

At a meeting of the Licensing Panel held in Theatre - The Wave Centre, Maryport on Tuesday 12 October 2021 at 1.00 pm

Members

Councillor Malcolm Grainger
Councillor Elaine Lynch

Councillor Peter Kendall

Staff Present

D Fletcher, J Irving, K Magnay, J Morgan and L Tomlinson

Also Present

Councillor Ron Munby attended as observer.

221. Election of Chair

Councillor Kendall was elected as Chair for the meeting.

222. Declaration of Interests

There were no declarations of interest.

223. Questions

No questions had been submitted.

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

The Senior Manager - Legal and Information Governance advised the Panel that representations against the application had originally been considered at a meeting of the Licensing Panel on 2 December 2020. The Panel had determined the application and it was granted with an additional condition. Broughton Parish Council had been aggrieved by that decision and had appealed to the Magistrates' Court under Schedule 5 Part 1 Paragraph 2 of the Licensing Act 2003. The case had been 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. The Licensing Panel was advised that it must now reconsider the application and use the information contained in the report to determine the application.

The Licensing and Compliance Officer then presented a report to consider representations received in relation to the application for a premises licence for "Ponderosa", Broughton Lodge, Little Broughton. The applicants were Beth Faulder and Ray Faulder. The premises were described as

"... 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 within the field. The alcohol will be placed behind the tent in a locked van and only accessed by the personal licence holder.”

The application was to allow live music, recorded music and the sale of alcohol as follows:

- Live and Recorded Music - Monday to Sunday 11:00 to 23:00
- Sale of Alcohol - Monday to Sunday 10:00 to 23:30

The applicants had provided details of various measures that they proposed to use to promote the licensing objectives should a licence be granted. This included a noise assessment report, wedding diversification report and the list of proposed conditions usually found in the premises licence application. Cumbria Constabulary and Environmental Health had responded to the application and suggested measures which they felt would promote the licensing objectives. The applicants had accepted those conditions.

Three written representations had been received against the application, details of which were included in the members’ reports pack. Members were advised that they had a duty to decide the application in line with the licensing objectives.

Beth Faulder spoke on behalf of both applicants to explain the background to the application. In response to questions from Panel members she gave reassurance around the marshalling of attendees at events, the security measures that would be in place and the proposed number of events that would be held. Members also sought clarification over the use of a bridleway for access to the site.

The Chair of Little Broughton Parish Council, Councillor Sue Hannah, made representations on behalf of the Parish Council. She made reference to the Road Traffic Act 1938 in respect of the proposed access road to the site and stated the impact the noise caused by live music and by attendees leaving the site would have on local residents. In addition there was concern at the public safety due to the proposed access routes. Councillor Lynch queried whether the Highways authority had been consulted and whether the use of the bridleway was lawful. The Licensing and Compliance Officer confirmed that Highways authority was not a statutory consultee and that the onus was on the applicant to ensure that any use of the bridleway was lawful. Councillor Nicky Cockburn queried whether the most up to date guidance in respect of s182 of the Licensing Act 2003 was being followed and the Licensing and Compliance Officer confirmed that the April 2018 guidance was being used.

Councillor Nicky Cockburn of Allerdale Borough Council spoke on behalf of a number of local residents and expressed concern at the impact of the proposal on people living within the vicinity of the application site. She also spoke on the potential effect on the amenity of the area, Soddy Gap ponds, and the risk that the use of the community asset would be reduced as a result of the proposal. Members asked more questions about the use of the bridleway for access and the Senior Manager - Legal and Information Governance clarified that the issue was separate from the licensing application.

In summary the applicant responded to the concerns raised by the parish council, confirming that no litter or drinks would be taken off the site by attendees, that the nearest dwelling was an acceptable distance away in terms of noise and that money would be invested back into the land. She also gave reassurances about the safety measures for the access route.

Councillor Cockburn, upon being invited to summarise, reiterated her comments around the s182 guidance on noise and her concern around potential loss of a community asset due to the use of the bridleway and Soddy Gap ponds.

The meeting was then adjourned for Panel deliberations.

The Panel considered all information provided including the written representations from objectors and representations from Cumbria Constabulary, the applicants and the agent. The panel also considered the relevant legislation.

Councillor Grainger moved to grant the premises licence, with an additional condition that a comprehensive traffic management plan must be put in place and approved by the Licensing Authority at least 28 days prior to the commencement of any licensable activity at the premises. Subsequently, Risk Assessments must be drafted at least 14 days before each event, to be available for production to the Licensing Authority on request.

The motion was seconded by Councillor Kendall.

A vote was taken on the motion: 3 voted in favour, 0 against and 0 abstentions.

The motion was therefore carried.

Decision/Reasons

In making its decision, the Panel had regard to the four licensing objectives under the Licensing Act 2003. The Panel has also taken into account the written representations made by Cumbria Constabulary, the written representations made by the Environmental Health Officer, the representations received from the Premises licence holder and the interested parties, and the information set out in the report by the Licensing and Compliance Officer.

The Panel has also had regard to the advice provided by the Legal Officer during the hearing as to the weight to be attached to the evidence presented. Weight has been attached to the evidence accordingly.

The Panel has considered the Secretary of State's guidance under section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy, the relevant legislation and Human Rights.

The Panel sought to balance the interests of the licence holder and the interested parties, whilst also taking into account the conditions proposed and agreed by Cumbria Constabulary and the Environmental Health Officer.

The interested parties raised a number of concerns, all of which were fully considered by the Panel. These concerns can be split broadly into three main areas:

- Noise
- Traffic/use of the bridleway and public safety
- Asset of Community Value/Amenity

Noise

The interested parties assert that to grant the application would be in breach of the Statement of Licensing Policy which states at 2.16 “In the event of representations being made, the Authority will not normally grant a premises licence in terms which are, in its opinion, likely to result in increased noise disturbance to people living or working in the vicinity”. The Panel considers that the applicant has provided adequate noise attenuation / mitigation in this regard, having instructed an external noise specialist to carry out an assessment of the area, who identified the most appropriate monitoring points. This assessment and associated conditions were subsequently agreed with the Council’s Environmental Health Department and the applicant has agreed to those conditions. Whilst acknowledging that the interested parties do not agree with the content of the assessment, and that they believe further monitoring points should have been used (i.e. Stockmoor Hall), it is the Panel’s view that the relevant specialist advice has been obtained in this regard, and it is satisfied with the conditions proposed and that they are a proportionate means of promoting the licensing objectives, specifically the prevention of public nuisance.

Bridleway/Traffic

The Panel notes the interested parties’ comments about the use of the bridleway and the requirement for relevant permissions to be in place. However, this not a relevant consideration within the remit of the licensing legislation and the Panel is satisfied that the applicant is aware that separate permissions may be required for vehicular access to the premises. It is worth stating that nothing contained within this licensing panel decision overrides any requirement for planning permission.

In respect of public safety, the interested parties have concerns about the safety of pedestrians, horse riders, cyclists etc when using the bridleway. They assert that to grant the licence would contradict paragraph 2.10 of the s182 guidance which discussed safe egress from the premises. The Panel appreciates that the applicant has put forward a number of proposed positive suggestions/mitigations in respect of access and ingress to the site by foot and by vehicle. However, it considers that a comprehensive traffic management plan is required, to satisfy itself that the public safety objective is fulfilled. In addition, risk assessments should be completed for each event as per the additional condition outlined in this decision. These additional requirements will therefore be reflected in a condition which is to be attached to the licence.

The interested parties also assert that 2.8 of the s182 guidance is not fulfilled because there is inappropriate access for emergency services. No evidence was presented to the Panel which confirms that the bridleway is unsuitable for emergency vehicles. The question of permission to use the bridleway is outwith the remit of the Licensing Authority and it is clear that the applicant is aware of her obligations in this regard.

Asset of Community Value/Amenity

The Panel considered the interested parties' concerns regarding the partial listing for an Asset of Community Value (ACV), and the fact that no reference was made to this in the report. It was asserted that the application is in conflict with the Statement of Licensing Policy insofar as it does not take into account the characteristics of the area. The ACV listing would have no bearing on the licensing application because its purpose is simply to give the community the opportunity to develop a bid and raise capital to buy the land should the owner wish to sell it. The Panel considers that the noise assessment and subsequent agreement of conditions with the Applicant and the Environmental Health department is adequate to fulfil the public nuisance objective.

The Panel considered the options available to it, which were to:

- 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) To refuse to specify a person in the licence as the designated premises supervisor
- d) To reject the application

The Panel felt that it was reasonable and proportionate to take the following steps to promote the licensing objectives:

- (a) To grant the licence subject to the following conditions:
 - The conditions proposed by the applicant as outlined in the report, as amended by the conditions included at Appendix C agreed with Cumbria Constabulary and the Environmental Health Department
 - The mandatory conditions
 - The following additional condition: "A comprehensive traffic management plan must be put in place and approved by the Licensing Authority at least 28 days prior to the commencement of any licensable activity at the premises. Subsequently, Risk Assessments must be drafted at least 14 days before each event, to be available for production to the Licensing Authority on request".

If any party is aggrieved by this decision, they have the right to appeal to the Magistrates Court within 21 days of receiving written notification of the decision.

The meeting closed at 4.00 pm