legal information contained in Paragraph 7.3 of this report.

6.0 Alternative Options

6.1 The Licensing Sub-Committee may:

- Grant the Premises Licence with the agreed additional conditions
- Grant the Premises Licence with modified conditions
- Refuse to grant the Application

7.0 Implications

Financial, Resources and Procurement

7.1 None

Human Resources

7.2 None

Legal

- 7.3 The 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.

- 7.3.1 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 23:00 and 08:00. 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.*

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.”*

Health and Sustainability Impact Assessment

7.4 Have you completed a Health and Sustainability 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 is 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 Analysis, please explain your reasons:

No assessment has been completed as the hearing is in line with legislative guidance, the impact of which is deemed as having a neutral impact.

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

Contact Officers

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Background Documents Available

Name of Background document	Where it is available
Licensing Act 2003	https://www.legislation.gov.uk/ukpga/2003/17/section/17
Revised Guidance issued under section 182 of the Licensing Act 2003	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018.pdf .
Statement of Licensing Policy	Statement of Licensing Policy 2022 to 2027 (southlakeland.gov.uk)

Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	17/06/2022	23/06/2022
Monitoring Officer	20/06/2022	23/06/2022
Director of Customer and Commercial Services	21/06/2022	22/06/2022

Circulated to	Date sent
Principal Specialist	17/6/22
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