

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 5th August 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 Seasons Restaurant, 151 – 152 Bawtry Road, Wickersley, Rotherham, S66 2BW.

Report Author(s)

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Report Summary

On the 10th June 2020, an application was made on behalf of Seasons Wickersley Ltd for a Premises Licence at Seasons Restaurant, 151 – 152 Bawtry Road, Wickersley, Rotherham, S66 2BW. The premises comprises of what were formerly three separate businesses – a delicatessen, a butcher and a health / beauty salon, which have been converted into one premises. The applicant is seeking a licence to permit the provision of late night refreshment and sale of alcohol for consumption on and off the premises.

As the premises is located within Wickersley, the application falls under the scope of the Council's Cumulative Impact Policy. This application should be considered in accordance with this policy along with the Council's overarching Licensing Act 2003 Statement of Licensing Policy.

Following the submission of the application paperwork, representations were received from Rotherham MBC Licensing Service (in the role as a responsible authority) and five interested parties. In addition, South Yorkshire Police have agreed conditions with the applicant that are intended to address any concerns that the police may have had in relation to the application. Further detail on these matters 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 10th June 2020
- Appendix 3 Plan of premises (provided by applicant)
- Appendix 4 Representation received from the Licensing Authority (acting in the role of a Responsible Authority)
- Appendix 5 Representations received from Interested Parties
- Appendix 6 Rotherham MBC Cumulative Impact Policy

Background Papers

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

Rotherham MBC Cumulative Impact Policy 2020 – 2023 (available at www.rotherham.gov.uk/licensing - also attached as Appendix 6)

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 Seasons Restaurant, 151 – 152 Bawtry Road, Wickersley, Rotherham, S66 2BW.

1. Background

- 1.1 The application has been made on behalf of Seasons Wickersley Ltd for a Premises Licence at Seasons Restaurant, 151 – 152 Bawtry Road, Wickersley, Rotherham, S66 2BW. The applicant is seeking a licence to permit the provision of late night refreshment and sale of alcohol for consumption on and off the premises. 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, six representations had been received, one from the Licensing Authority (in its role as a Responsible Authority) and the remaining five from the following interested parties:
- i. Rotherham Borough Councillors representing the Wickersley Ward.
 - ii. Wickersley Parish Council.
 - iii. Mr and Mrs Malpas – local residents.
 - iv. Mr I Postlethwaite – local resident.
 - v. Mrs H Bartholomew – local resident.
- 1.5 In addition to the representations that had been received, South Yorkshire Police have put forward a number of conditions that should be added to the licence should it be granted, this has been discussed with the applicant who as agreed to offer these conditions for inclusion on the licence.

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 (for consumption within and outside of the licensed area) between the hours of 2300hrs and 0000hrs Monday to Sunday.

- Retail sale of alcohol (for consumption on and off the premises) between the hours of:
 - 1100hrs and 0000hrs Monday to Friday
 - 1000hrs and 0000hrs Saturday and Sunday
- 2.2 The applicant has stated that the opening times of the premises are as follows:
- 0800hrs to 0030hrs Monday to Sunday
- 2.3 Rotherham MBC Planning Service have confirmed that Condition 03 attached to Planning reference RB2018/1692 only allows the business to operate between the hours of 0800hrs and 0000hrs. Members should take this matter into consideration in relation to the terminal hour for the provision of licensable activity.

Representations received

- 2.4 One representation has been received, this was from the Licensing Authority (acting in its role as a Responsible Authority). The representation cited the following concerns:
- Noise nuisance and incidents of crime and disorder.
 - Worsening of the existing issues already prevalent in the area.
 - Inadequate provision for door supervision.
- 2.5 Full details of the representation can be found in Appendix 4.
- 2.6 Five representations were received from interested parties, these are summarised as follows:
- i. The representation from Rotherham Borough Councillors representing the Wickersley Ward cited:
 - Lack of infrastructure to support the industry resulting in a negative impact for local residents.
 - Increase in crime and disorder.
 - Public safety concerns.
 - Concerns regarding noise and littering.
 - Impact on young people.
 - ii. The representation from Wickersley Parish Council cited:
 - Noise nuisance.
 - Anti-social behaviour.

- Increase in excessive drinking leading to public nuisance, public safety concerns and crime and disorder problems.
- iii. The representation from Mr and Mrs Malpas cited:
- Noise nuisance.
 - Lack of management control.
- iv. The representation from Mr I Postlethwaite cited:
- Noise.
 - Litter.
 - Unruly behaviour.
- v. The representation from Mrs H Bartholomew cited:
- Noise.
 - Litter.
 - Anti-social behaviour.

2.7 Full details of the above representations can be found at Appendix 5.

2.8 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.

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

2.10 In addition, South Yorkshire Police have agreed the following licence conditions with the applicant:

- i. Alcohol will be served to customers seated or to those waiting to be seated.
- ii. A 'greeter' shall be employed at Seasons on Friday and Saturday evenings from 20:00hrs until close. The 'greeter' will principally be located in the restaurant's waiting area.
- iii. The use of door staff will be risk assessed on an ongoing basis by the licence holder of premises supervisor. A minimum of 3 SIA door supervisors will be employed to manage customers from Seasons and adjacent premises from 22:00hrs on Friday and Saturday evening when the Courtyard is open and trading. These door supervisors will patrol both the Courtyard and Seasons and will closely monitor external areas.

- iv. When external areas are being utilised for dining and / or consumption of alcohol by Seasons' customers, a specific member of staff shall be instructed to monitor external areas and remove empty / unrequired glassware from external tables.
- v. The use of non-glass drinking vessels in external areas shall be in accordance with the management's written assessment of risk.
- vi. All staff employed at the premises for the purpose of selling or delivering alcohol shall receive training in connection with prevention of underage sale and ID verification in accordance with a 'Challenge 25 policy'.
- vii. Where third party agents are utilised for the purpose of delivering food and alcohol orders, the licence holder shall require evidence that delivery staff have received training in connection with prevention of underage sale and ID verification in accordance with a 'Challenge 25 policy'.
- viii. No drinks to be removed from the premise sealed or unsealed, with the exception of:
 - for consumption within the area provided for that purpose
 - for home delivery, ancillary to a food order.
 - for takeaway pre-ordered by a customer, ancillary to a food order (walk up order will not be accepted by the premises).
- ix. No drinks to be removed from the premise sealed or unsealed, with the exception of:
 - for consumption within the area provided for that purpose (alcohol not allowed to be removed from the specified outside area)
 - for home delivery, ancillary to a food order.
 - for takeaway pre-ordered by a customer, ancillary to a food order (walk up order will not be accepted by the premises)."

2.11 These conditions should be added to the licence should it be granted.

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 10th June 2020 to the 8th July 2020.
- 4.3 All Responsible Authorities, relevant ward members, and the Town / Parish Council 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 3rd 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.

Cumulative Impact Policy

- 7.9 As this application relates to a premises in Wickersley, the application falls within the scope of the Council's Cumulative Impact Policy. This policy is attached for information as Appendix 6.
- 7.10 The Cumulative Impact Policy makes reference to a Cumulative Impact Assessment that has been carried out in the Wickersley area (in accordance with Section 5(a) of the Licensing Act 2003).
- 7.11 The assessment has been published as the Council believe that the number of licensed premises within the area described in the assessment is such that granting any further licences, or varying existing licenses, would be inconsistent with the Council's duty under the Act to promote the licensing objectives. There is therefore a presumption against the granting of new (or the varying of existing) licences in the area covered by the assessment.
- 7.12 When considering the presumption against granting or varying a licence in a CIZ, the Council must be satisfied that the applicant will not impact any further on the cumulative impact of existing licensed premises.
- 7.13 Applicants may suggest measures which they believe will demonstrate there will be no further impact from their premise. Examples that the Council may consider as demonstrating that there will be no further impact include:
- Small premises who operate outside of the peak hours of disruption, as described in the CIA.
 - Premises which are not alcohol-led and operate during the day-time economy.
 - Instances where a business is relocating to a new premise but retaining the same style of business.
 - Conditions which ensure the premise will operate in a particular manner, such as a minimum number of waiting staff to secure a food-led premise.
- 7.14 Examples of factors the Council will not consider include:
- That the premise will be well managed and well run.
 - That the premise will be constructed to a high specification
 - That the applicant operates similar premises in other areas without complaint.

7.15 Any representation made which supports the grant of a licence within a Cumulative Impact Zone will also be taken into account by the Council.

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

This report is published on the Council's [website](#).

Hearing Procedure

- 1 The Chair of the Licensing Committee will introduce the Committee and ask officers to introduce themselves.
- 2 The Chair will ask the applicants to formally introduce themselves.
- 3 The Licensing Officer will outline the procedure to be followed at the hearing.
- 4 Hearing Procedure:-
 - i. The Licensing Officer will introduce the report.
 - ii. Questions concerning the report can be asked both by Members and the applicant.
 - iii. The Licensing Officer will introduce in turn representatives for the Responsible Authority and Interested Parties who will be asked to detail their relevant representations.
 - iv. Members may ask questions of those parties
 - v. With the leave of the Chair the applicant or his representative may cross examine the representatives of the Responsible Authorities and Interested Parties.
 - vi. The applicant / licensee (or his/her nominated representative) will then be asked to:-
 - a) detail the application;
 - b) provide clarification on the application and respond to the representations made.
 - vii. The applicant / licensee (or his/her nominated representative) may then be asked questions by members and with the leave of the Chair from the other parties present.
 - viii. The applicant will then be given the opportunity to sum up the application. The Licensing Officer will then detail the options.
 - ix. There will then be a private session for members to take legal advice and consider the application.
- 5 The decision of the Licensing Committee will be given in accordance with the requirements of the Licensing Act 2003 and regulations made there under.

Notes:

- At any time in the Licensing Process Members of the Committee may request legal advice from the Solicitor to the Committee. This advice may be given in open session or in private.
- The Committee Hearing will be held in public unless and in accordance with the Regulations the Committee determine that the public should be excluded.