

**Eden District Council**

**Licensing Committee**  
**29 September 2015**

**Application for Premises Licence**  
**Lowther Barn Café, Beckside Farm, Sandwich, Martindale,**  
**Penrith, CA10 2NF**

**Reporting Officer: Director of Corporate and Legal Services**

**Responsible Portfolio: Services**

**1 Purpose of Report**

- 1.1 The Council as the Licensing Authority has received an application to license premises under the provisions of the Licensing Act 2003 and the Committee is asked to consider the request in the light of representations which have been received.

**2 Recommendation:**

It is recommended that the Committee determines the application in accordance with one of the options set out in paragraph 3.9 below.

**3 Report Details**

- 3.1 An application for a premises licence has been received for Lowther Barn Café, Beckside Farm, Sandwich, Martindale, Penrith, CA10 2NF.
- 3.2 The application, which has been made by Mr A W Hewitt and Mrs M P Hewitt trading as Alston Old Hall Farm, requests a licence permitting the retail sale of alcohol for consumption on the premises between the hours of 10am and 4pm daily, extending to 9pm during the hours of British Summer Time. The premises are described as a small upper floor café, consisting of 6 tables inside and 6 tables outside, on a private farm providing refreshments to walkers on the Sandwich to Patterdale bridle path. A copy of the application is attached at Appendix A.
- 3.3 A plan of the premises, together with a site plan and copies of photographs showing the outside seating area, is attached at Appendix B.
- 3.4 The application has been advertised as required by statute for a 28 day period both in the local newspaper and on the premises.

- 3.5 The application has been copied to all relevant responsible authorities. These are the public bodies that are entitled to make representations in relation to the application for the grant of a premises licence. Each of the responsible authorities has had the opportunity to engage with the applicants to ensure the licensing objectives are promoted. These are:
- prevention of crime and disorder;
  - public safety;
  - prevention of public nuisance;
  - protection of children from harm.
- 3.6 No representations have been made to the application by any of the responsible authorities.
- 3.7 The Lake District National Park, the relevant planning authority, has confirmed that the use of Lowther Barn is permitted by virtue of a planning permission which the Government has granted through the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015. It has confirmed that the planning permission granted does not impose conditions upon the use of the café (for example, hours of opening) and, as there is no conflict between the application for a premises licence and the planning permission, it has no objections to the application.
- 3.8 A total of 7 representations objecting to the application have been received during the consultation period and these are attached at Appendix C.
- 3.9 The following options are available to the Committee:
- (a) to grant the application subject to the applicable mandatory conditions and such other conditions as are consistent with the application;
  - (b) to grant the application subject to such modified or other conditions as are considered necessary for promotion of the licensing objectives;
  - (c) to reject the application.

## **4 Policy Framework**

- 4.1 The Council has four corporate priorities which are:
- Decent Homes for All
  - Strong Economy, Rich Environment
  - Thriving Communities
  - Quality Council
- 4.2 The application to grant a premises licence will be determined in accordance with Eden District Council's Statement of Licensing Policy and Home Office Guidance issued under Section 182 of Licensing Act 2003.

- 4.3 The prime purpose of the Council's Statement of Licensing Policy is to promote the licensing objectives. It lists particular matters that the authority will take into account in considering whether a licensable activity is likely to cause an adverse impact and its aim is to achieve a balanced approach to these issues.
- 4.4 Paragraph 4.2.2 of the Statement of Licensing Policy states 'If representations are made, when considering an application for a licence the authority will take into account the following factors in assessing its likely impact on the licensing objectives in addition to any other relevant matters:
- the nature of the activities proposed;
  - the number of customers likely to attend the premises and the type of customers expected;
  - the location of the premises;
  - the proposed hours of operation;
  - the level of public transport accessibility for customers either arriving at or leaving the premises and the likely means of public or private transport that will be used by the customers;
  - the physical and accessible nature of the premises;
  - the level of likely car parking demand in relation to the use of the premises in comparison with the existing situation and the likely effect on the movement of priority traffic;
  - the cumulative impact of licensed premises in an area;
  - the scope for mitigating the impact;
  - how often the activity is to occur.'
- 4.5 Guidance is offered to Licensing Authorities under Section 182 of the Act by the Home Office in relation to the discharge of their functions under the Act. Paragraph 9.4 of the guidance states: 'A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.'
- 4.6 Paragraph 9.36 of the guidance states: 'As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or any other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.'

- 4.7 Paragraph 9.37 of the guidance continues: 'In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy'.
- 4.8 Paragraph 9.38 of the guidance includes the statement that: 'After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety'. Paragraph 9.39 continues: 'Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities'.
- 4.9 There is provision under the Act for any responsible authority or any other person who has concerns relating to the promotion of the licensing objectives following the grant of a licence to apply for a review of the licence. The guidance states at paragraph 11.1 that this represents: 'a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence'. The guidance continues at paragraph 11.13 that: 'licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion'.

## **5 Implications**

### **5.1 Legal**

- 5.1.1 The licensing authority must determine the application in accordance with Section 18 of the Act which outlines the circumstances whereby a hearing is required and the options available to the committee when determining the application.
- 5.1.2 Where there are no relevant representations, the licensing authority must grant the licence in accordance with the application and subject to conditions which are consistent with the operating schedule accompanying the application and other mandatory conditions.
- 5.1.3 If the application is refused, or conditions are imposed which he does not accept, the applicant has 21 days from the date of being notified to appeal to the Magistrates' Court. Those who made representations will also have the right of appeal if aggrieved by grant of the licence or the conditions imposed.

## **5.2 Financial**

- 5.2.1 Any decision to reduce or increase resources must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 16 April 2015.
- 5.2.2 There are no proposals in this report that would reduce or increase resources.
- 5.2.3 There are no other financial implications for Eden District Council arising from this report.

## **5.3 Equality and Diversity**

- 5.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.

## **5.4 Environmental**

- 5.4.1 The Council has to have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.

## **5.5 Crime and Disorder**

- 5.5.1 Under the Crime and Disorder Act 1998 the Council has to have regard to the need to reduce crime and disorder in exercising any of its functions.
- 5.5.2 By considering the application and any proposals put forward by Cumbria Police and partner agencies, the Council will have taken reasonable steps to help reduce crime and disorder within the district and therefore discharging its duty under Section 17 of the Crime and Disorder Act 1998.

## **5.6 Children**

- 5.6.1 Under the Children Act 2004 the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.

## **5.7 Risk Management**

- 5.7.1 By determining the application in accordance with the relevant sections of the Licensing Act, the Statement of Licensing Policy and guidance offered by the Home Office, the licensing authority is ensuring that all of the licensing objectives are considered fully, therefore minimising risk to the Council and any other parties. The Council must be able to substantiate and justify any decision which it makes having regard to the licensing objectives and any relevant consideration. The Council must make its decision taking account of all the relevant considerations, ignoring any irrelevant considerations and making a judgement which is reasonable and appropriate.

## 6 Reasons for decision/recommendation

- 6.1 Application for a premises licence has been made under the Licensing Act 2003 to which objections have been received from members of the public. The licensing authority must determine the application in accordance with Section 18 of the Act.

P G Foote  
Director of Corporate and Legal Services

### Governance Checks:

Checked by or on behalf of the Chief Finance Officer	√
Checked by or on behalf of the Monitoring Officer	√

### Background Papers:

Home Office Guidance issued under Section 182 of the Licensing Act 2003 (as revised March 2015)  
Eden District Council's Statement of Licensing Policy

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