

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 the applicant / licensee (or his/her nominated representative) who will then be asked to detail the application.
 - iv. The Licensing Officer will introduce in turn representatives for the Responsible Authority and Interested Parties who will be asked to detail their relevant representations.
 - v. Members may ask questions of those parties
 - vi. With the leave of the Chair the applicant or his representative may ask questions of the representatives of the Responsible Authorities and Interested Parties.
 - 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 / licensee (or his/her nominated representative) will then be given the opportunity to sum up the application and provide any clarification. 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.

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 2nd August 2022 (2pm)

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 East Herringthorpe Pub, Laudsdale Road, Rotherham S65 3LG

Report Author(s)

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Report Summary

On the 13th June 2022, an application was made for the grant of a Premises Licence in respect of East Herringthorpe Pub, Laudsdale Road, Rotherham S65 3LG.

The applicant is seeking a licence to permit the retail sale of alcohol for consumption on and off the premises, the provision of indoor regulated entertainment (plays, films indoor sports events, live music, recorded music, the performance of dance and similar entertainment), and the provision of late night refreshment for consumption on and off the premises.

Following the submission of the application representations have been received from a local Ward Councillor, three (3) local residents, the Licensing Authority, the Council's Environmental Health Service and South Yorkshire Police. The receipt of these representations mean that the application must be considered by the Licensing Sub-Committee.

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 and premises layout plan and boundary plan received on 13th June 2022
- Appendix 3 Representations received
- Appendix 4 Applicants response to the Representations

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 East Herringthorpe Pub, Laudsdale Road, Rotherham S65 3LG

1. Background

- 1.1 The application is made by Mr Roy Kwaitkowski for the grant of a Premises Licence in respect of the premises to be known as East Herringthorpe Pub situated at Laudsdale Road, Rotherham, S65 3LG. The applicant is seeking a licence to permit:
 - the retail sale of alcohol for consumption on and off the premises,
 - the provision of indoor regulated entertainment (plays, films, indoor sporting events, live music, recorded music, performance of dance and similar entertainment); and
 - the provision of late night refreshment for consumption on and off the premises.
- 1.2 The location of the premises is shown at Appendix 1 and a copy of application form, together with the accompanying layout plans, can be found at Appendix 2.
- 1.3 The premises does not currently have the benefit of a Premises Licence. It is understood that the premises are currently closed.
- 1.4 Previously the premises were known as East Herringthorpe Club and had the benefit of a Club Premises Certificate issued under the Licensing Act 2003. However, this Certificate was withdrawn by the Licensing Authority on 01 April 2022 on the grounds that as premises were not operating as a “qualifying club”.
- 1.5 In summary, to be a “qualifying club”, a club must have at least 25 members and may only supply alcohol to its members and their guests. Instant membership is not permitted, and members must wait at least two days between their application and their admission to the club.
- 1.6 An appeal against the Licensing Authority’s decision to withdraw the Club Premises Certificate was lodged with Sheffield Magistrates Court, but subsequently withdrawn, meaning that the withdrawal of the Certificate had immediate effect.
- 1.7 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.
- 1.8 At the end of the prescribed period, representations have been received from a local Ward Councillor, three local residents, the Licensing Authority (acting in its role as a Responsible Authority), the Council’s Environmental Health Service and South Yorkshire Police.

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 and off the premises on:
 - Sunday to Thursday between 11:00hrs and 00:00: hrs; and
 - Friday and Saturday between 11:00hrs and 01:00hrs on the following day.
- The provision of indoor regulated entertainment (plays, films, indoor sporting events, live music, recorded music, performance of dance and similar entertainment) on:
 - Sunday to Thursday between 11:00hrs and 00:00: hrs; and
 - Friday and Saturday between 11:00hrs and 01:00hrs on the following day.
- Late Night refreshment for consumption on and off the premises on:
 - Sunday to Thursday between 23:00hrs and 00:00hrs hrs; and
 - Friday and Saturday between 23:00hrs and 01:00hrs on the following day
- Extend the terminal hour of all licensable activities to 01:00hrs on the day following Bank Holiday Sundays and Mondays and, if they fall on a Sunday to Thursday, Christmas Eve, Boxing Day, New Year's Eve, New Year Day and on All Saints Day.

Note: The application form attached at Appendix 2 to the report states that an extension is sought on "all saints days", of which they are numerous. This was raised with the applicant, who has clarified that the extension is sought for a single day, All Saints Day, which falls each year on the 1st November. Therefore the occasional extended hours sought in the application are as set out in the report.

2.2 The applicant has stated that the opening times of the premises are:

- Sunday to Thursday between 11:00hrs and 00:30hrs hrs; and
- Friday and Saturday between 11:00hrs and 01:300hrs on the following day

2.3 Two plans are attached to the application, one showing the internal layout of premises, the other its boundary. Regarding the internal layout, the applicant has clarified that consent is sought to allow the provision of licensable activities in all areas outlined in red.

- 2.4 The boundary plan does not identify a designated external drinking area. Again, clarification on this has been sought and the applicant has confirmed that consumption of alcohol and late night refreshment would be permitted anywhere within the boundary of the premises.

Representations received

- 2.5 Representations have been received from a local ward councillor, three local residents, the Licensing Authority, the Council's Environmental Health Service and South Yorkshire Police.
- 2.6 Full details of the representations can be found in Appendix 3. The representations from the Licensing Authority include CCTV footage, and a request has been made that when the Sub Committee view this footage the meeting is closed to the press and public.

Note: Whilst not set out in their representations, South Yorkshire Police have confirmed that a reduction in the terminal hour for the with regard to the retail sale of alcohol to 22:30hrs every day of the week is also sought. This has been communicated to the applicant, and they are aware that this reduction is included in their representations.

- 2.7 The applicant's response to the representations is attached at Appendix 4. This response was circulated to all parties who had made representations but failed to lead to the withdrawal of any of the representations.
- 2.8 As all parties are continuing with their representations the application is referred the Sub Committee for determination. Members of the Sub-Committee should give full consideration of the issues raised in the representations when determining the application.
- 2.9 All parties making representations have been invited to the hearing today and informed that, if attending, they will be given the opportunity to address the Sub-Committee in relation to their representations.

Conditions & Reduction in Operating Hours

- 2.10 At the time of writing no amendments to the application with regard to a reduction of operating hours, the removal of the provision of late night refreshment, the extent of the internal licensed area and the use of the external area had been made or requested - all of which are matters raised in the representations. In addition, whilst communications have been taking place, at the time of writing the conditions suggested / recommended by Licensing Authority and South Yorkshire Police have yet to be formally agreed.

Additional information regarding the Licensing Authority representation

- 2.11 The Licensing Authority have indicated that there is additional information that is relevant to this application, but due to the sensitivity of this information a request has been made for this information to be considered by the Sub-Committee in private session (i.e. with the public excluded from that part of the meeting).
- 2.12 Regulation made under the Licensing Act 2003 permit the exclusion of individuals from hearings, or conducting the hearing in private, if it is in the public interest to do so.
- 2.13 The Licensing Authority will outline their reasons why they consider it to be in the public interest for the Committee to consider the information in private, and it will then be for the Committee to determine whether to do so or not. If the Committee decide that it is not in the public interest for the information to be considered in private, then the Licensing Authority have asked for the information to be withdrawn from today's proceedings.
- 2.14 Legal advice will be available during the hearing to assist in the public interest determination should this be required.

Important considerations in relation to Regulated Entertainment

- 2.15 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 Sub Committee.
- 2.16 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.
- 2.17 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?
- 2.18 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.

2.19 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.

2.20 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.

2.21 If the Sub Committee are minded to 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 consider 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 consider 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.
- 3.24. 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.
- 3.25. 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.
- 3.26. 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.
- 3.27. 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. All representations received within this period 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