

Hearing Procedure – Review of Premises Licence

- 1 The Chair of the meeting 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 the applicant for the review (or the nominated representative) and invite them to detail the application and provide them with the opportunity to develop / clarify any of the matters raised as part of their application.
 - iv. The applicant for the review (or the nominated representative) may then be asked questions by members and, if agreed by the Chair, the licence holder and any other parties present.
 - v. The Licensing Officer will then introduce representatives for any Responsible Authorities that are a party to the hearing along with other Interested Parties in turn and each will be asked to detail their relevant representations. Following each submission, Committee members may ask questions of the Responsible Authority / Interested Party. If it is agreed by the Chair, the licence holder may also ask questions of those parties.
 - vi. The Premises Licence Holder (or their nominated representative) will then have the opportunity to make their submission in response to the matters raised by the other parties to the hearing. The licence holder may seek to provide further information / clarification to the Committee that will provide assurance that the licensing objectives are being adequately promoted, or may propose additional measures that will provide this assurance.
 - vii. Following this submission, Committee members may ask questions of the licence holder. If it is agreed by the Chair, the other parties to the hearing may also ask questions of the licence holder in relation to their submission.
 - viii. The applicant for the review will then be given the opportunity to sum up the application.

- ix. The licence holder will then be given the opportunity to sum up their submission in response to the review application.
 - x. The Licensing Officer will then detail the options.
 - xi. 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.

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 15th June 2021 (9:30 am)

Report Title

Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) to review the Premises Licence in place at The Waverley, Brinsworth Road, Catcliffe, Rotherham, S60 5RW.

Report Author(s)

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Report Summary

On the 27th April 2021, Rotherham MBC Licensing Service (acting in its role as a Responsible Authority under the Licensing Act 2003) made an application to review of the Premises Licence in place at The Waverley, Brinsworth Road, Brinsworth, Rotherham. The premises is a public house licensed for the sale of alcohol for consumption on and off the premises, and provides a significant food offer in addition to the provision of regulated entertainment.

The review application was submitted following the issuing of two fixed penalty notices issued in response to a failure of the licence holder to comply with nationally imposed requirements introduced to control the spread of Coronavirus / Covid-19 within the UK.

Following the submission of the review paperwork, eight other responses were received in relation to the review. 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 Premises Licence P0034
- Appendix 3 Review application form
- Appendix 4 Additional information from Rotherham MBC Licensing Authority (acting in the role of a Responsible Authority under the Licensing Act 2003)
- Appendix 5 Representation from South Yorkshire Police
- Appendix 6 Representation from Rotherham MBC Environmental Health
- Appendix 7 Representations from interested parties

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.51 of the Licensing Act 2003) to review the Premises Licence in place at The Waverley, Brinsworth Road, Catcliffe, Rotherham, S60 5RW.

1. Background

- 1.1 The Waverley is located on Brinsworth Road in Brinsworth, Rotherham and is a public house providing food, drink and regulated entertainment. Further details on the location of the premises can be found at Appendix 1.
- 1.2 The premises currently has the benefit of a Premises Licence issued under the Licensing Act 2003 (licence number P0034). The licence permits the sale of alcohol for consumption on and off the premises, provision of regulated entertainment and the provision of late-night refreshment. A copy of the Premises Licence is attached to this report as Appendix 2.
- 1.3 On 27th April 2021, Rotherham MBC's Licensing Service (acting in its role as a Responsible Authority under the Licensing Act 2003) submitted an application to review the Premises Licence. This application was submitted following the issuing of two fixed penalty notices issued in response to a failure of the licence holder to comply with nationally imposed requirements introduced to control the spread of Coronavirus / Covid-19 within the UK.
- 1.4 A copy of the review application form is attached as Appendix 3, additional information provided by the review applicant is attached as Appendix 4.
- 1.5 There is a prescribed period of 28 days following the submission of a review application during which time interested parties / responsible authorities may submit representations in relation to the application.
- 1.6 At the end of the prescribed period, a total of 8 additional representations / comments had been received. Appropriately redacted copies of the representations / comments can be found at Appendices 5 to 7.

2. Key Issues

The application

- 2.1 The application submitted by Rotherham MBC Licensing Service outlines concerns regarding the following matters:
 - 2.1.1 Failure of the licence holder to adhere to legal requirements regarding the sale of alcohol to persons on the premises (occurred on the 4th November 2020).
 - 2.1.2 Failure of the licence holder adhere to legal requirements regarding the sale of food and drink to persons on the premises (occurred on the 4th November 2020).

2.2 Full details of the circumstances leading to the submission of the application to review the licence can be found at Appendices 3 and 4. In addition, the applicant will be in attendance at the hearing and will have the opportunity to further develop the above points and clarify any points or issues that may arise.

Representations received

2.3 Eight additional representations / comments were received – full details of these representations can be found at Appendices 5 – 7, but are briefly summarised below:

2.3.1 South Yorkshire Police have made reference to the following:

- A number of contacts with the Designated Premises Supervisor regarding allegations that Coronavirus related legislation had been breached (including a birthday party, “lock ins” and trading during “lock down” periods).
- Advice regarding use of CCTV equipment to evidence compliance with legislation.
- Allegations of drug usage and discovery of cannabis in the car park of the premises.

Further information is detailed in Appendix 5.

2.3.2 The representation submitted by Rotherham MBC Environmental Health made reference to the following:

- An apparent failure to comply with legislation regarding the service of food and alcoholic / non-alcoholic drinks.
- Lack of effective controls in place to ensure that customers and staff are adequately protected from Coronavirus / Covid-19 (such as use of track and trace, use of face coverings, appropriate cleaning of contact surfaces).

Further information is detailed in Appendix 6.

2.3.3 Six other interested parties have submitted representations in relation to the application, these are detailed in Appendix 7 (with redactions where appropriate) and summarised below (listed in the order that they were received):

- John Gaunt and Partners (on behalf of the Designated Premises Supervisor) have made the following points in support of the Designated Premises Supervisor:

- Confirmation that the Designated Premises Supervisor considers the review proceedings as a serious matter and that he and his team place great stall on their professionalism and quality of their systems.
 - That the Designated Premises Supervisor seeks at all times to uphold the Licensing Act 2003 and licensing objectives.
 - A lack of material complaints from Responsible Authorities in relation to the operation of the premises.
 - Concerns regarding administrative / procedural matters regarding the review and service of the fixed penalty notices.
- Ms L G has made the following comments in support of the review:
 - Impact of noise from the premises and / or patrons on surrounding residential properties.
 - Anti-social behaviour connected to the premises.
 - Safety issues caused by the volume of parked cars.
- Ms C H has made the following comments in support of the review:
 - Impact of noise and raucous behaviour on surrounding residential properties.
 - Failure of the licensee to consider the impact of the premises' activities on local residents.
- Mr J W has made the following comments in support of the Designated Premises Supervisor:
 - Personal support provided to him by the Designated Premises Supervisor during the previous 14 years.
 - Clarification regarding household arrangements and Mr J W's attendance at the premises in December 2020.
- Ms A B has made the following comments in support of the Designated Premises Supervisor:
 - Outline of the events on 4th November 2020 (the day that the alleged incidents took place that resulted in the service of the fixed penalty notices).
 - Adherence and enforcement of relevant rules.
 - Improvements to the local community.
- Mr L C has made the following comments in support of the Designated Premises Supervisor:
 - The professional approach and manner of the Designated Premises Supervisor and his respectfulness, honesty and integrity.

- 2.4 All parties that have submitted representations in relation to the application have been invited to attend the hearing today to provide further detail in relation to the above.
- 2.5 Members of the Sub-Committee should give full consideration of the issues raised the Responsible Authorities and Interested Parties when determining the application.
- 2.6 The process to be adopted at the hearing is provided with 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.
- 3.3 The Sub-Committee must take steps that it considers appropriate for the promotion of the licensing objectives.
- 3.4 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 3.5 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

- 3.6 However, where responsible authorities such as the Police or Environmental Health Officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 3.7 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption).
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management.
 - suspend the licence for a period not exceeding three months.
 - revoke the licence.
- 3.8 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 3.9 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 3.10 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as

this would be a clear indication of deeper problems that impact upon the licensing objectives.

3.11 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

3.12 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.

3.13 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.

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 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 Departure from the guidance 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 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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