

Report Title	Application for the Variation of a Premises Licence at Lago, Unit 6, St Martins Parade, Bowness-on-Windermere
Meeting	Licensing Sub-Committee
Meeting Date	22 April 2024
Report Author	Donna McCarthy
Wards Affected	Bowness and Lyth;
Public. Part Exempt, or Fully Exempt	Public
Appendices (if any)	<ol style="list-style-type: none"> 1. Application 2. Representations 3. Current Premises Licence and Plan 4. Report to Licensing Sub-Committee 28 March 2022 5. Minutes of Licensing Sub-Committee 28 March 2022 6. Decision notice of licensing Sub-Committee dated 28 March 2022

1. Executive Summary

- 1.1 The purpose of this report is to enable Members to determine whether or not to grant the variation application to the Premises Licence in respect of Lago, Unit 6 St Martins Parade, Bowness on Windermere having taken into account the ten relevant representations submitted. These include eight representations from Interested Parties. One representation from Westmorland and Furness Environmental Protection and one representation from Windermere and Bowness Town Council
- 1.2 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*”.

2. Recommendations

For the reasons set out in this report, Licensing Sub-Committee is recommended to:

- 2.1 Members are requested to consider the representations that have been made, and determine whether to:
- 2.1.1 Grant the variation of the premises licence as applied for;
 - 2.1.2 Grant the variation of the premises licence with modifications to the conditions; or
 - 2.1.3 Refuse to grant the variation application.

3. Information: the Rationale & Evidence for the Recommendations

3.1 On 04 March 2024, an Application for the variation of a Premises Licence, under the Licensing Act 2003, for Lago, Unit 6 St Martins Parade, Bowness on Windermere was sent out to public consultation.

3.2 The Application which is attached at Appendix 1, seeks authorisation to modify the conditions to the current Premises Licence. The Applicant has stated in their application 'We are wishing to add a pavement license in the near future, in order for this to happen we need to add the following condition to the license; the existing condition imposed by the committee, we are happy to abide by that condition, however the additional condition will take effect when a pavement license is in place'. The Applicant has proposed the below condition:

'Patrons are permitted to take drinks and glass containers outside during times which the pavement café licence is in force. They will remain seated at all times and the area will be supervised by staff. Empty glasses and containers will be removed promptly.'

3.3 The condition that was added to the licence by the licensing Sub-committee on 28 March 2022 is as follows:

- *'Patrons required to temporarily leave e.g. to smoke and then re-enter the premises shall not be permitted to take drinks or glass containers with them'; and*
- *'The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff to ensure there is no public nuisance'.*

3.4 The Applicant has also stated in their Application: 'We don't want any condition removed, we would just like to add a condition that works with condition 5 of the current license to allow us to have some outdoor seating and compete in the summer months as mentioned above when pavement licence is granted'.

3.5 The Application also seeks the opening hours to the public to be as follows:

- Sunday to Thursday 12:00-23:00
- Friday and Saturday 12:00-00:30

3.6 The current hours open to the public are:

- Sunday to Thursday 12:00-23:30;
- Friday and Saturday 12:00-01:00

3.7 The Applicant also states in the Application to make changes to recorded music (Section F) as follows:

- *'Soft background music-we have a long enough trading history at this point to demonstrate that we have no issues with the volume levels of recorded music'*

- 3.8 The current Licence and the plan of the premises are available at Appendix 3 together which does not show an outside area that is part of the licensable area of the premises. The current licence was applied for in February 2022 and at that time the Application received representations against the granting of the licence and it was subsequently presented to the Licensing Sub-Committee for their determination. The application was granted with modified conditions. The original application also stated that 'No Outside space is available'.
- 3.9 The report presented to the Licensing Sub-Committee on 28 March 2022 is available to view at Appendix 4 and the minutes of the Licensing Sub-Committee are available to view at Appendix 5. The decision notice is available to view at Appendix 6.
- 3.10 Eight Representations have been received from residents and Interested Parties. One representation has been received from Windermere and Bowness Town Council and one representation from Westmorland and Furness Environmental Protection as they are unclear as to the request of the applicant as the requested conditions would contradict the current condition. The representations received relate to the Licensing Objective of 'Prevention of Public Nuisance'. All relevant representations received are attached at Appendix 2.

4. Link to Council Plan Priorities: (People, Climate, Communities, Economy and Culture, Customers, Workforce)

- 4.1 None.

5. Consultation Outcomes

- 5.1 A copy of the application was served on all the Responsible Authorities and a 28 day consultation period took place. This commenced on 05 March 2024 and ended on 01 April 2024. The applicant advertised the application in a local newspaper within the first 10 working days of consultation as required by the Licensing Act 2003. They also displayed a 'Blue Notice' on the premises from the first day of the consultation period.
- 5.2 The representations to consider in respect of this application have been made by eight residents and Interested Parties, Westmorland and Furness Environmental Protection and Windermere and Bowness Town Council and they have been brought to the attention of the Applicant.
- 5.3 The Applicant, at the time of writing this report has not responded to the representations and therefore has not provided any mitigation measures in response to the representations.
- 5.4 Members may wish to refer to the legal information contained in Paragraph 9 of this report.

6. Alternative Options Considered

6.1 The Licensing Sub-Committee may:

- Grant the variation to the Premises Licence as applied for;
- Grant the variation to the Premises Licence with modified conditions; or
- Refuse to grant the variation Application.

7. Reasons for the Recommendations

7.1 The recommendations listed show all available options for the sub-committee to determine whether or not to grant the variation application for the Premises Licence in respect of Lago, Unit 6 St Martins Parade, Bowness having taken into account the relevant representations submitted.

8. Climate and Biodiversity Implications

8.1 No climate and biodiversity implications have been identified in relation to the report.

9. Legal and Governance Implications

9.1 The Licensing Committee and Licensing Sub-Committee have full delegated authority to deal with Licensing Act 2003 and Gambling Act 2005 functions. Under the Council's Constitution, Part 2 – Section 5: Functions of Committees at 5.12, the Licensing Sub-Committee has authority to make decisions in all individual cases where a hearing is required because of an objection to an application.

9.2 The Licensing Sub-Committee must determine the application, taking into account any relevant representations and have regard to the Licensing Act 2003, the Secretary of State's Guidance issued under Section 182 of the Licensing Act and the Council's Statement of Licensing Policy. Where any decision departs from the Policy or Section 182 Guidance, the departure must be directed solely at the attainment of the four Licensing Objectives, and such departure must be supported by clear and cogent reasons.

9.3 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.

9.4 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.*
- 2.20** *Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.*
- 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 9.42 to 9.44, 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.
- 16.41** Where a performance of live music or the playing of recorded music on relevant licensed premises is not licensable, it remains possible for anyone to apply for a review of a licence or certificate, if there are appropriate grounds to do so.

10. Human Resources Health Wellbeing and Safety Implications

- 10.1 There are no direct Human Resources implications arising from this report.
- 10.2 The Council has a responsibility under the Health & Safety at Work Act 1974 and associated Management of Health & Safety at Work Regulations to ensure as far as is reasonably practicable that there are arrangements in place to ensure a healthy and safe working environment for all officers and services for which it has responsibility.

11. Financial Implications

- 11.1 There are no direct financial implications arising from this matter.

12. Equality and Diversity Implications (please ensure these are compliant with the EiA Guidance)

- 12.1 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.

13. Background Documents

Name of Background document	Where it is available
Licensing Act 2003 s17	Licensing Act 2003 (legislation.gov.uk)
Revised Guidance issued under section 182 of the Licensing Act 2003	Revised Guidance issued under section 182 of the Licensing Act 2003 (publishing.service.gov.uk)
Statement of Licensing Policy	Approved Statement of Licensing Policy 2024-2029 (westmorlandandfurness.gov.uk)
South Lakeland District Council Licensing Sub-Committee Meeting 28 March 2022	Meeting of SLDC Licensing Sub-Committee on Monday, 28th March, 2022, 10.00 am

Name of Background document	Where it is available
	Westmorland and Furness Council (moderngov.co.uk)