

# Allerdale Borough Council

## Licensing Panel – 12 October 2021

### To consider representations received in relation to an application for a premises licence

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<b>Portfolio holder</b>	Councillor Colin Sharpe Finance and Legal
<b>Report from</b>	Deborah Fletcher, Licensing and Compliance Officer
<b>Wards affected</b>	Broughton St Bridget's
<b>Is this a key decision</b>	No

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#### **1.0 The reason for the decision**

- 1.1 To consider representations received in relation to an application for a premises licence under section 18(3) of the Licensing Act 2003.

#### **2.0 Recommendation**

- 2.1 The Panel should consider all the information contained in the report. They should make a decision from the options available in paragraph 7.0 taking into account information received from the applicant, other persons and any relevant legislation or guidance.

#### **3.0 Background and Introduction**

- 3.1 The Licensing Act 2003 allows for interested parties and responsible authorities to make representations for or against an application. Representations must outline relevant information on how an application will promote or undermine the licensing objectives.
- 3.2 Representations were received against the application and they must be considered in line with section 18(3) of the Licensing Act 2003 (The Act).
- 3.3 The representations were originally considered by the licensing panel on 2 December 2020. The panel determined the application and it was granted with an additional condition.

- 3.4 Broughton Parish Council were aggrieved by that decision and appealed to the Magistrates' Court under Schedule 5 Part 1 Paragraph 2 of the Licensing Act 2003.
- 3.5 The case was heard at West Cumbria Magistrates' Court on 27 May 2021. The appeal was allowed and remitted back to the licensing panel to reconsider under section 181 of the Licensing Act 2003.
- 3.6 The licensing panel must now reconsider the application and use the information contained in this report to determine the application.

#### **4.0 Content**

- 4.1 The applicants are Beth Faulder and Ray Faulder.
- 4.2 The application relates to the premises known as Ponderosa, Broughton Lodge, Little Broughton. The plan of the premises can be found at Appendix A.
- 4.3 The applicants have given the following description of the premises:

THE PREMISES IS A COMPLETELY BLANK CANVAS, WHICH IS A FIELD WHICH OVERLOOKS THE LAKE DISTRICT MOUNTAINS. THE FIELD WILL BE HIRED OUT BY THE COUPLE AND USED AS INSTRUCTED BY US. WE HAVE SITUATED WHERE THE EVENT WILL TAKE PLACE ON THE DESIGNATED AREA WITH IN THE FIELD. THE ALCOHOL WILL BE PLACED BEHIND THE TENT IN A LOCKED VAN AND ONLY ACCESSED BY THE PERSONAL LICENCE HOLDER.

- 4.4 The application is to allow live music, recorded music and the sale of alcohol in the following terms:

##### **Live and Recorded Music**

Monday to Sunday 11:00 to 23:00

##### **Sale of Alcohol**

Monday to Sunday 10:00 to 23:30

- 4.5 The applicants have given various measures that they will use to promote the licensing objectives should a licence be granted. This includes a noise assessment report, wedding diversification report and the list of proposed conditions usually found in the premises licence application. Those documents can be found at Appendix B.
- 4.6 Cumbria Constabulary and Environmental Health responded to the application and suggested measures which they felt would promote the licensing objectives. The applicants have accepted those conditions and, if granted, they should be added to the licence. The details of the agreed conditions can be found at Appendix C.

4.7 As well as responsible authorities, any other person can make representations for or against an application. Three representations have been received against the application. They are from:

Broughton Parish Council	9 October 2020	Appendix D
Stephen Murray	9 October 2020	Appendix E
Cllr Nicky Cockburn	12 October 2020	Appendix F

4.8 The Guidance issued under section 182 of the Licensing Act 2003 states that a person may request that a representative make their representation to the licensing authority on their behalf. The representative can be a legal representative, a friend, a Member of Parliament or a local ward or parish councillor.

4.9 Cllr Nicky Cockburn has made a representation on behalf of residents of her ward, Broughton St Bridget's. Cllr Cockburn is aware of the identity of the persons making representations, but those details have not been passed to the Licensing Authority as part of the representation.

4.10 Allerdale Borough Council's Licensing Policy 2016-2021 states that representations can be made by persons who are democratically elected such as borough, county, town or parish councillors, or a Member of Parliament. It confirms that such representatives are free to make representations, and no specific evidence of being asked to represent any other person will be required.

4.11 The application was heard by the licensing panel on 2 December 2020. The draft minutes of that meeting are available at Appendix G. The panel granted the application with modified conditions.

4.12 The decision notice was delivered to the applicant and all persons that had made relevant representations. There is then a period of 21 days to allow for an appeal if any party to the hearing is aggrieved by the decision of the panel.

4.13 Allerdale Borough Council received notification from the Magistrates' Court that Broughton Parish Council had lodged an appeal against the decision to grant the licence.

4.14 The case was heard at West Cumbria Magistrates Court on 27 May 2021. The Magistrates allowed the appeal and the full decision is at Appendix H.

4.15 Allerdale Borough Council had serious concerns about the validity of the court order, and its ability to fulfil the terms of that order in full, for the following reasons:

- The Licensing Authority did not believe that it was a licensing requirement to determine whether someone has the use of a bridleway
- The Licensing Authority is not permitted to invite representations, yet was being asked to consult with non-statutory consultees

- The Licensing Authority understood that any planning applications are not relevant licensing conditions

- 4.16 It was the Licensing Authority's view that to carry out the requirements of the Order would be unlawful within the remit of the licensing legislation, and the opinion of an experienced licensing barrister (Counsel) has since been requested and received, which confirms that this is the case.
- 4.17 Counsel has confirmed that the magistrates' court decision is challengeable by way of a High Court 'case stated' appeal. However effectively, this would only determine that the court should re-hear the appeal once again, applying the correct legal test. Counsel does not consider that the High Court would be able to substitute its own decision and it would be likely to take around 6-12 months to hear the matter in court. It would also come at considerable expense.
- 4.18 Following receipt of specialist legal advice, the Licensing Authority therefore sought to give effect to the decision of the court insofar as it was lawfully able to do so. The Licensing Authority cannot give effect to the aspects of the judgement that required it to go back and start a fresh consultation as there is simply no legal power to do so. Similarly there is no legal power to consult named parties.
- 4.19 The Licensing Authority has convened this licensing panel at the request of the court, however in light of the advice, only representations from those parties involved in the original panel hearing are able to put forward information.
- 4.20 The course of action taken by the Licensing Authority is seen to be the fairest and most pragmatic route to overcome the difficulties faced, giving all of the parties who were involved in the initial hearing, to put forward their representations.
- 4.21 Should the licensing panel allow the application then the appellant is free to appeal to the magistrates' court. Similarly should the licensing panel refuse the application, then the applicant can appeal to the magistrates' court.
- 4.22 The Legal Team Manager at the magistrates' court has been fully appraised regarding the legal advice received and of the Licensing Authority's intentions in terms of the process going forwards.
- 4.23 The application should be considered with only the licensing objectives in mind. Matters which fall outside of the licensing objectives should not be considered and should not form part of any decision.

## **5.0 Legislation and Policy**

- 5.1 The Licensing Act 2003 has four licensing objectives –

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

- 5.2 The application process includes circulating the application to all the responsible authorities. It also includes advertising the application in the local press and a notice on the premises. This is to allow for representations to be made for or against the application. Representations should be about the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.
- 5.3 The Licensing Authority must hold a hearing to consider any representations made unless all parties agree that a hearing isn't necessary. It is considered necessary to hold a hearing to consider the representations in this case.
- 5.4 The Allerdale Statement of Licensing Policy 2016-2021 section 7.1 states that, when considering applications, the Panel should have regard to the Act and its objectives, Government guidance, supporting regulations, representations, duties and obligations under other legislation and the statement of Licensing Policy.
- 5.5 Paragraph 7.2 of the Policy states that an application should be considered on its individual merits.
- 5.6 Revised Guidance issued under section 182 of the Licensing Act 2003 provides advice on considering if a representation is relevant. It recommends in borderline cases the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing will provide an opportunity for the person making the representation to amplify and clarify it.

## **6.0 Implications and Impact**

### **6.1 Finance/Resource implications**

The applicants have paid a non-refundable fee of £100.00.

### **6.2 Legal and governance implications**

The applicant or any person who has made relevant representations to the application is entitled to make an appeal if they are aggrieved by the decision of the Council. That person has the right of appeal to a Magistrates' Court within 21 days of the decision.

### **6.3 Equality impacts**

Impact Assessment not completed.

### **6.4 Health and Safety impacts**

None.

### **6.5 Health, wellbeing and community safety impacts**

The licensing objectives adequately deal with any potential impacts on health, wellbeing and community safety.

## 6.6 Environmental/sustainability impacts

Not applicable in respect of the licensing objectives.

## 6.7 Other significant implications

None.

## 7.0 Options available to the Licensing Regulatory Panel

7.1 The Panel must consider the representations and take such steps as it considers necessary for the promotion of the licensing objectives.

7.2 The steps available are:

- a) Grant the licence subject to the conditions mentioned in the operating schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and any mandatory condition.
- b) Exclude from the scope of the licence any of the licensable activities to which the application relates;
- c) Refuse to specify a person in the licence as the premises supervisor
- d) Reject the application

7.3 The Licensing Panel should give reasons for its decision.

## Appendices attached to this report

Appendix number	Title of appendix
A	Premises plan
B	Documents provided by the applicant to promote the licensing objectives.
C	Agreed conditions with Cumbria Constabulary and Environmental Health
D	Representation – Broughton Parish Council
E	Representation – Stephen Murray
F	Representation – Cllr Nicky Cockburn, Broughton St Bridget's Ward
G	Draft minutes from the Licensing Panel 2 December 2020
H	Court decision 27 May 2021

## Background documents available

Name of background document	Where it is available

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