

## **Rotherham MBC Licensing Sub-Committee – Wednesday 5<sup>th</sup> August 2020**

**Notice of determination of application for the grant of premises licence in relation to Seasons Restaurant, 151 – 152 Bawtry Road, Wickersley, Rotherham, S66 2BW**

**To: John Gaunt & Partners, Omega Court, 372 Cemetery Road, Sheffield, S11 8FT (acting on behalf of Seasons Restaurant Ltd, 39 – 43 Bridge St, Swinton, Mexborough, S64 8AP)**

### **Written reasons and determination of the Sub-Committee**

The Sub-Committee considered the application for a Premises Licence under the provisions of the Licensing Act 2003. The application was made on behalf of Seasons Restaurant, 151-152 Bawtry Road, Wickersley, Rotherham, S66 2BW.

The Applicant was seeking the grant of a licence in order to permit the provision of late-night refreshment and the sale of alcohol for consumption on and off the premises.

Mr. Green was in attendance on behalf of the Applicant Company and they were represented by Mr. Grunert, Solicitor. The hearing took place via Microsoft Teams.

Following the presentation of the report the Sub-Committee heard from each of the objectors in attendance.

The representations made by the Licensing Authority as a Responsible Authority were withdrawn. Having considered the significant list of conditions proposed and agreed by the Applicant it was felt that the concerns raised within the representation had been addressed.

Councillor Ellis was in attendance on behalf of the Wickersley Ward and set out full details as to her objections. The key points as to the objections were as follows:

1. The restaurant was to open every day of the week, all year round and therefore there would be no let up for local residents, only on the 3<sup>rd</sup> June did the Council adopt the cumulative impact zone for Wickersley.
2. Crime and disorder – it was accepted that figures for crime had reduced in 2019 but it was the view of residents that the figures were not an accurate reflection and were grossly under reported. The Sub-Committee were told about an occasion where there was a period in 2018 when Atlas Court was overwhelmed by calls and had to shut down and therefore calls to report

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crimes would have been missed. In the Courtyard the crime rate was actually tripling when in the rest of Wickersley the crime rate was reducing.

3. Prevention of public nuisance – the Sub-Committee were told that this was the area of most concern when the consultation for the cumulative impact policy took place. Specific reference was made to anti-social behaviour, noise nuisance, littering and general public nuisance. The noise was said to go on until the early hours of the morning along the 300m stretch where ten licensed premises were situated. The ability for residents to enjoy their weekend leisure has been taken away. Litter was also set out as a problem in respect of empty cans and bottles and broken glass.
4. Public Safety – The concern regarding public safety centred on the busy dual carriageway that was nearby and the issue of parked cars which made it difficult to cross the road safely. It felt that the premise would add to this problem.
5. The Sub-Committee were advised that feedback had been received from residents during the period of lockdown and the view was that they had enjoyed their first nice summer in years as the licensed premises were closed. Even when premises re-opened, with restrictions, there were still issues within Wickersley with Police having to be called.
6. Finally, the Sub-Committee's attention was drawn to what factors could not be considered when deciding whether to grant a licence in a cumulative impact zone. They were urged to reject the application.

Mr. Thirlwall was in attendance on behalf of Wickerlsey Parish Council. The key points to the objections from the Parish Council were as follows:

1. The Applicant premise was within a cumulative impact zone which was introduced by RMBC following extensive consultation with the main concern being noise nuisance. The Parish Council were also in the final stages of their neighbourhood plan. The overwhelming view was that there were too many licensed premises. The Sub-Committee were asked to consider what sort of message it would send if the views of residents were now ignored and a licence granted.
2. The Sub-Committee were told that the concern was that premises appear to obtain a licence with subjective conditions with wriggle room for a later date and that the proposed conditions were ambiguous, imprecise and essentially worthless. There was therefore a very strong objection to the application.
3. In the unlikely event that the licence was granted the Parish Council asked the Sub-Committee to attach a list of 11 conditions which were emailed to all

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parties at the end of the public meeting, before the Sub-Committee deliberated in private.

Mr. Postlethwaite was in attendance as a local resident of 33 years. He explained to the Sub-Committee that he had witnessed a steady increase in drinking establishments in the area and an associated increase in Anti-social behaviour, vandalism, parking and nuisance. He told the Sub-Committee that he had attended a local meeting some time ago where it was discussed that there were too many drinking establishments in the village. Mr. Postlethwaite stated that he had no specific problem with Seasons but believed it would add to the existing problems. He had seen a number of premises marked as food, only to then months later see them operating as a bar.

The Chair also referenced the written representations made by local residents who were not in attendance.

Questions were asked of the Objectors by Mr. Grunert. Through those questions he clarified the following points:

1. The reference to crime figures tripling at the Courtyard was not information contained within the Cumulative Impact Policy.
2. There was no ban in respect of a new licence being granted in a Cumulative Impact Zone.
3. The view of the Parish Council was that it was inconceivable that a fine dining restaurant could also operate as essentially a takeaway and off-licence and any such conditions could be dumbed down.

The Sub-Committee then heard representations on behalf of the Applicant.

Mr. Grunert addressed the Sub-Committee and began by reminding them that they were not dealing with a review of Mr. Green's other premises, The Courtyard, despite the fact it had been mentioned a number of times. He also emphasised to the Sub-Committee that there was no intention to tear down the Cumulative Impact Policy and the hope was to meet and address it. Mr. Green's background was explained to the Sub-Committee as was the concept behind the restaurant and proposals, with food being the star and alcohol being served to compliment.

The Sub-Committee were directed to page 28 of the application, which set out the description of what the Applicant intended the premise to be. The Applicant felt it was unfair that it had been implied that it was all a façade to then later open as a bar.

The Sub-Committee were told that the Applicant understood that when considering the grant of a licence in a cumulative impact zone they could not consider the high specification of the premise as a factor. However, the high specification of the

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kitchen was relevant given that it had been implied that the concept was a façade. Mr. Grunert explained that the kitchen was going to cost between £90,000 and £120,000 and required an enhanced electrical supply, the premise would be a restaurant and in the event it was sold the layout could not be altered without scrutiny or consultation.

Mr. Grunert then addressed the specific representations that had been made. He told the Sub-Committee that there was no evidence as to why noise would be an issue from the premise. Customers would be sat dining, music would be at all times background music and a condition had been agreed for no speakers in the external area. Customers dining and eating a meal and preparation from the kitchen would not cause a noise nuisance. The external dining would also be subject to weather conditions.

The Sub-Committee were informed that the lower external area was currently used by The Courtyard Bar, in addition to the upper area. The lower area would instead be used by Seasons customers which would in fact reduce capacity. At the present time the area had capacity for 30/40 customers to stand, this would change with Seasons accommodating four tables with four seats at each table. This would be a 60% reduction in capacity and would be seating only. There would therefore be a positive impact when considering the cumulative impact as there would be a considerable reduction in those using the lower external area.

The Applicant recognised that there was an issue in Wickersley with movement around the area and the need for a Cumulative Impact Policy. However, they did not accept that just because capacity was being created it would automatically lead to additional people in the area. The issue with litter could not be challenged but it was not for the Applicant to address that issue and make it disappear. Conditions had been agreed to assist with the issue and the delivery service suggested would be more in the way of a catering service than a hot food takeaway service.

The position surrounding door staff was explained to the Sub-Committee in that a condition had been agreed that Seasons, when trading externally, would ensure three SIA door staff. This would not be in addition to those provided by The Courtyard premises, the difference being that the Courtyard did not have a specific condition on their licence stating the number they should provide. Therefore, should the Courtyard decide to provide less than three, Seasons would be responsible for ensuring there were always a minimum of three present when trading externally. It was unusual for a restaurant to have such a condition, but the Applicant had agreed.

The Applicant had engaged with SYP, Environmental Health and the Licensing Authority. As a result, additional conditions had been agreed and there had been no opposition by the Responsible Authorities as a result of that engagement.

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In respect of public safety there had been no issues identified with the safety of the premises. Comments had been made regarding the proximity to the busy road. This was not directly outside the premises, there was a crossing infrastructure, barriers and an under road walkway. This was the Council's responsibility, whether or not a person was impaired by alcohol.

The Sub-Committee were told that the Cumulative Impact Policy did not raise an issue with regards to the protection of children from harm and therefore there was nothing to suggest that the premises would cause a danger to children.

Mr Green also addressed the Sub-Committee and reassured them that the premise was to be 1000% a restaurant and nothing else. He also addressed the issue of dispersal which had been raised in the Cumulative Impact Policy in that he had entered into a contract with A1 taxis in order to ensure that Seasons customers were able to leave the area safely and quickly and he had taken a lease on a piece of land to the rear of the Gaslamp to begin on 1<sup>st</sup> October which would hold twenty vehicles.

The Applicant and his representative were asked questions by the Sub-Committee and Objectors present. They clarified the following points:

1. Drinking vessels used outside would be glass. This had been discussed at length when considering additional conditions, but the use of plastic would not be in keeping with the concept. Vertical drinking would not be taking place in the external area and therefore it was agreed that the glasses would be cleared away promptly and there would be a member of staff monitoring the area.
2. The external area would not be an overspill area for drinking and would be for dining with 16 covers only, this could be placed in the conditions if felt appropriate. There would be no vertical drinking in the external area.
3. The hours in the application had in fact been varied to match the planning authorisation but that had not made its way into the report.
4. The premise occupied by the Butchers had been vacant for two years, the tattoo shop had relocated about a year ago and the beauty premises chose to end their lease in May as they did not want to pay rent when not trading during lockdown, the lease was due to end in November. Two businesses had therefore ceased trading and were not viable as suggested.
5. The Applicant did not agree that no vertical drinking at all was needed, for example there may be a situation where the waiting area was full or only a certain number of the party could sit in the waiting area and others would stand, the point was that alcohol would only be served to those waiting to be seated and this was clear in the conditions.

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6. It was suggested that the restaurant could operate without a licence and customers could bring their own alcoholic drinks. The Applicant stated that this would not be in keeping with the concept and it was not unreasonable to want to serve alcohol alongside a meal.
7. The first challenge point for door staff would be at the mouth of the Courtyard area. Customers for The Courtyard would not be walking through Seasons dining area.
8. The Applicant clarified that it was not a matter of trust but that 33 additional conditions had been agreed and they were enforceable by law and not just a promise.

Mr. Grunert summed up the application for the Sub-Committee and asked them to consider that the premises was almost entirely food led, the policy could not be overcome and the test was whether the premises would add to the issues identified, the Applicant had gone to great lengths to consider the policy and had also addressed dispersal issues. The Sub-Committee were asked to grant the application considering the measures agreed and that in implementing those measures the premise would have a positive impact on the issues identified within the policy.

The Sub-Committee considered all written and oral representations that had been made and considered the application in accordance with the following licensing objectives:

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm

They also took into account that the premise was located within a Cumulative Impact Zone and whether in granting a licence to the Applicant the premise would then exacerbate the issues identified.

The Sub-Committee took into account the measures that had been suggested by the Applicant and agreed by both SYP and the Licensing Authority. They also gave significant weight to the fact that the Responsible Authorities did not oppose the application. SYP and the Licensing Authority were satisfied that the conditions agreed addressed their concerns and that the granting of a licence would not undermine the promotion of the licensing objectives and would not further impact negatively upon the cumulative impact of existing licensed premises.

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The Sub-Committee did agree that the premise would not have a negative impact given the proposed use of the lower external area as set out within their representations and that as a result there would be a significant reduction in the number of people in that area and a 100% reduction in vertical drinking in the lower external area used by Seasons.

The Sub-Committee were satisfied that the concerns raised by the Objectors would be sufficiently addressed by the agreed conditions.

The Sub-Committee took the view that the premise was not alcohol led and based upon what they had heard they were satisfied that it was a food-led business. They also took account of the size of the premise and as set out above the conditions agreed in terms of the way in which the business would operate. The Sub-Committee were particularly impressed with Mr. Green's commitment in leasing the land behind the Gaslamp and securing a contract with A1 taxis and they felt that he had gone above and beyond to address the concerns raised within the Cumulative Impact Policy.

Having considered all representations the Sub-Committee were satisfied that in granting the licence the premises would not impact any further upon the cumulative impact of existing licensed premises.

The decision of the Sub-Committee was therefore to grant the application for a premises licence made on behalf of Seasons Restaurant, 151-152 Bawtry Road, Wickersley, Rotherham, S66 2BW. The licence would be subject to the conditions suggested within the application and also the following additional conditions as agreed with SYP and the Licensing Authority (set out in full for the avoidance of doubt):

1. There shall be no change to this operating style without proper written notice to the Licensing Authority, which shall include details of the operating style proposed. The Licensing Authority shall advise within 21 days whether a formal application for a full or minor variation or a new licence is required, and the holder shall comply with that direction.
2. The premises shall operate primarily as a restaurant. The sale of alcohol without food will always remain as an ancillary part of the main use of the premises as a restaurant. The premises will not operate exclusively as a bar.
3. Non-intoxicating drinks shall be available at all times the premises are trading.
4. Orders for substantial food shall be accepted up to 1 hour before closure.
5. Staff will receive training on matters concerning underage sales, drugs policies and operating procedures.

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6. The sale of alcohol for consumption off the premises shall be in a sealed vessel other than for alcohol consumed within any external area provided for that purpose by the premises.
7. Glassware can be used by customers sitting in the outside seating area and a member of staff will be responsible for service in this area and the clearing of glasses for that area.
8. The use of door staff will be risk assessed on an ongoing basis by the licence holder of premises supervisor.
9. The management of the premises will liaise with police on issues of local concern or disorder.
10. CCTV shall be provided in the form of a recordable system. Cameras shall encompass all points of public ingress and egress to the premises and provide comprehensive coverage of all internal area to which the public have access (save for toilets). Equipment shall be maintained in good working order and correctly timed and dated. The licence holder shall take reasonable steps to ensure prompt repairs are carried out as and when required. Recordings will be available for a period of 28 days and handed to Police on receipt of a legal request which accords with Data Protection laws from time to time. The recording equipment shall be kept secure and under the control of the Premises Licence Holder or other responsible named individual.
11. To comply with the reasonable requirements of the fire officer from time to time.
12. The premises will have adequate safety and firefighting equipment and such equipment will be maintained in good operational order.
13. Staff will be trained on matters of safety, evacuation and use of emergency equipment as required.
14. Spillages and breakages will be removed as soon as possible to reduce the risk to patrons and staff.
15. Toughened glasses will be used in the premises where appropriate.
16. Fire Exits and means of escape shall be kept clear and in good operational condition.
17. No hot food is to be provided for consumption off the premises after 23:00 hours.
18. No glass or materials or bottles shall be deposited in any skip, bin or container of a like nature, located in the open air outside the premises between the hours of 21:00 and 08:00 and any such skip, bin or container shall not be removed from the premises between those hours.
19. Notices shall be prominently displayed at the exits requesting customers to respect the needs of local residents and to leave the premises quietly.



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20. Noise, vibration or odours shall not emanate from the premises so as to cause a nuisance to nearby sensitive properties
21. The premises shall operate a proof of age scheme and will require photographic identification from any person who appears to be under the age of 25 years (Challenge 25)
22. Alcohol will be served to customers seated or to those waiting to be seated.
23. The premises shall operate solely as a restaurant, save for alcohol being served to those waiting to be seated or ancillary to a restaurant meal
24. A 'greeter' shall be employed at Seasons on Friday and Saturday evenings from 20:00hrs until close. The 'greeter' will principally be located in the restaurant's waiting area.
25. The use of door staff will be risk assessed on an ongoing basis by the licence holder or premises supervisor. A minimum of 3 SIA door supervisors will be employed to manage customers from Seasons and adjacent premises from 22:00hrs on Friday and Saturday evening when the Courtyard is open and trading.
26. In addition to the above, the premises will prepare a written risk assessment for the day to day operation of Seasons addressing the conduct and safety of the restaurant's customers. This risk assessment shall be available for inspection by Responsible Authorities upon request.
27. When external areas are being utilised for dining and / or consumption of alcohol by Seasons' customers, a specific member of staff shall be instructed to monitor external areas and remove empty/unrequired glassware from external tables.
28. The use of non-glass drinking vessels in external areas shall be in accordance with the management's written assessment of risk.
29. All staff employed at the premises for the purpose of selling or delivering alcohol shall receive training in connection with prevention of underage sale and ID verification in accordance with a 'Challenge 25 policy'.
30. Where third party agents are utilised for the purpose of delivering food and alcohol orders, the licence holder shall require evidence that delivery staff have received training in connection with prevention of underage sale and ID verification in accordance with a 'Challenge 25 policy'.
31. No drinks to be removed from the premise sealed or unsealed, with the exception of:
  - i) for consumption within the area provided for that purpose
  - ii) for home delivery, ancillary to a food order.

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- iii) for takeaway pre-ordered by a customer, ancillary to a food order (walk up order will not be accepted by the premises)."

32. No external speakers shall be fixed to the exterior of the premises.

Dated: 7<sup>th</sup> August 2020