

## **Hearing Procedure – Summary 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 parties to the hearing 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 and review the interim steps.
- 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 – 15<sup>th</sup> July 2021 (9:30 am)

### **Report Title**

Summary review of a Premises Licence following an application made under s.53A of the Licensing Act 2003 in relation to the Premises Licence in place at The Red Lion, Bridgegate, Rotherham, S60 1PN.

### **Report Author(s)**

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### **Report Summary**

On the 21<sup>st</sup> June 2021, Superintendent Lynn Knox made an application on behalf South Yorkshire Police for the summary review of the Premises Licence in place at the Red Lion, Bridgegate, Rotherham. This application was considered by the Licensing Sub-Committee on 23<sup>rd</sup> June 2021, and the Committee determined that it was necessary to suspend the premises licence pending the summary review.

The Licensing Sub-Committee is required to determine the application for the summary review within 28 days following the submission of the application. In addition, the Committee should review the decision to suspend the licence following the hearing on 23<sup>rd</sup> June.

Following the submission of the summary review application, three additional representations were received in relation to the review. Further detail on these are provided within the main body of the report.

## **Recommendations**

1. That the Licensing Sub-Committee considers the information contained within this report (and associated appendices) along with any additional information presented at the hearing and subsequently determines the application that has been made.
2. That the Licensing Sub-Committee reviews the decision made at the “interim steps” hearing on 23<sup>rd</sup> June and determines whether the steps remain appropriate for the promotion of the Licensing Objectives.
3. The Licensing Sub-Committee should inform the Licensing Manager of the decisions made at today’s hearing, 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 P0443
- Appendix 3 Review application form
- Appendix 4 Interim steps decision notice
- Appendix 5 Additional information South Yorkshire Police in support of the application for the review
- Appendix 6 Representation from Rotherham MBC Licensing Service (acting in the role of a Responsible Authority under the Licensing Act 2003)
- Appendix 7 Representation from Rotherham MBC Environmental Health
- Appendix 8 Representation from Designated Premises Supervisor

## **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

## **Summary review of a Premises Licence following an application made under s.53A of the Licensing Act 2003 in relation to the Premises Licence in place at The Red Lion, Bridgegate, Rotherham, S60 1PN.**

### **1. Background**

- 1.1 The Red Lion is a public house located within the Red Lion Yard off Bridgegate in Rotherham Town Centre. 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 P0443). The licence permits the sale of alcohol for consumption on and off the premises, regulated entertainment and late night refreshment. A copy of the Premises Licence is attached to this report as Appendix 2.
- 1.3 On 21<sup>st</sup> June 2021, Rotherham MBC's Licensing Service received an application from South Yorkshire Police for the summary review of the Premises Licence. This application was submitted due to a number of serious incidents connected to the premises that occurred on 18<sup>th</sup> and 20<sup>th</sup> June. A copy of the review application form is attached as Appendix 3.
- 1.4 The Licensing Sub-Committee met on 23<sup>rd</sup> June to determine whether any interim steps were required pending consideration of the review. On this occasion, the Sub-Committee determined that it would be appropriate to suspend the premises licence with immediate effect. The decision issued to the licence holder is attached as Appendix 4.
- 1.5 There is a prescribed period of 10 working days following the submission of a summary 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 two additional representations / comments had been received, along with additional information provided by the applicant. Appropriately redacted copies of the additional information and representations / comments can be found at Appendix 5 (Police information), Appendix 6 (Licensing Authority representation) and Appendix 7 (Environmental Health representation).

### **2. Key Issues**

#### The application

- 2.1 The application submitted by South Yorkshire Police outlines concerns regarding the following matters:
  - 2.1.1 Numerous incidents of serious crime and disorder – some involving the use of snooker cues and glasses as weapons.

- 2.1.2 Problematic and obstructive staff and customers who reported themselves as being in charge on behalf of the owner, most of whom were drunk. There were attempts to intimidate police officers as they were carrying out their duties.
- 2.1.3 Significant non-compliance with national legislation / guidance introduced to control the spread of Coronavirus / Covid-19 in the UK.
- 2.1.4 Children as young as 13 being served alcohol at the premises.
- 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 5. In addition, a representative of South Yorkshire Police 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 Three additional representations / comments were received – full details of these representations can be found at Appendices 6, 7 and 8, but are briefly summarised below:
- 2.3.1 The representation submitted by Rotherham MBC Licensing Service makes reference to the following:
- Crime and disorder associated with the premises.
  - Underage drinking.
  - Non-compliance with Coronavirus / Covid-19 legislation.
  - Failure of the licence holder or DPS to report instances of disorder at the premises.
  - Lack of management control of the premises by the licence holder and DPS.
  - Failure to comply with Annex 2 conditions attached to the Premises Licence.
  - Extremely offensive, aggressive and intimidating behaviour directed towards Council officers by customers and staff at the premises.

Further information is detailed in Appendix 6.

- 2.3.2 The representation submitted by Rotherham MBC Environmental Health Service makes reference to the following:
- Failure of the licence holder to ensure that appropriate steps had been taken to ensure compliance with nationally introduced legislation aimed at preventing the spread of Coronavirus / Covid-19 in the UK.
  - The issuing of a Fixed Penalty Notice in relation to the above.

Further information is detailed in Appendix 7.

2.3.3 The representation submitted by the Designated Premises Supervisor makes reference to the following:

- xxx

Further information is detailed in Appendix 8.

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 During the hearing today, the Sub-Committee must:

- a. Consider the application for the summary review of the licence and determine whether any steps are appropriate for the promotion of the licensing objectives.
- b. Review whether the interim steps taken by the Sub-Committee on 23<sup>rd</sup> June remain appropriate for the promotion of the licensing objectives.

3.2 In determining both of these matters, the Sub-Committee 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

3.3 In addition, the Sub-Committee should take into account any change in circumstances since the interim steps were imposed, along with any representations or additional information that is received from responsible authorities, the licence holder or other interested parties.

- 3.4 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.
- 3.5 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. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council's licensing policy statement.
- 3.6 Specific information relevant to each of the matters outlined in section 3.1 is provided below.

### **Consideration of the application for a summary review**

- 3.7 The Sub-Committee must take steps that it considers appropriate for the promotion of the licensing objectives.
- 3.8 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.
- 3.9 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.
- 3.10 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.
- 3.11 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.

3.12 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.

3.13 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.

3.14 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.

3.15 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.

3.16 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.

3.17 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.

### **Review of interim steps**

3.18 The licensing authority's determination does not have effect until the end of the 21 day period given for appealing the decision, or until the disposal of any appeal that is lodged (see below information on right of appeal).

3.19 To ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.

3.20 The review of the interim steps should take place immediately after the determination of the summary review application.

3.21 In conducting the review of the interim steps the licensing authority has the power to take any of the steps that were available to it at the initial stage, these were:

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence.

It should be noted that modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

3.22 Any interim steps taken at the review hearing apply until:

- a. the end of the period given for appealing against the decision made by the Sub-Committee (21 days),
- b. if an appeal is lodged, the time the appeal is disposed of, or
- c. the end of a period determined by the relevant licensing authority (which may not be longer than the period of time for which such interim steps could apply under (a) or (b) above).

3.23 The licence holder or the chief officer of police may appeal against the decision made by the licensing authority concerning its review of the interim steps to a magistrates' court. The appeal must be made within 21 days of the appellant being notified of the licensing authority's decision and must be heard in full by the magistrates' court within 28 days beginning with the day on which the appellant lodged the appeal.

3.24 Where appeals are lodged both against the decision following the review of the interim steps and against the final determination, the courts may decide to consider the appeal against the final determination within the 28 day period, allowing the interim steps appeal to be disposed of at the same time.

#### **4. Consultation**

4.1 The application has been subject to the statutory consultation process including the display of public notices in the vicinity of the site for a minimum period of 7 days.

4.2 Responsible Authorities and interested parties have been provided with the statutory 10 working day period during which time they may make representation to the Council in relation to the review application.

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

5.1 Subject to section 3.22 above, 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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