

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 1st December 2020 (09:30 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 “20 The Pastures”, 20 The Pastures, Todwick, Sheffield, S26 1JH.

Report Author(s)

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Report Summary

On the 8th October 2020, an application was made for a premises licence in relation to “20 The Pastures”, 20 The Pastures, Todwick, Sheffield, S26 1JH. The premises has most recently operated as soft furnishings / carpet retailer.

The applicant is seeking a licence to permit the provision of regulated entertainment (in the form of recorded music) and the retail sale of alcohol for consumption on the premises only.

Following the submission of the application paperwork, representations were received from the Council’s Community Protection Unit and three other interested parties. In addition, South Yorkshire Police and RMBC Licensing have agreed conditions with the applicant that are intended to address any concerns that the Responsible Authorities 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 8th October 2020
- Appendix 3 Representation received from Rotherham MBC Community Protection Unit.
- Appendix 4 Representations received from Interested Parties
- Appendix 5 Conditions agreed with South Yorkshire Police
- Appendix 6 Conditions agreed with Rotherham MBC Licensing

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 (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 “20 The Pastures”, 20 The Pastures, Todwick, Sheffield, S26 1JH.

1. Background

- 1.1 The application has been made by Ms Gillian Farrington-Lee and Mr Garry Astle for a Premises Licence at “20 The Pastures”, 20 The Pastures, Todwick, Sheffield, S26 1JH. The applicant is seeking a licence to permit the retail sale of alcohol for consumption on the premises only and the provision of regulated entertainment (in the form of recorded music). The location of the premises is shown at Appendix 1.
- 1.2 The premises does not currently have the benefit of a Premises Licence and has previously operated as a soft furnishings / carpet retailer. The applicant has recently acquired the premises with the intention of redeveloping the property and changing the nature of the business to one which is primarily the consumption of a food and drink on the premises (including the sale and consumption of alcoholic beverages). Further detail in relation to the business model can be provided by the applicant at the hearing should this be required. A copy of application can be found at Appendix 2.
- 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 – one from the Council’s Community Protection Unit and the remaining three from local residents (or representative organisations):
- i. Todwick Parish Council
 - ii. Ms JG (on behalf of A & J G)
 - iii. Anonymous resident
- 1.5 In addition to the representations that had been received, the following Responsible Authorities have put forward 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:
- South Yorkshire Police
 - Rotherham MBC Licensing

2. Key Issues

The application

- 2.1 The applicant is seeking authority for the following licensable activities to take place at the premises:

- Retail sale of alcohol (for consumption on the premises only) between the hours of 1200hrs and 2300hrs Sunday to Monday

The applicant has also specified seasonal hours as follows:

- New Year's Eve until 0100hrs

- Provision of Regulated Entertainment (Recorded Music – described in the application as “soft background music”) between the hours of 0900hrs and 2300hrs Monday to Sunday.

2.2 The applicant has stated that the opening times of the premises are 0900hrs to 2330hrs Monday to Sunday

The applicant has also specified seasonal hours as follows:

- New Year's Eve until 0130hrs.

Representations received

2.3 Four representations have been received, one from the Council's Community Protection Unit and the remainder from local residents (or groups representing local residents).

2.4 The representation from the Community Protection Unit cites the following concerns:

- Noise nuisance.
- Proximity of residential properties.
- Inadequate sound proofing measures.

2.5 Full details of this representation can be found in Appendix 3.

2.6 The representation from Todwick Parish Council cites the following concerns:

- Noise nuisance.
- Road safety concerns.
- Proximity of residential properties and the impact on local residents.

2.7 The representation from Ms JG cites the following concerns:

- Traffic flow and associated safety issues due to narrowing of streets caused by the parking of patrons.
- Noise and other disturbance at night.

2.8 The representation from the anonymous resident cites the following concerns:

- Noise, litter, parking and behaviour.

2.9 Full details of these representations can be found in Appendix 4.

2.10 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.

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

Agreed conditions

2.12 In addition to the above, a number of Responsible Authorities have agreed licence conditions with the applicant, these are attached to this report as follows:

- Appendix 5 – conditions agreed with South Yorkshire Police
- Appendix 6 – conditions agreed with Rotherham MBC Licensing

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

Important considerations in relation to Regulated Entertainment

2.14 As the applicant has indicated an intention for there to be live and / or recorded music at the premises, it is important that the following information is brought to the attention of the Licensing Committee.

2.15 There are a number of exemptions that mean that a licence (or other authorisation) under the 2003 Act is not required. The following activities are examples of entertainment which are not licensable:

- Incidental music – the performance of live music or the playing of recorded music if it is incidental to some other activity (see below).
- A spontaneous performance of music, singing or dancing.
- Stand-up comedy.

2.16 Whether or not music is “incidental” to another activity will depend on the facts of each case. In considering whether or not live or recorded music is incidental, one relevant factor could be whether, against a background of the other activities already taking place, the addition of music will create the potential to undermine the promotion of one or more of the four licensing objectives of the 2003 Act. Other factors might include some or all of the following:

- Is the music the main, or one of the main, reasons for people attending the premises and being charged?
- Is the music advertised as the main attraction?
- Does the volume of the music disrupt or predominate over other activities, or could it be described as 'background' music?

2.17 In addition to the above, as a result of deregulatory changes that have amended the 2003 Act, no licence is required for the following activities:

- Live music: no licence permission is required for:
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises.
- Recorded Music: no licence permission is required for:
 - any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

2.18 The deregulatory changes mean that, for example, a performance of live music taking place between 07.00 and 23.30 on a particular day is licensable in respect of activities taking place between 07.00-08.00 and 23.00-23.30. Similarly, where the audience for a performance of recorded music, those activities are licensable if, and for so long as, the number of people in the audience exceeds 500.

2.19 Anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable under the 2003 Act – must comply with any applicable duties that may be imposed by other legislation relevant to the event (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and planning). Any such person should take steps to be aware of relevant best practice, and may find responsible authorities a useful source of expert support and advice.

2.20 If the Licensing Committee grant the licence, and the licence includes permission for the retail sale of alcohol, then any live or recorded music taking place at the premises (subject to the above requirements) will not be licensable between the hours of 0800hrs and 2300hrs. In addition, any conditions that are applied to live or recorded music will not be effective during these hours (subject to certain conditions being met). Further detail in relation to conditions is contained within section 3 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 (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 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.

Conditions relating specifically to live and recorded music

- 3.17 Any existing licence conditions (or conditions added on a determination of an application for a premises licence) which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08.00 and 23.00 on the same day where the following conditions are met:
- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
 - if the music is amplified, it takes place before an audience of no more than 500 people; and
 - the music takes place between 08.00 and 23.00 on the same day.
- 3.18 Whether a licence condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of regulated entertainment all doors and windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.
- 3.19 More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.
- 3.20 Licence conditions imposed for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and / or the activities are taking place between 23.00 and 08.00.
- 3.21 These conditions will, in effect, be suspended between 08.00 and 23.00 if a performance of live music or the playing of recorded music takes place before an audience of 500 people or fewer, but will remain on the face of the licence for when these activities may take place under other circumstances.
- 3.22 Where a performance of live music or the playing of recorded music on relevant licensed premises is not licensable, it remains possible for anyone to apply for a review of a licence or certificate, if there are appropriate grounds to do so.

Proportionality

3.23 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 until 5th November 2020, all representations received by this date have been included in this report.
- 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.

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

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.