

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 6th September 2021 (09:30 am)

Report Title

Consideration of an application (made in accordance with s.34 of the Licensing Act 2003) for the variation of a Premises Licence for Deer Park Farm Retail Village, Unit 2, Doncaster Road, Thrybergh, Rotherham, S65 4BH.

Report Author(s)

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Report Summary

On the 12th July 2021, an application was made for the variation of a premises licence in relation to Deer Park Farm Retail Village, Doncaster Road, Thrybergh, Rotherham, S65 4BH.

The applicant is seeking a variation of the licence to amend the area within which licensable activity can take place, and to include the retail sale of alcohol (for consumption on and off the premises) in a new development (referred to in the application as a “micro pub”).

Following the submission of the application paperwork, five representations were received from six local residents. In addition, comments were received from Rotherham MBC Environmental Health and conditions were agreed with the Council’s Licensing Service (acting in its role as a Responsible Authority).

Further details in relation to all of these matters can be found within the body of this 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 Current Premises Licence (P1030) (including plan)
- Appendix 3 Application form accepted on 12th July 2021 (including amended plan)
- Appendix 4 Conditions agreed with Rotherham MBC Licensing Service
- Appendix 5 Comments received from Rotherham MBC Environmental Health
- Appendix 6 Representations received from local residents

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.34 of the Licensing Act 2003) for the variation of a Premises Licence at Deer Park Farm Retail Village, Doncaster Road, Thrybergh, Rotherham, S65 4BH.

1. Background

1.1 An application has been made by Deer Park Farm Retail Village Limited to vary the premises licence in place at Deer Park Farm Retail Village, Doncaster Road, Thrybergh, Rotherham, S65 4BH. The location of the premises is shown at Appendix 1.

1.2 The premises currently has the benefit of a Premises Licence (number P1030), a copy of which is attached as Appendix 2. In summary, the licence permits:

The retail sale of alcohol (for consumption on and off the premises) between the following hours:

| | |
|--------------------|--------------------|
| Monday to Saturday | 1000hrs to 2100hrs |
| Sunday | 1100hrs to 2100hrs |

These hours match the stated opening times of the premises.

1.3 The application is to vary the hours during which alcohol can be sold, and to amend the area covered by the licence. The full application form is attached to this report as Appendix 3.

1.4 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.

1.5 At the end of the prescribed period, five representations had been received from nine local residents:

- K and K D - residents of Arran Hill, Thrybergh
- Mr and Mrs J - residents of Arran Hill, Thrybergh
- Mr and Mrs H - residents of Arran Hill, Thrybergh
- M H - a resident of Arran Hill, Thrybergh
- Mr and Mrs W - residents of Church View, Thrybergh

1.6 In addition to the above, comments were received from Rotherham MBC Environmental Health and a number of additional conditions were proposed by the Council's Licensing Service – these proposed conditions were agreed by the applicant and will be added to the licence should the variation be approved.

2. Key Issues

The application

- 2.1 The applicants are seeking a variation to the licence as follows (**emphasis added to show key elements of the variation**):

The retail sale of alcohol (for consumption on and off the premises) between the following hours:

| | |
|--------------------|--------------------|
| Monday to Saturday | 1000hrs to 2100hrs |
| Sunday | 1100hrs to 2100hrs |

(the applicant has stated that the sale of alcohol in the retail shop / deli will cease at 1700hrs except during November and December when the sale will continue to the terminal hour given above)

The inclusion of other parts of the premises within the licensable area, including a recently developed unit referred to as a “micro pub”. This development represents a significant change to the activities carried on at the premises. The applicant has noted that alcohol will be consumed in external areas of the premises and has marked these on the plan that accompanies the application.

Conditions agreed with Rotherham MBC Licensing Service

The applicant has engaged with the Council's Licensing Service and has agreed a number of conditions that are considered appropriate for the promotion of the Licensing Objectives. Further detail is provided at Appendix 4 to this report.

The conditions detailed in Appendix 4 will be added to the licence should the Sub-Committee decide to grant the application under consideration.

Comments received from Rotherham MBC Environmental Health

The Council's Environmental Health Service have reviewed the application and have chosen not to submit a representation but have recommended a number of actions that should be taken by the applicant to reduce the likelihood of noise emanating from the premises and affecting local residents. Full details of the comments made can be found at Appendix 5 to this report.

The comments made by Environmental Health should be considered by the Sub-Committee, however it is important to note that the recommendations detailed in Appendix 5 will not result in conditions being added to the licence unless the Sub-Committee consider it appropriate to add them at the hearing (with or without the applicant's consent).

Representations received

- 2.2 Five representations have been received from local residents, these are summarised below:
- 2.3 The representation from K and K D (residents of Arran Hill) cite the following concerns:
- Noise nuisance.
 - Potential for crime and disorder.
- 2.4 The representation from Mr and Mrs J (residents of Arran Hill) cite the following concern:
- Noise nuisance.
- 2.5 The representation from Mr and Mrs H (residents of Arran Hill) cite the following concerns:
- Noise, odour and light nuisance.
 - Lack of confidence in management at the premises (due to previous failures to adhere to licensing requirements).
 - Access to the premises by children.
 - Potential for crime and disorder.
- 2.6 The representation from M H (resident of Arran Hill) cite the following concern:
- Noise and light nuisance.
- 2.7 The representation from Mr and Mrs W (residents of Church View) cite the following concerns:
- Noise, odour and light nuisance.
 - Potential for crime and disorder.
 - Lack of confidence in management at the premises (due to previous failures to adhere to licensing requirements).
 - Access to the premises by children.
- 2.8 Full details of the above representations can be found at Appendix 6. Please note that elements of the representations have been redacted as they do not relate to the Licensing Objectives and / or the licensable activity that is the subject of the application that is being considered.

- 2.9 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.
- 2.10 Members of the Sub-Committee should give full consideration of the issues raised by an interested party when determining the application.
- 2.11 No representations have been received from Responsible Authorities in relation to this application.

Important considerations in relation to Regulated Entertainment

- 2.12 The applicant has not indicated an intention for there to be live and / or recorded music at the premises, it is however important that the following information is brought to the attention of the Licensing Committee.
- 2.13 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.
- 2.14 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?
- 2.15 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.

- a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that does not have a licence, provided that the audience does not exceed 500 (a workplace could include an external area to a licensed premises – for example a beer garden or other outdoor space provided for patrons to consume alcohol).
- 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.

2.16 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.

2.17 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.

2.18 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 variation of 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 for variation (which may include the omission of certain licensable activities from the licence).
- 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 – 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.
- 3.23

Proportionality

- 3.24 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 9th August 2021, 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 (as amended).
- 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 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.
 - iv. 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.
 - v. The Licensing Officer will introduce in turn representatives for any Responsible Authorities and Interested Parties who will be asked to detail their relevant representations.
 - vi. Members may ask questions of those parties
 - vii. With the leave of the Chair the applicant or his representative may ask questions of the representatives of the Responsible Authorities and Interested Parties.
 - 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.