

LICENSING SUB-COMMITTEE

**Venue: Committee Room 2 -
Rotherham Town Hall**

Date: Wednesday 13 March 2024

Time: 1.30 p.m.

A G E N D A

1. To determine whether the following items should be considered under the categories suggested in accordance with Part 1 of Schedule 12A (as amended March 2006) of the Local Government Act 1972.
2. To determine any item(s) which the Chair is of the opinion should be considered later in the agenda as a matter of urgency.
3. Consideration of an application (made in accordance with s.17 of the Licensing Act 2003) for the Grant of a Premises Licence in respect the premises to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE (Pages 3 - 45)

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Licensing Act 2003 - Hearing Procedure – Grant of a Premises Licence

1. The Chair of the Licensing Sub Committee will introduce the Committee and ask officers to introduce themselves.

The Chair of the Licensing Sub Committee will ask the following parties to introduce themselves:

- a) the applicant and any witnesses they wish to call.
- b) any person who has made representations and any witnesses they wish to call.

2. The Licensing Officer will introduce the report and provide any updates.

Note: Questions solely concerning the report can be asked by Members, the applicant and by persons making representations.

3. The Chair of the Licensing Sub Committee will then invite any person who has made representations to present their representations and call any witnesses

Note: Members of the Sub Committee, followed by the applicant may ask questions of persons who have made representations and their witnesses.

4. The Chair of the Licensing Sub Committee will then invite the applicant to present their application, respond to the representations, and call any witnesses

Note: Members of the Sub Committee, followed by any person who has made representations may ask questions of the applicant and their witnesses.

5. The licence holder will then be given the opportunity to sum up
6. The public hearing will then be concluded, and the Sub Committee will go into closed session, together with the Council's Solicitor and the Clerk to the meeting.
7. The decision of the Licensing Committee will be given in accordance with the requirements of the Licensing Act 2003 and regulations made thereunder.

Note:

At any time throughout the hearing Members of the Licensing Sub Committee may request legal advice from the Council's Solicitor. Any advice sought during closed session will be included in the notice setting out the decision.

The Committee Hearing will be held in public unless and in accordance with relevant Regulations the Licensing Sub Committee determine that the public should be excluded.

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 13th March 2024 at 13:30 hours (1.30 pm)

Report Title

Consideration of an application (made in accordance with s.17 of the Licensing Act 2003) for the Grant of a Premises Licence in respect the premises to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE.

Report Author(s)

Diane Kraus, Principal Licensing Officer, Community Safety and Street Scene
Tel: 01709 289536

Report Summary

On the 17th January 2024 an application the grant of a premises licence was made by Mrs Denisa Mirela LINCA in respect of La Sandy, 34 Kimberworth Road, Rotherham S61 1AE.

The applicant, as amended, is seeking authorisation to allow the sale of alcohol for consumption on the premises on each of the days Monday to Thursday between 10:00 hours and 22:00 hours, and on Friday, Saturday & Sunday between 10:00 hours and 23:00 hours each of the days.

Representations to the application have been made by Rotherham Metropolitan Borough Council's Environmental Health Service, in their role as a designated Responsible Authority under the Licensing Act 2003. The Environmental Health Service is opposed to the grant of the application. Further detail of the application, as amended, and representations to it, are provided within the main body of the report.

Recommendations

1. That the Licensing Sub-Committee considers the information contained within this report (and associated appendices) along with any additional information presented at the hearing and subsequently determines the application that has been made.
2. The Licensing Sub-Committee should inform the Licensing Manager of the decision in accordance with the requirements of the Licensing Act 2003 and Regulations made thereunder.

List of Appendices Included

- Appendix 1 Location plan
- Appendix 2 Advisory letter
- Appendix 3 Application form, email confirming amendments & premises plans
- Appendix 4 Offered conditions
- Appendix 5 Representations from Rotherham MBC Environmental Health Service
- Appendix 6 Abatement Notice in respect of Statutory Nuisance
- Appendix 7 Photographs of Abatement Notice fixed to railings at the premises

Background Papers

Rotherham MBC Statement of Licensing Policy 2020 -2025
(available at www.rotherham.gov.uk/licensing)

Revised guidance issued under section 182 of the Licensing Act 2003 (December 2023) available at <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>)

Council Approval Required

No

Exempt from the Press and Public

No

Consideration of an application (made in accordance with s.17 of the Licensing Act 2003 for the grant of a Premises Licence in respect of the premises to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE.

1. Background

- 1.1 The premises are not currently licensed under the Licensing Act 2003.
- 1.2 A location plan identifying the premises is attached at Appendix 1.
- 1.3 The premises first came to the attention of the Licensing Service in October 2023 following an allegation that licensable activities were being provided without the benefit of a licence. This led to an advisory letter being sent to Mr Aurel Sandi & Ms Denisa Linka (the current applicant). A copy of this letter is attached at Appendix 2.
- 1.4 From October 2023 Temporary Event Notices in respect of the premises have been served by Mr Aurel Sandi for events on the following dates:
- 01/12/2023
 - 24/12/2023
 - 30/12/2023
 - 31/12/2023
 - 22/02/2024 – see paragraphs 2.19 to 2.23 below for further information.
 - 08/03/2024 – see paragraph 2.24 below for further information.

2. Key Issues

The application

- 2.1 On 17TH January 2024 an application for the grant of a premises licence was made by Mrs Denisa Mirela Linca, in respect of the premises to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE. In the first instance the application sought consent to allow the sale of alcohol and the provision of live and recorded music at the premises. However, on 8th February 2024, the application was amended and the request to allow live and recorded music was withdrawn from the application with immediate effect.
- 2.2 A copy of the application and email making amendments to it, together with the plan identifying the extent of the applicant premises, and a second plan showing the layout of the building located within the site, is attached at Appendix 2. The licensed area, as identified on the plan, includes both the building and outside area.
- 2.3 The application, as amended, seeks authorisation to allow the sale of alcohol for consumption within the licensed area on each of the days Monday to Thursday between 10:00 hours and 22:00 hours, and on Friday, Saturday & Sunday between 10:00 hours and 23:00 hours.

- 2.4 The opening hours of the licensed area, as stated in the application, are between 10:00 hours and 22:30 hours on Monday to Wednesday and between 10:00 hours and 23:30 hours on Friday to Sunday.
- 2.5 The applicant, Mrs Linca, has named herself as the Designated Premises Supervisor (DPS). Mrs Linca holds a Personal Licence issued by Rotherham MBC.

Consultation

- 2.6 Consultation on the application has been carried out in accordance with all statutory requirements and the Council's procedure. There is a prescribed period of 28 days following the submission of an application during which time representations in relation to the application may be submitted.
- 2.7 During the consultation period the Licensing Authority made representations seeking the addition of a further management control conditions. The conditions sought by the Licensing Authority are set out below :
- A CCTV system shall be installed at premises and shall:
 - be maintained fully operational and in good working order at all times;
 - make and retain clear images; and
 - show an accurate date and time that the images were made.
 - All CCTV images shall be retained for a period of not less than 31 days.
 - CCTV images shall be made immediately available for viewing, upon request, of the Police or an authorised officer of the Licensing Authority.
 - The original CCTV images, or a copy, shall be provided to any police officer or authorised officer of the Licensing Authority within 48 hours of a request having been made in a format that can be viewed on readily available equipment without the need for specialist software
 - A member of staff trained on the operation of the CCTV system shall be on duty at the premises, or on call and available to attend the premises, at all times the premises are open.
 - Signage shall be displayed in the customer area of the premises to advise that CCTV is in operation
- 2.8 The applicant agreed to include the conditions sought by the Licensing Authority in the operating schedule which resulted in the Licensing Authority's representations being withdrawn.

- 2.9 The conditions offered in the application, together with those agreed by the applicant during the application process, are set out at Appendix 4. These Conditions will be applied at Annex 2 to any Licence that may be granted.
- 2.10 The Council's Environmental Health Service also made representations to the application which are ongoing. Further detail these representations is provided in paragraphs 2.15 to 2.24 below.
- 2.11 No "Other Persons" have made representations to the application.
- 2.12 The applicant has been provided with the detail of the representations received from the Council's Environmental Health Service.
- 2.13 The applicant and the Council's Environmental Health Service have been invited to the hearing today. All parties attending, will be given the opportunity to address the Sub-Committee in relation to the matters raised in the application and the representations they have made to it.
- 2.14 Members of the Sub-Committee should give full consideration of application submitted and the and representations to it, together any supporting evidence provided by any party prior to the date of the hearing. Documentary evidence provided on the day of the hearing should only be considered with the consent of all parties.

Representations from Rotherham MBC Environmental Health Service

- 2.15 The representations made to the application by the Environmental Health Service, in their role as a designated Responsible Authority under the Licensing Act 2003, are attached at Appendix 5. The representations ask for a Noise Impact Survey to be carried out at the premises, as the application fails to address how local residents would not be subject to noise nuisance.
- 2.16 The applicant responded by stating that the requirement to carry out a Noise Impact Survey was costly and beyond her means. By way of a compromise a suggestion was made that a noise limiting device could be installed at the premises.
- 2.17 The Environmental Health Service did not agree the suggested compromise and maintained their initial representations. At the point the applicant withdrew the request to allow live and recorded music to be provided at the premises. However, the amendment to the application did not result in the withdrawal of the representations.

- 2.18 The Environmental Health Service explained that the representation were continuing, as licensing deregulation allows any premises authorised to sell alcohol to provide live amplified music or the playing of recorded music between 8am and 11pm, before an audience of no more than 500 people. Given this, the removal of live and recorded music from the application did not negate the requirement for a Noise Impact Survey to be provided.

Additional submitted by Rotherham MBC Environmental Health Service

- 2.19 During the application process two Temporary Event Notices (TENs) were served to allow licensable activities to be provided at the premises on 22nd February 2024 and 8th March 2024. Both Notices were served by Mr Aurel Sandi.
- 2.20 Despite representations having made to this application the Environmental Health Service did not object to either TEN. Instead they opted to monitor the activities at the premises when they were operating under the TEN.
- 2.21 Officers of the Environmental Health Service carried out monitoring visits throughout the duration of the event held on 22nd February 2024 and found that amplified music was being played at a level to constitute a statutory noise nuisance.
- 2.22 On 23rd February 2024 the Environmental Health Service served a Noise Abatement Notice in respect of the premises, a copy is at Appendix 6.
- 2.23 It was brought to the attention of the Environmental Health Service that, during a meeting with her licensing agent on 28th February 2024 Mrs Linca claimed to have no knowledge that a Noise Abatement Notice has been served in respect of the premises. Given this, a further copy of the Noise Abatement Notice was hand delivered to the premises on 29th February 2024, and on the same date a copy was affixed to the railings at the premises. A photograph of the Notice in place is attached at Appendix 7.
- 2.24 Further monitoring of the premises is scheduled to take place on the 8th March 2024, the date of the second TEN, and an oral update will be provided at the meeting.

Additional Evidence submitted by Applicant

- 2.25 At the time of writing no additional documentary evidence in support of the application has been received.

3. Options available to the Licensing Sub-Committee

3.1 A licensing authority must carry out its functions under the Licensing Act with a view to promoting the licensing objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

3.2 In considering this matter, the Sub-Committee 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. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council's licensing policy statement. In relation to this application, the options available to the Sub-Committee are:

- To grant the licence subject to the conditions consistent with the operating schedule accompanying the application, which the Sub-Committee may modify to such extent as they consider appropriate; or
- To reject the whole or part of the application (which may include the omission of certain licensable activities from the licence and / or the refusal to specify a particular individual as the Designated Premises Supervisor).

3.3 The statutory guidance makes it clear that 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.

3.4 The Sub-Committee'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.

3.5 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require the Sub-Committee to decide that no lesser step will achieve the aim, the Sub-Committee should aim to consider the potential burden that the condition would impose on the applicant/premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the Sub-Committee ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the licensing objectives and nothing

outside those parameters. The Sub-Committee may consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business (if appropriate).

- 3.6 The Sub-Committee is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination. Conditions may be placed on the licence (if granted) and further information in relation to conditions is provided later in this report.
- 3.7 All licensing determinations should be considered on the individual merits of the application. The Sub-Committee'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. Findings on any issues of fact should be on the balance of probability.
- 3.8 It is important that the Sub-Committee give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

Conditions

- 3.9 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.
- 3.10 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

Proposed conditions

- 3.11 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence holder, which they should carry out before making their application for a premises licence. This would be translated into the steps recorded in the operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.
- 3.12 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

Consistency with steps described in operating schedule

- 3.13 The 2003 Act provides that where an operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 3.14 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder must be clear to the licence holder, enforcement officers and the courts.

Imposed conditions

- 3.15 The Sub-Committee 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.
- 3.16 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

Proportionality

- 3.17 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

4. Timetable and Accountability for Implementing this Decision

- 4.1 Any decision made by the Licensing Sub-Committee does not have effect until:
- the end of the period given for appealing against the decision; or

- if the decision is appealed, until the appeal is disposed of.
- 4.2 An appeal may be lodged by either the applicant or a party to the hearing that has made a relevant representation.
- 4.3 Parties to the hearing must be informed of the decision within 5 working days of the hearing (or within 5 working days from the last day of the hearing if it takes place over multiple days).

5. Financial Implications

- 5.1 There are no specific financial implications arising from this application.
- 5.2 However, additional costs may be incurred should the matter go to appeal. In such an eventuality it may not be possible to recover all of the costs incurred. The impact of these additional costs (if any) will therefore need to be met from within existing revenue budgets.

6. Legal Advice and Implications

- 6.1 A Council Solicitor will be in attendance at the hearing to provide appropriate legal advice to the Licensing Sub-Committee in relation to specific aspects of the application / hearing, however the advice below is generally applicable to all applications.
- 6.2 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.
- 6.3 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.
- 6.4 The Sub-Committee may accept hearsay evidence and it will be a matter for the Sub-Committee to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard but has heard or read about.
- 6.5 The Secretary of State's guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment, and proportionality.

- 6.6 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The guidance is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this guidance, they may depart from it if they have good reason to do so and can provide full reasons.
- 6.7 In addition to the above, members are reminded that all decisions must be taken in accordance with the Council's Statement of Licensing Policy (adopted 3rd June 2020).
- 6.8 Departure from the guidance and / or Statement of Licensing Policy could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

7. Risks and Mitigation

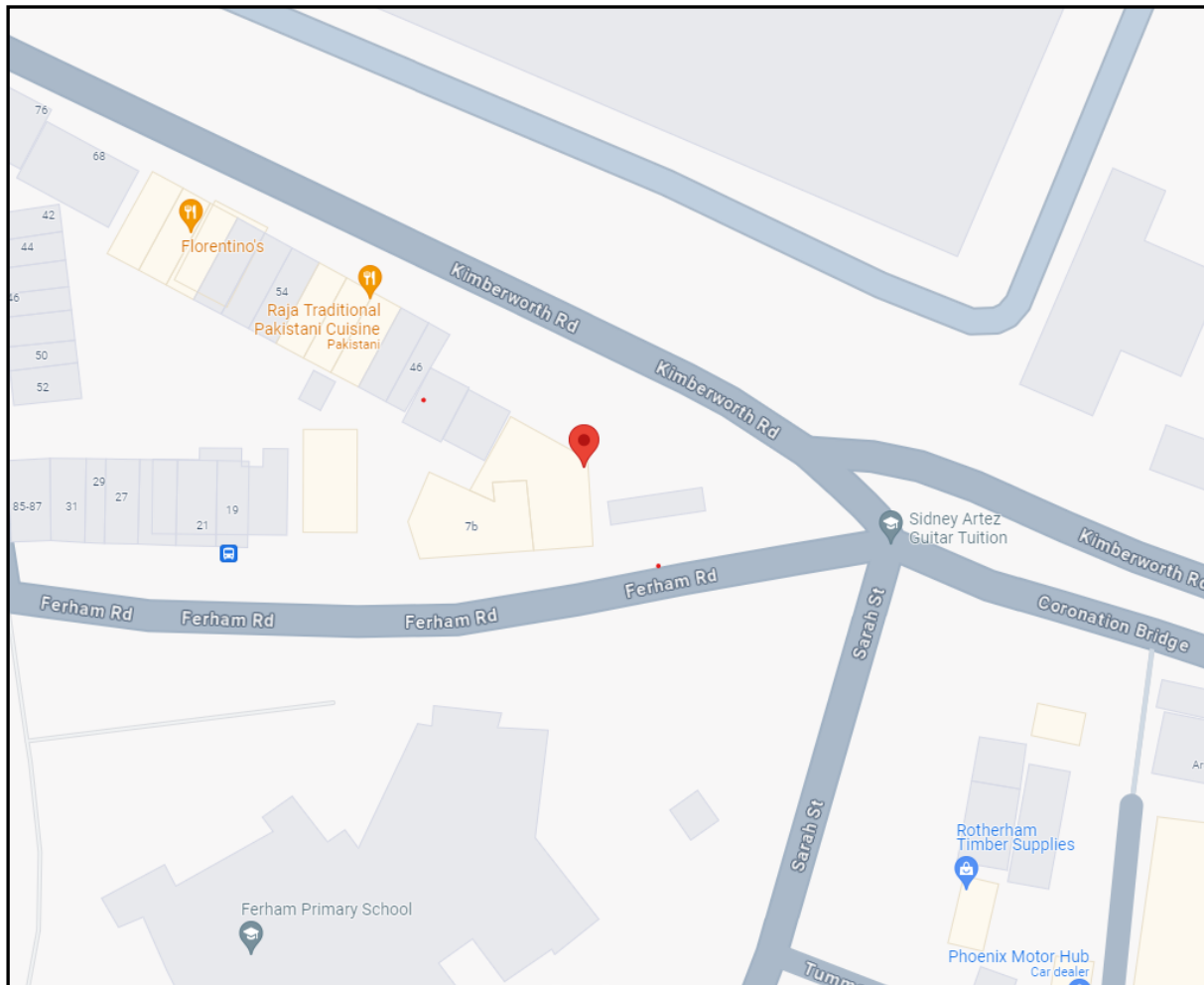
- 7.1 The statutory requirements in relation to the consideration of this application are detailed in this report. It is essential that the Sub-Committee act in accordance with these statutory provisions and take account of statutory guidance.
- 7.2 Failure to do this exposes the Council to significant risk of legal challenge, the consequences of which could result in financial and / or reputational damage to the Council.
- 7.3 Members are therefore urged to fully consider the information in this report when making a decision regarding this application, and to ensure that any decision made is justifiable, proportionate and based on the promotion of one or more of the Licensing Objectives.
- 7.4 Council officers are present at the meeting today and can provide additional advice to members of the Sub-Committee should this be required. In addition, a copy of the statutory guidance and Statement of Licensing Policy is available for members to review should they wish to do so.

8. Accountable Officer(s)

Diane Kraus, Principal Licensing Officer, Community Safety and Street Scene

APPENDIX 1

La Sandy, 34 Kimberworth Road, Rotherham S61 1AE



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Appendix 2



My Reference: LaSandy/DEK
Please ask for: Diane Kraus
Email: diane.kraus@rotherham.gov.uk

Your Reference:
Date: 6th October 2023
Tel: 01709 289536

Mr Aurel Sandi & Ms Denisa Linka
34 Kimberworth Road
Rotherham
S61 1AJ

Dear Mr Sandi & Ms Linka

RE: La Sandy, 34 Kimberworth Road, Rotherham, S61 1AJ

Further to your meeting of 5th October 2023 with the South Yorkshire Police Licensing Enforcement Officer, Jo Belton, during which you identified yourselves as the owners of the above premises.

As you are aware, the purpose of this meeting was to discuss allegations that unlawful licensable activities are being provided at La Shandy, 34 Kimberworth Road, Rotherham, S61 1A.

Licensing Activities are the sale and supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment, which is the supply of hot food and drink between 23:00 hours and 05:00hours.

Evidence supports that amplified live music has been provided at the premises on at least one recent occasion. Furthermore, this provision has resulted in a statutory noise nuisance occurring, which is being dealt with as a separate matter colleague in the Council's Environmental Noise Service.

The provision of live amplified music qualifies as a licensable activity. This means that it may only be lawfully provided at premises that has benefit of a Premises Licence issued under the Licensing Act 2003, which 34 Kimberworth Road does not have.

Please be aware that, a person commits an offence if—

(a)he carries on, or attempts to carry on, a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or
(b)he knowingly allows a licensable activity to be so carried on.

Consideration will be given to the institution of legal proceeding if unlicensed activities continue to be provided at the premises.

I have sent a copy of this letter to the registered office of LA Sandy Limited (company registration number 13554200), of which Mr Aurel Sandi is the sole Director.

If anything in this letter is unclear, or should you wish to make an application for a Premises Licence to allow the provision of licensable activities, please do not hesitate to contact me.

Yours sincerely

Diane Kraus
Principal Licensing Officer
Rotherham MBC, Riverside House, Main Street, Rotherham, S60 1AE

CC. LA Sandy Limited, 1 Warren Mount, Rotherham, S61 1JU

APPENDIX 3

Application for a premises licence to be granted under the Licensing Act 2003

Please read the following instructions first

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

DENISA MIRELA LINCA

(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003

Part 1 – Premises details

Postal address of premises or, if none, ordnance survey map reference or description			
LA SANDY 34 KIMBERWORTH ROAD, BRADGATE, ROTHERHAM. S61 1AE			
Post town	ROTHERHAM	Postcode	S61 1AE

Telephone number at premises (if any)	07778269067
Non-domestic rateable value of premises	£ 3000

Part 2 - Applicant details

Please state whether you are applying for a premises licence as **appropriate** **Please tick as appropriate**

a)	an individual or individuals *	X	please complete section (A)
b)	a person other than an individual *		
	i as a limited company/limited liability partnership		please complete section (B)
	ii as a partnership (other than limited liability)		please complete section (B)
	iii as an unincorporated association or		please complete section (B)
	iv other (for example a statutory corporation)		please complete section (B)
c)	a recognised club		please complete section (B)
d)	a charity		please complete section (B)

e)	the proprietor of an educational establishment		please complete section (B)
f)	a health service body		please complete section (B)
g)	a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales		please complete section (B)
ga)	a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England		please complete section (B)
h)	the chief officer of police of a police force in England and Wales		please complete section (B)

* If you are applying as a person described in (a) or (b) please confirm (by ticking yes to one box below):

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or X
- I am making the application pursuant to a
- statutory function or
- a function discharged by virtue of Her Majesty's prerogative

(A) individual applicants (fill in as applicable)

Mr	Mrs	Miss	Ms	Other Title (for example, Rev)	MRS
Surname LINCA			First names DENISA MIRELA		
Date of birth 22/02/1988			I am 18 years old or over		Please tick yes X
Nationality ROMANIAN					
Current residential address if different from premises address		XXXXXXXXXXXXXX			
Post town	ROTHERHAM			Postcode	S61 1JU
Daytime contact telephone number			xxxxxxx		
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 'share code' provided to the applicant by that service (please see note 15 for information)					
S6A MRK 377					

Second individual applicant (if applicable)

Mr	Mrs	Miss	Ms	Other Title (for example, Rev)	
Surname			First names		
Date of birth or over		I am 18 years old		Please tick yes	
Nationality					
Current residential address if different from premises address					
Post town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 'share code' provided to the applicant by that service: (please see note 15 for information)					

(B) Other applicants

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name
Address
Registered number (where applicable)
Description of applicant (for example, partnership, company, unincorporated association etc.)
Telephone number (if any)
E-mail address (optional)

Part 3 Operating Schedule

Please give a general description of the premises (please read guidance note 1)

A brick built industrial building operating as a food shop with 2 storage areas and a toilet. Part of the shop counter to be converted to a bar counter and large tables and benches to be brought in for customers use. Outside is a concrete hardstanding and a bench table for smokers. In the garden area there are tables and benches and an area with a BBQ and Pizza oven.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

NO

What licensable activities do you intend to carry on from the premises?

(please see sections 1 and 14 and Schedules 1 and 2 to the Licensing Act 2003)

Provision of regulated entertainment (please read guidance note 2)		Please tick all that apply
a)	plays (if ticking yes, fill in box A)	
b)	films (if ticking yes, fill in box B)	
c)	indoor sporting events (if ticking yes, fill in box C)	
d)	boxing or wrestling entertainment (if ticking yes, fill in box D)	
e)	live music (if ticking yes, fill in box E)	x
f)	recorded music (if ticking yes, fill in box F)	x
g)	performances of dance (if ticking yes, fill in box G)	
h)	anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)	

<u>Provision of late night refreshment</u> (if ticking yes, fill in box I)	
<u>Supply of alcohol</u> (if ticking yes, fill in box J)	X

In all cases complete boxes K, L and M

Plays Standard days and timings (please read guidance note 7)			<u>Will the performance of a play take place indoors or outdoors or both – please tick</u> (please read guidance note 3) N/A	Indoors	
				Outdoors	
				Both	
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue					
Wed			<u>State any seasonal variations for performing plays</u> (please read guidance note 5)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sat					
Sun					

Films Standard days and timings (please read guidance note 7)			<u>Will the exhibition of films take place indoors or outdoors or both – please tick</u> (please read guidance note 3) N/A	Indoors	
				Outdoors	
				Both	
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue					
Wed			<u>State any seasonal variations for the exhibition of films</u> (please read guidance note 5)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sat					
Sun					

Indoor sporting events Standard days and timings (please read guidance note 7)			<u>Please give further details</u> (please read guidance note 4) N/A
Day	Start	Finish	
Mon			
Tue			
Wed			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 5)
Thur			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 6)
Fri			
Sat			
Sun			

Boxing or wrestling entertainments Standard days and timings (please read guidance note 7)			<u>Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3) N/A	Indoors	
				Outdoors	
				Both	
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 4)		
Mon					
Tue					
Wed			<u>State any seasonal variations for boxing or wrestling entertainment</u> (please read guidance note 5)		
Thur					
Fri					
Sat			<u>Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sun					

Live music Standard days and timings (please read guidance note 7)			<u>Will the performance of live music take place indoors or outdoors or both – please tick</u> (please read guidance note 3)		Indoors	
			N/A		Outdoors	
Day	Start	Finish	Both x			
Mon	10.00	22.00	Live music is only expected at Romanian Christenings, birthdays, and marriages and Christmas Eve and New Years Eve celebrations.			
Tue	10.00	22.00				
Wed	10.00	22.00	<u>State any seasonal variations for the performance of live music</u> (please read guidance note 5)			
Thur	10.00	22.00				
Fri	10.00	23.00	<u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u> (please read guidance note 6) Christmas Eve 24 th December and New Years Eve 31 st December to midnight 24.00 hours			
Sat	10.00	23.00				
Sun	10.00	22.00				

Recorded music Standard days and timings (please read guidance note 7)			<u>Will the playing of recorded music take place indoors or outdoors or both – please tick</u> (please read guidance note 3)		Indoors	
			N/A		Outdoors	
Day	Start	Finish			Both	x
Mon	10.00	22.00	<u>Please give further details here</u> (please read guidance note 4). Background recorded music to be played inside and outside most Evenings.			
Tue	10.00	22.00				
Wed	10.00	22.00	<u>State any seasonal variations for the playing of recorded music</u> (please read guidance note 5) NO			
Thur	10.00	22.00				
Fri	10.00	23.00	<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u> (please read guidance note 6) Christmas Eve 24 th December and New Years Eve 31 st December to midnight 24.00 hours.			
Sat	10.00	23.00				
Sun	10.00	23.00				

Performances of dance Standard days and timings (please read guidance note 7)			<u>Will the performance of dance take place indoors or outdoors or both – please tick</u> (please read guidance note 3) N/A	Indoors	
				Outdoors	
				Both	
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 4)		
Tue					
Wed			<u>State any seasonal variations for the performance of dance</u> (please read guidance note 5)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sat					
Sun					

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)			Please give a description of the type of entertainment you will be providing N/A		
Day	Start	Finish	<u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	
Mon				Outdoors	
				Both	
Tue			<u>Please give further details here</u> (please read guidance note 4)		
Wed					
Thur			<u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 5)		
Fri					
Sat			<u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sun					

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3) N/A	Indoors	
				Outdoors	
				Both	
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 4)		
Tue					
Wed			<u>State any seasonal variations for the provision of late night refreshment</u> (please read guidance note 5)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list</u> (please read guidance note 6)		
Sat					
Sun					

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption – please tick (please read guidance note 8)	On the premises	X
				Off the premises	
				Both	
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 5) NO		
Mon	10.00	22.00			
Tue	10.00	22.00			
Wed	10.00	22.00			
Thur	10.00	22.00	Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 6) Christmas Eve 24 th December and New Years Eve 31 st December until midnight 24.00 hours.		
Fri	10.00	23.00			
Sat	10.00	23.00			
Sun	10.00	23.00			

State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

Name DENISA MIRELA LINCA	
Date of birth 22/02 1988	
Address XXXXXXXXXX	
Postcode	XXXXXXX
Personal licence number (if known) RM3750	
Issuing licensing authority (if known) ROTHERHAM COUNCIL LICENSING	

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9).

NONE

L

Hours premises are open to the public Standard days and timings (please read guidance note 7)			State any seasonal variations (please read guidance note 5)
Day	Start	Finish	
Mon	10.00	22.30	
Tue	10.00	22.30	
Wed	10.00	22.30	
Thur	10.00	22.30	
Fri	10.00	23.30	
Sat	10.00	23.30	
Sun	10.00	22.30	
Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 6)			
Christmas Eve 24 th December to 00.30 hours 25 th December and New Years Eve 31 st December to 00.30 hours 1 st January .			

M

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)

THE OWNER OF THE BUSINESS IS THE DPS AND SHE WILL ENSURE THE GOOD RUNNING OF THE PREMISES ASSISTED BY HER HUSBAND. ANY AUTHORISED OFFICER, FIRE OFFICER OR POLICE SHALL BE ALLOWED ENTRY TO ALL PARTS OF THE PREMISES AT ALL REASONABLE TIMES AND ALL REASONABLE REQUESTS WILL BE GRANTED. NO UNLAWFUL ACTIVITY WILL BE ALLOWED ON THE PREMISES.

b) The prevention of crime and disorder

A BOUND INCIDENT/ACCIDENT BOOK WILL BE KEPT TO RECORD ALL INSTANCES OF DISORDER, DAMAGE TO PROPERTY, PERSONAL INJURY AND REFUSALS OF SERVICE AT THE PREMISES. THE BOOK WILL BE AVAILABLE FOR INSPECTION BY POLICE OR OTHER RESPONSIBLE AUTHORITY OFFICERS. ANY PERSON APPEARING DRUNK WILL NOT BE SERVED AND ANY ONE APPEARING DRUNK WILL BE REFUSED ENTRY TO THE PREMISES. REFUSAL BOOK SHALL ALSO BE KEPT AND BE AVAILABLE TO POLICE OR OTHER AUTHORITY OFFICERS. AGE RESTRICTED SALES AND TRAINING WILL BE GIVEN TO ALL STAFF. A ZERO TOLERANCE DRUGS POLICY SHALL BE PUT IN PLACE TO INCLUDE TOILET CHECKS, A SECURE DROP BOX AVAILABLE FOR ANY DRUGS FOUND/SEIZED ETC AND IMMEDIATE BARRING OF ANY CUSTOMER FOUND IN POSSESSION OF DRUGS.

c) Public safety

ALL TABLES WILL BE KEPT CLEAR OF EMPTY DRINK CONTAINERS. FIRE EQUIPMENT IS LOCATED ON THE PREMISES AND WILL BE REGULARLY MAINTAINED. ALL STAFF WILL BE TRAINED ON INDUCTION WITH CHALLENGE 25 POLICY AND DRUGS POLICY AND HOW TO COMPLETE ACCIDENT/INCIDENT BOOK AND REFUSAL BOOK AND TRAINING RECORDS WILL BE UPDATED EACH YEAR.

d) The prevention of public nuisance

WHEN RECORDED OR LIVE MUSIC IS TAKING PLACE NOISE LEVELS WILL BE MONITORED TO PREVENT NOISE NUISANCE. CUSTOMERS WILL BE ASKED TO LEAVE THE PREMISES QUIETLY AND CONSIDER ANY NEAR NEIGHBOURS AND NOTICES DISPLAYED WILL REQUEST THE SAME. DISPOSAL OF EMPTY BOTTLES INTO WASTE BINS OUTSIDE THE PREMISES SHALL NOT TAKE PLACE BETWEEN THE HOURS OF 22.00 HOURS AND 8.00 HOURS..

e) The protection of children from harm

A CHALLENGE 25 SCHEME SHALL OPERATE AT THE PREMISES. ANY PERSON WHO APPEARS TO BE UNDER 25 YEARS OF AGE SHALL NOT BE ALLOWED TO PURCHASE ALCOHOL UNLES THEY PRODUCE AN ACCEPTABLE FORM OF PHOTO IDENTIFICATION. CHILDREN UNDER THE AGE OF 18 YEARS SHALL ONLY BE ALLOWED ON THE PREMISES WHEN ACCOMPANIED BY AN ADULT.

Checklist:**Please tick to indicate agreement**

•	I have made or enclosed payment of the fee.	x
•	I have enclosed the plan of the premises.	x
•	I have sent copies of this application and the plan to responsible authorities and others where applicable.	x
•	I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.	x
x•	I understand that I must now advertise my application.	x
•	I understand that if I do not comply with the above requirements my application will be rejected.	x
•	[Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom or my share code issued by the Home Office online right to work checking service (please read note 15).	x

It is an offence, under Section 158 of the Licensing Act 2003, to make a false statement in or in connection with this application. Those who make a false statement may be liable on summary conviction to a fine of any amount.

It is an offence under Section 24b of the Immigration Act 1971 for a person to work when they know, or have reasonable cause to believe, that they are disqualified from doing so by reason of their immigration status. Those who employ an adult without leave or who is subject to conditions as to employment will be liable to a civil penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 and pursuant to Section 21 of the same act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified.

Part 4 – Signatures (please read guidance note 11)

Signature of applicant or applicant's solicitor or other duly authorised agent (see guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Declaration	[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15). - The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, or have conducted an online right to work check using the Home Office online right to work checking service which confirmed their right to work (please see note 15)
Signature	JOHN HILL
Date	11/01/2024
Capacity	LICENSING AGENT

For joint applications, signature of 2nd applicant or 2nd applicant's solicitor or other authorised agent (please read guidance note 13). If signing on behalf of the applicant, please state in what capacity.

Signature	
Date	
Capacity	

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14)

JOHN HILL, (LICENSING AGENT)

20, CURLEW COURT,

ROSSINGTON.

Post town	DONCASTER	Postcode	DN11 0ER
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Telephone number (if any)	07712688265
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If you would prefer us to correspond with you by e-mail, your e-mail address (optional)

blueberryhill.j@mail.com

Email amending application

From: John HILL <blueberryhill.j@mail.com>

Sent: Thursday, February 8, 2024 7:28 PM

To: Diane Kraus <Diane.Kraus@rotherham.gov.uk>

Subject: L A Sandy Premise License application

Hi Diane,

I have spoken at length with my client Denisa Linca and she insists that she can not afford to pay for a Noise Impact Survey or the fitting of a sound limiter if it was agreed. Therefore she would like to remove the use of recorded and live music from the application as the only way she can address the Representation made by the Environmental Health Noise officer with immediate effect and so reduce the application to the On sale of alcohol only. I have explained to her that as a personal license holder she can have a maximum of 15 T.E.N at L A Sandy per year covering a maximum of 21 days and that Environmental Health Noise officers could object if she were to cause a Noise Nuisance.

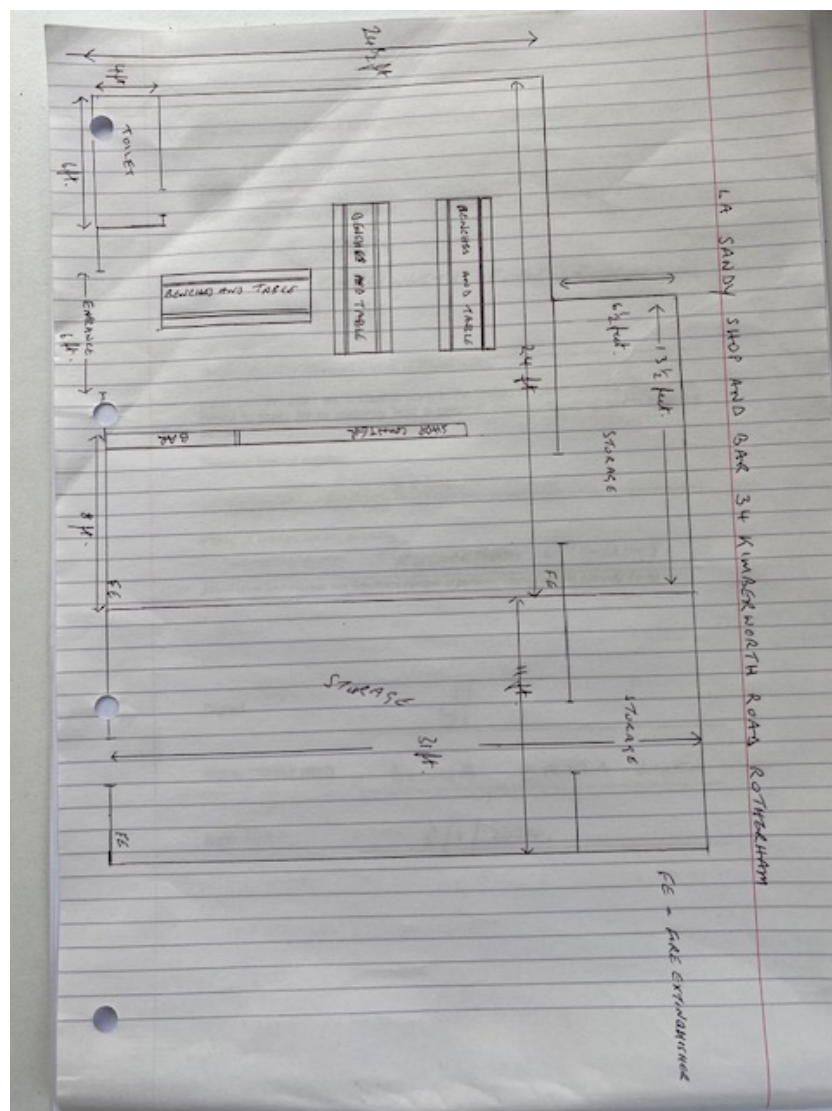
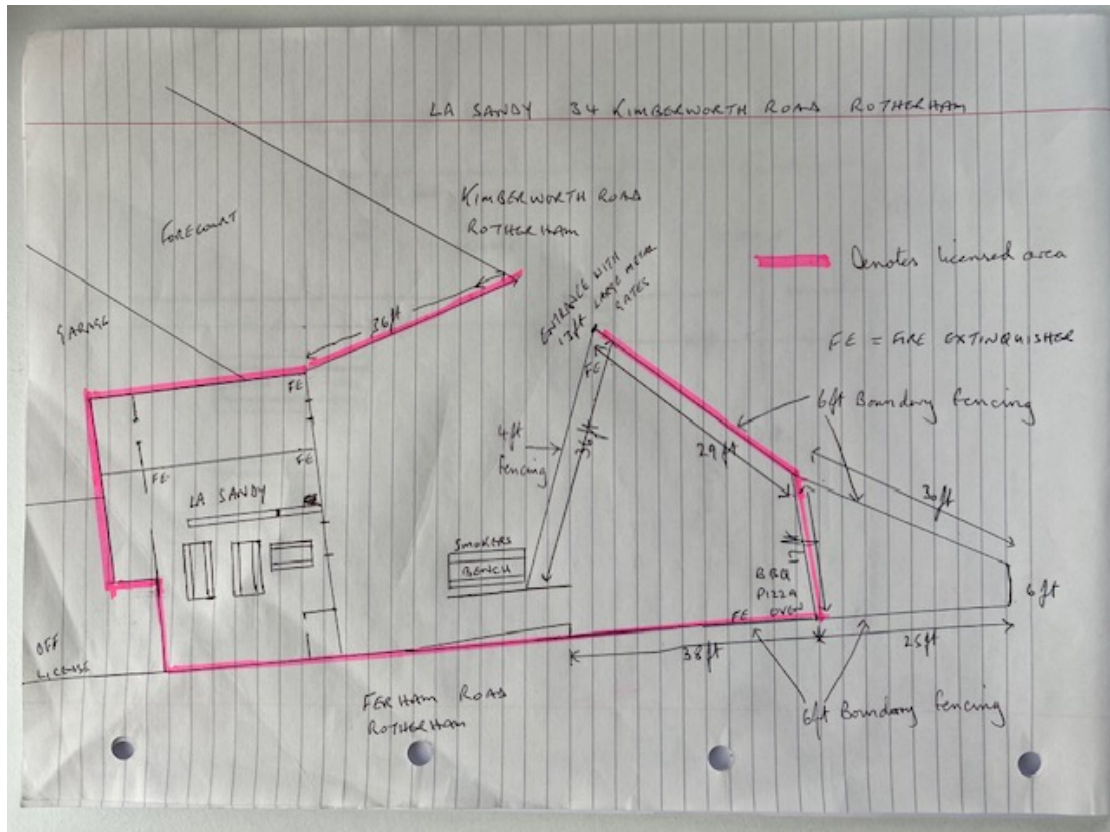
This is the way that she wishes to proceed.

Regards

John

John Hill

Licensing Agent



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APPENDIX 4

1. Any authorised officer of the Licensing Authority, fire officer or police shall be allowed entry to all parts of the premises at all reasonable times.
2. A CCTV system shall be installed at premises and shall:
 - a. be maintained fully operational and in good working order at all times;
 - b. make and retain clear images; and
 - c. show an accurate date and time that the images were made.
3. All CCTV images shall be retained for a period of not less than 31 days.
4. CCTV images shall be made immediately available for viewing, upon request, of the Police or an authorised officer of the Licensing Authority.
5. The original CCTV images, or a copy, shall be provided to any police officer or authorised officer of the Licensing Authority within 48 hours of a request having been made in a format that can be viewed on readily available equipment without the need for specialist software
6. A member of staff trained on the operation of the CCTV system shall be on duty at the premises, or on call and available to attend the premises, at all times the premises are open.
7. Signage shall be displayed in the customer area of the premises to advise that CCTV is in operation
8. A “Challenge 25” proof of age policy shall be operated at the premises where, persons who appear to be under the age of 25 must produce id before being sold alcohol. Only the following forms of id shall be accepted:
 - a. passport or photo-card driving licence;
 - b. proof of age card bearing the official ‘PASS’ accreditation hologram; or
 - c. a military ID cards.
9. A refusals log, in which a record of any occasions that a member of staff has refused to sell alcohol, shall be maintained. This refusals log shall be kept on the premises made available to the police or authorised officers of the Licensing Authority upon request.
10. Notices shall be displayed in a clear and prominent position inside the premises stating that Challenge 25 is in operation.
11. An incident book/register shall be maintained in which, as a minimum, the following shall be recorded.
 - a. All incidents of crime and disorder occurring at the premises; and
 - b. Details of occasions when the police are called to the premises.

12. The incident book/register shall be kept on the premises and made available for inspection by the police or authorised officers of the Licensing Authority upon request.
13. A “Zero tolerance” drugs policy shall be in place. As a minimum, the policy will require:
 - a. Regular toilet checks to be carried out and recorded;
 - b. A secure drop box is available to keep any seized drugs until such time they are collected by the police; and
 - c. Immediate barring of any customer found in possession of drugs.
14. The drugs policy and associated records shall be kept on the premises and shall be available for inspection upon request by the Police or an authorised officer of the Licensing Authority.
15. No unlawful activity will be allowed on the premises.
16. Any one appearing drunk will be refused entry to the premises.
17. No adult entertainment, services or other activities shall be provided at the premises
18. Children under the age of 18 years shall only be allowed on the premises when accompanied by an adult.
19. All tables will be kept clear of empty drink containers
20. The disposal of empty bottles into waste bins outside the premises shall not take place between 22.00 hours and 8.00 hours.
21. A clear and legible notice will be prominently displayed at the exit of the premises asking customers to “leave quietly and have regard to our neighbours”.
22. Fire equipment shall be subject to routine inspections to maintained in accordance with current safety regulations.
23. All staff shall be trained in:
 - a. the Challenge 25 & drug policies;
 - b. method of recording refusals f sale of alcohol;
 - c. the need to report, and record, any instances of crime and disorder occurring at, or nearby, the premises.
24. Staff training shall take place upon commencement of employment and updated every year thereafter.
25. A written record of the training provided to staff shall be kept on the premises and made available to the police or authorised officers of the Council upon request.

APPENDIX 5

From: Andrew Woodhouse <Andrew.Woodhouse@rotherham.gov.uk>

Sent: Thursday, January 18, 2024 10:32 AM

To: Diane Kraus <Diane.Kraus@rotherham.gov.uk>

Subject: LA SANDY LTD -MAU56964

Good morning,

Following the review of the above application, Environmental Health would like to put in formal representation against the grant of premises license for LA SANDY LTD 34 Kimberworth Road.

Reason being is that the application submitted fails to address how the premises would prevent noise nuisance to residents in the local area which would likely be a statutory nuisance and Environmental Health has previously received noise complaints in relation to these premises.

This would be a requirement of licensing objectives and would likely cause public nuisance.

I would request that the applicant has a Noise Impact Survey carried out.

I would be happy to reconsider once I have reviewed the Noise Impact Survey results.

Andy Woodhouse
Community Protection Officer

Community Protection & Environmental Health
Regulation & Enforcement Services
Regeneration & Environment
Rotherham Metropolitan Borough Council
Tel: 01709 823118
Internal: 18210

Riverside House | Main Street | Rotherham | S60 1AE

**Chartered Institute of
Environmental Health**



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APPENDIX 6

ENVIRONMENTAL PROTECTION ACT 1990, section 80

Abatement Notice in respect of Statutory Nuisance

To: LA SANDY LIMITED

Of: 34 Kimberworth Road, Rotherham, S61 1AE

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the **ROTHERHAM METROPOLITAN BOROUGH COUNCIL** being satisfied of the existence of a statutory nuisance under section 79[1][G] of that Act at premises in the vicinity of **LA SANDY LTD 34 Kimberworth Road, Rotherham, S61 1AE** within the district of the said Council arising from **amplified music**.

HEREBY REQUIRE YOU as the owner of the premises with IMMEDIATE EFFECT from the service of this notice, to abate the same, and also:

HEREBY PROHIBIT the occurrence of the same and for that purpose require you to:

- **Cease or cause to cease the playing of amplified music at such a level that constitutes a statutory noise nuisance.**
- **And / or take any other steps so as to prevent a recurrence.**

IN the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) as amended of the Environmental Protection Act 1990 and on summary conviction, a person will be liable to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of the greater of £5,000 or level 4 on the standard scale for each day on which the offence continues after the conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure incurred.

DATED: 23 February 2024

Signed:

(Address to which all communications should be sent)
Community Protection Unit
Riverside House,
Main Street,
Rotherham S60 1AE

N.B. The person served with this Notice may appeal against the notice to a magistrates' court within twenty-one days beginning with the date of service of the notice. See notes on the reverse of this form.

*Currently £5,000, subject to alteration by Order.

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:-

Citation, Commencement and Interpretation

- 1.- (2) In these Regulations-
 "the 1974 Act" means the Control of Pollution Act 1974; "the 1990 Act" means the Environmental Protection Act 1990; and "the 1993 Act" means the Noise and Statutory Nuisance Act 1993.

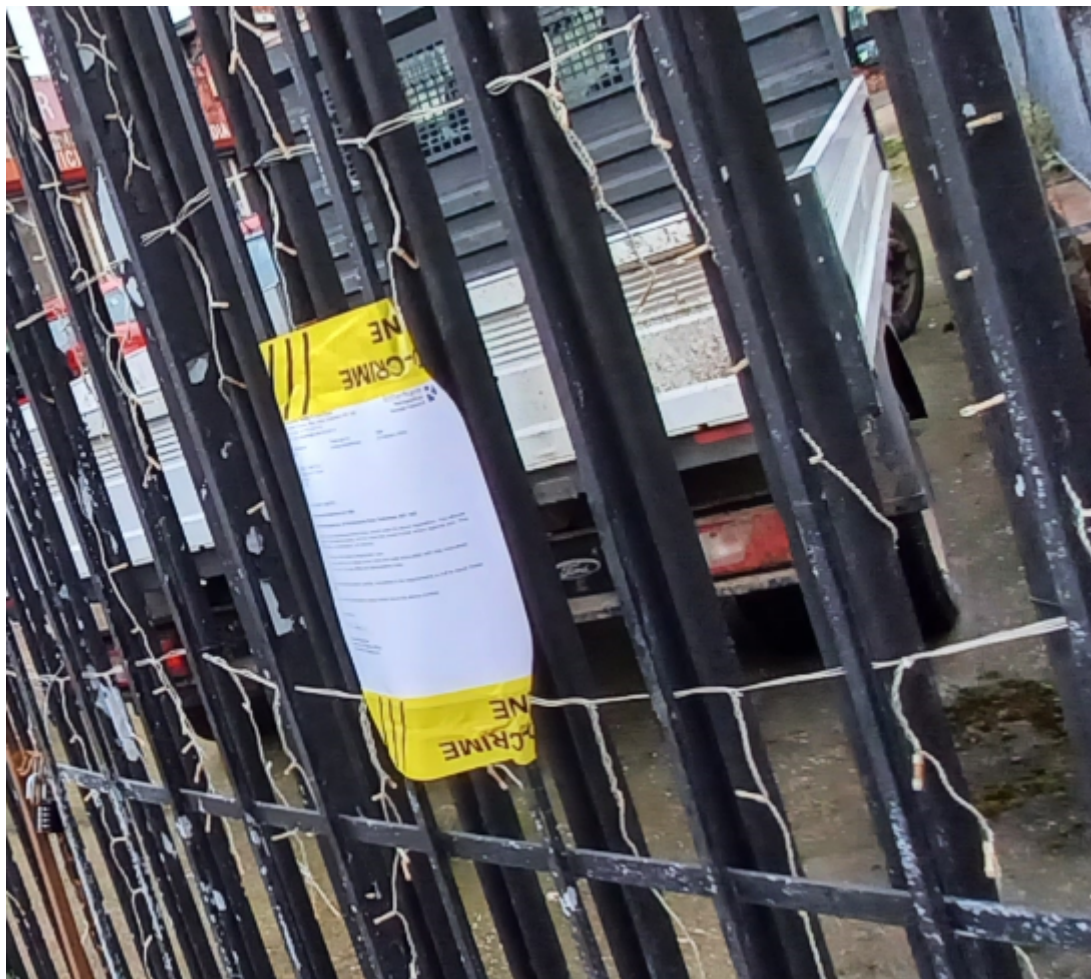
Appeals under Section 80(3) of the 1990 Act

- 2.- (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case-
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
 - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
 - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates-
 - (i) is a nuisance falling within section 79(1)(a), (d), (e), (f) or (g) of the 1990 Act and arises on industrial, trade, or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney, or
 - (iii) is a nuisance falling within section 79(1)(ga)(a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes,
 that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
 - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of-
 - (i) any notice served under section 60 or 66 of the 1974 Act (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
 - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the 1993 Act (loudspeakers in streets or roads);
 - (h) that the abatement notice should have been served on some person instead of the appellant, being-
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
 - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being-
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,
 and that it would have been equitable for it to have been so served;
 - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being-
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,
 and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may-
- (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit, or
 - (c) dismiss the appeal;
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit-
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
 - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above the court-
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
 - (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Suspension of Notice

- 3.- (1) Where-
- (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and-
 - (b) either-
 - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal, or
 - (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
 - (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met,
- the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) This paragraph applies where-
- (a) the nuisance to which the abatement notice relates-
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
 - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice-
- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
 - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

Appendix 7



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