

**Committee Name and Date of Committee Meeting**

Licensing Sub-Committee – 10<sup>th</sup> July 2020 (9:30 am)

**Report Title**

Consideration of an application (made in accordance with s.17 of the Licensing Act 2003) for the Grant of a Premises Licence for the premises described as a container unit in the carpark of Pitstop Car Wash, 93 Fitzwilliam Road, Eastwood, Rotherham, S65 1PS.

**Report Author(s)**

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**Report Summary**

On the 12<sup>th</sup> May 2020, an application was made on behalf of Matki Chai Ltd for a Premises Licence at the premises described as a container unit in the carpark of Pitstop Car Wash, 93 Fitzwilliam Road, Eastwood, Rotherham, S65 1PS. The premises is located within the car park of an existing hand car wash and the applicant is seeking a licence to permit the provision of late night refreshment from the container unit on Friday and Saturday night.

Following the submission of the application paperwork, concerns were raised by Rotherham MBC Children and Young People's Services, South Yorkshire Police and Rotherham MBC Licensing Service (in the role as a responsible authority). Representations have been received from each of these agencies who all cite concerns regarding the nature of the premises and the likely impact of its activities on the local area. In addition, a representation has been received by a local Councillor – again citing concerns regarding the impact of the premises on the local area. Further detail on these is 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 details
- Appendix 2 Application form received on 12<sup>th</sup> May 2020
- Appendix 3 Plan of premises (provided by applicant)
- Appendix 4 Representations received (redacted where appropriate)

## **Background Papers**

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

Revised guidance issued under section 182 of the Licensing Act 2003 (April 2018)  
(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 for the premises described as Unit One, Imperial Buildings, High Street, Rotherham, S60 1PA.**

## **1. Background**

- 1.1 The application has been made on behalf of Matki Chai Ltd for a Premises Licence at the premises described as a container unit in the carpark of Pitstop Car Wash, 93 Fitzwilliam Road, Eastwood, Rotherham, S65 1PS. The premises is located within the car park of an existing hand car wash and the applicant is seeking a licence to permit the provision of late night refreshment from the container unit on Friday and Saturday night. The location of the premises is shown at Appendix 1.
- 1.2 The premises does not currently have the benefit of a Premises Licence prompting the submission of the application to which this report relates. A copy of application can be found at Appendix 2. A plan of the premises (provided by the applicant) is attached as Appendix 3.
- 1.3 There is a prescribed period of 28 days following the submission of an application during which time interested parties / responsible authorities may submit representations in relation to the application.
- 1.4 At the end of the prescribed period, four representations had been received. A redacted copy of these representations can be found at Appendix 4.
- 1.5 Rotherham MBC Development Control have confirmed that the premises have not yet obtained the relevant planning consent in relation to the proposed development, but the applicant has made initial enquiries with Development Control in order to assess the likelihood of success should an application be made.

## **2. Key Issues**

### The application

- 2.1 The applicant is seeking authority for the following licensable activities to take place at the premises:
  - Provision of late night refreshment
- 2.2 The applicant has stated that the “activity to be authorised is to allow us to remain open till 2am on Friday and Saturday nights. There will be no music played or other noise from the premises the sole purpose is to remain open till 2am to serve Hot drinks and snacks”.

- 2.3 The application is for these activities to take place between the hours of 2300hrs and 0200hrs the following morning, on Friday at Saturday.
- 2.4 In addition, the applicant has asked requested the following in relation to non-standard timings:
- “If Eid falls on a day that isn’t Fri / Sat we would like to be able to open till 2am on this day too. Eid festival takes place twice per year”.
- 2.5 It is important to note that this application only relates to activities that take place between the hours of 11pm and 5am. Therefore, the absence of a licence will prevent the premises from operating during these hours only and not at any other time.

#### Representations received

- 2.6 Four representations have been received:
- South Yorkshire Police
  - Rotherham MBC Children and Young People’s Services
  - Rotherham MBC Licensing (in the role as a Responsible Authority)
  - Cllr Kathleen Reeder (Rotherham Borough Ward Councillor for the Valley Ward)
- 2.7 The representations are summarised below, however full details can be found in Appendix 4.
- 2.8 The representation submitted by South Yorkshire Police cited the following:
- Increase in antisocial behaviour in the area.
  - Concerns regarding public nuisance.
- 2.9 The representation submitted by Rotherham MBC Children’s Services cited the following:
- Concerns regarding antisocial activity and child sexual and / or criminal exploitation in this area.
  - The premises contributing to further exploitation.
- 2.10 The representation submitted by Rotherham MBC Licensing cited the following:
- Sexual and / or criminal exploitation.
  - Concerns regarding crime and disorder and public nuisance.

2.11 The representation submitted by Councillor Kathleen Reeder cited the following:

- Concerns regarding antisocial behaviour
- The area being subject to a Public Space Protection Order

2.12 Those that have made representations have been invited to the hearing today and if attending will be given the opportunity to address the Sub-Committee in relation to the matters of concern.

2.13 Members of the Sub-Committee should give full consideration of the issues raised by interested party when determining the application.

2.14 The process to be adopted at the hearing is outlined at the end of this report.

### **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 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 Committee are:

- To grant the licence subject to the conditions consistent with the operating schedule accompanying the application, which the Panel may modify to such extent as they consider appropriate; or
- To reject the whole or part of the application.

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 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.
- 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 a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the 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 authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. The licensing authority should 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 licensing authority 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) – 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 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. Findings on any issues of fact should be on the balance of probability.
- 3.8 It is important that a licensing authority should 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 or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club 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 or club 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 or certificate 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 or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

### Imposed conditions

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

### Proportionality

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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. 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. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

## **4. Consultation**

- 4.1 The application has been subject to the statutory consultation process involving a newspaper advertisement and display of public notices in the vicinity of the site for 28 days.
- 4.2 The public consultation period ran from the 12<sup>th</sup> May 2020 to the 9<sup>th</sup> June 2020.
- 4.3 Relevant ward members have been notified of the application and all statutory requirements in relation to notification requirements have been complied with.



## **5. Timetable and Accountability for Implementing this Decision**

5.1 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.

5.2 An appeal may be lodged by either the applicant or a party to the hearing that has made a relevant representation.

5.3 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).

## **6. Financial Implications**

6.1 There are no specific financial implications arising from this application.

6.2 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.

## **7. Legal Advice and Implications**

7.1 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.

7.2 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.

7.3 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.

7.4 The Panel may accept hearsay evidence and it will be a matter for the Licensing 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.

- 7.5 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.
- 7.6 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.
- 7.7 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 3<sup>rd</sup> June 2020).
- 7.8 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.

## **8. Risks and Mitigation**

- 8.1 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.
- 8.2 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.
- 8.3 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.

- 8.4 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.

**9. Accountable Officer(s)**

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene

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