

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 the Responsible Authority 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.

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 11th January 2023 (10:00 am)

Report Title

Consideration of an application made by Orzo Rotherham Ltd (in accordance with s.17 of the Licensing Act 2003) for the grant of a Premises Licence in respect of the premises known as Orza situated at 2/2a Doncaster Gate, Rotherham, S65 1DG.

Report Author

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Report Summary

On the 8th November 2022 an application was made by Orzo Rotherham Ltd for the grant of a Premises Licence in respect of the premises known as Orza situated at 2/2a Doncaster Gate, Rotherham, S65 1DG.

On 13th December 2022 the application was amended so as to remove the requested extended hours on occasions when “pre-booked events” were held at the premises.

Representations to the application, as amended, are continuing to be made by the Licensing Authority, the Police, the Council’s Environmental Health Service, a local Ward Councillors and two local residents.

Further details on the application, as amended, and the representations 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 Premises layout plan
- Appendix 3 Application, as amended, under consideration
- Appendix 4 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 by Orzo Rotherham Ltd (in accordance with s.17 of the Licensing Act 2003) for the grant of a Premises Licence in respect of the premises known as Orza situated at 2/2a Doncaster Gate, Rotherham, S65 1DG

1. Background

- 1.1 The premises located at 2/2a Doncaster Gate, Rotherham, S65 1DG have previously had the benefit of a Premises Licence issued under the Licensing Act 2005. A Licence was in force between July 2005 and June 2015. During this period the premises were known as “Disraeli’s 2” and from May 2010 onwards “The Towngate”. This Licence was surrendered June 2015.
- 1.2 A further Premises Licence was in force between March 2021 and July 2022 when the Licence was suspended for non-payment of fees and subsequently lapsed. Whilst during this period the premises were known as “La Orza”, neither the current applicant Company or Mr Jozef Gazi held the Licence.

2. Key Issues

Location of the Premises

- 2.1 Attached at Appendix 1 to the report are plans showing the location of applicant premises.

The Initial Application

- 2.2 On 8th November 2022 an application was made by Orzo Rotherham Ltd for the grant of a Premises Licence in respect of the premises known as Orza situated at 2/2a Doncaster Gate, Rotherham, S65 1DG.
- 2.3 Initially the applicant sought consent to allow the sale of alcohol at the premises between 11am and 9.30pm on every day of the week, with an unlimited extension of the terminal hour to 1.30am on the following day when the premises were in use for “pre-booked events”. Consent was also sought to allow live music from 11pm and to 1.30am on the day following, and to allow recorded and provide late night refreshment from 11pm to 2am on the day following, when the premises were in use for “pre-booked events”.

The Applicant Company

- 2.4 The application is made in the name of Orzo Rotherham Ltd. Companies House records show that this Company was incorporated on 27th October 2022 and has one Director, Mr Jozef Gazi. In addition, Mr Gazi is listed as the person with significant control of the Company.

The Premises

- 2.5 The description of the premises, as provided in the application is as follows:

Established 3 Storey restaurant situated in town centre. On the ground floor, the premises has a large open area for seating (for approximately 40 Covers), a bar and a snug area. There is also a smaller kitchen area to the rear. Up the first flight of stairs (mezzanine area) there is a function room which can seat up to 40 covers and up a further flight of stairs up to a second dining area that can accommodate up to 80 people. Disabled toilets are located on the ground floor and male and female toilets are situated on the first floor. There is also a lift operating directly from the ground to the first floor.

- 2.6 The plan, which accompanied the application and shows the layout of the premises is attached at Appendix 2.

Consultation

- 2.7 Consultation on the application was carried out in accordance with statutory requirements and the Council's procedure. There is a prescribed period of 28 days following the submission of an application during which time representations in relation to the application may be submitted.
- 2.8 At the end of the prescribed period six parties had made representations, all of whom were opposed to the application.
- 2.9 The applicant was provided with the detail of the representations and, following this, on 13th December 2022 formally amended the application so as to remove the requested extended hours on occasions when "pre-booked events" were held at the premises.

Application (as amended) Under Consideration

- 2.10 A copy of the application, as amended, is attached at Appendix 3.
- 2.11 The application under consideration seeks consent to allow the retail sale of alcohol at the premises between 11am and 9.30pm on every day of the week, with the premises closing to the public at 10pm.
- 2.12 The application is not seeking consent to allow the provision of regulated entertainment at the premises. However, it is important to note that there are a number of exemptions that allow live and recorded music to be provided without the benefit of a licence. The full detail of these exemptions is set out in paragraphs 2.22 to 2.28 below. In addition paragraphs 3.17 to 3.22 provide information regarding the suspension of conditions when exempt entertainment is being provided.

2.13 Any Licence granted would be subject to the conditions offered in the operating schedule, which forms part of the application. The offered conditions are:

- I. *The premises shall install and maintain a CCTV system. Cameras will be positioned on all floors, at the front exterior and all entrance and exit doors.*
- II. *The CCTV system shall have sufficient hard drive storage capacity to store a minimum of 31 days and to continually record when the premises is open for licensable activities.*
- III. *The CCTV system shall be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering the premises at each entrance point.*
- IV. *A CCTV log will be completed on a weekly basis to record all elements of the CCTV System is maintained in good working order and recordings date and time stamped.*
- V. *Only nominated staff shall be trained in the operation of the CCTV system to ensure rapid data retrieval & downloads of footage can be provided to the Police & the Local Authority Officer upon reasonable request in accordance with the Data Protection Act.*
- VI. *In the event of a failure of the CCTV system for any reason, a record of the failure will be recorded in the premises Incident log and immediate steps will be made to rectify the problem.*
- VII. *The DPS will provide training to staff in relation to alcohol sales in relation to the restrictions of 16 & 17 year old(s)*
- VIII. *An incident log shall be kept at the premises. Log records will be retained for a period of 12 months from the date it occurred. It will be made immediately available on request to an 'authorised person' (as defined by section 13 of the Licensing Act 2003), an authorised trading standards officer or the police, and must record the following:*
 - a. *All crimes reported to the premises (where relevant to the licensing objectives)*
 - b. *Any incidents of disorder on the premises or within the direct vicinity.*
- IX. *A written register of refusals will be operated. Such records shall be kept for a period of 12 months and the contents of the logbook will be made available for inspection to Local Authority officers and the police.*
- X. *For any pre booked events door supervisors registered with the SIA qualifications will be employed on such times and ratios following a risk assessment for each particular event. Such numbers will be sufficient and capable of controlling the customers on the venue.*
- XI. *All door supervisors will complete on the first engagement an in-house registration form. This form will be retained on the premises for a minimum of 12 months.*
- XII. *All door supervisors will be easily identifiable by their outer clothing and their badges will be clearly visible at all times.*
- XIII. *The premises licence holder will operate a written Dispersal Policy whereby at the end of all events, the door supervisors (if employed) or a senior member of staff or both will observe the exterior of the premises to assist in the smooth dispersal of all customers from the venue to encourage customers to leave the area quickly, quietly and to help to disperse people gathering outside.*

- XIV. *When the designated premises supervisor is not on duty, a contact telephone number will be available at all times.*
- XV. *All alcohol including spirits will be stored and sold behind the bar(s).*
- XVI. *There will be employed when required enough staff to collect glasses and bottles from around the premises during the event and bottle bins will be placed around the premises if necessary, depending on the event taking place.*
- XVII. *A written alcohol register containing all the names of all persons who are authorised to serve/sell alcohol on the premises will be completed and kept at the premises for a minimum of 12 months*
- XVIII. *All free-flowing alcoholic drinks will be dispensed into polycarbonate plastic glasses or shatterproof glass for consumption by customers.*
- XIX. *No customers apparently carrying open bottles upon entry shall not be admitted to the premises or any times the premises are open to the public.*
- XX. *Alcoholic and other drinks may not be removed from the premises in open containers save for consumption in any external area provided for that purpose.*
- XXI. *At least one door supervisor will be positioned near any stairway to monitor the customers safely during a large event.*
- XXII. *All lighting both internal and external will be of sufficient illumination for customers to safely navigate the building.*
- XXIII. *Prominent, clear and legible signage shall be displayed at the entrance and exit of the premises requesting the public to respect the needs of local residents and to leave the premises and the area quickly and quietly.*
- XXIV. *The Management will provide a free telephone service for all non-residents and will have an agreement with a minimum of a local taxi companies that will agree to certain 'quiet' conditions when collecting customers at the end of the evening. These quiet conditions will ensure that all taxis vehicles will make the minimum noise possible and encourage customers to leave quickly and quietly.*
- XXV. *All customers will be encouraged to pre-book their taxi and to wait for their taxi inside the restaurant.*
- XXVI. *The Management will operate a Noise Assessment log book when any pre booked function is taking place and will endeavour to reduce the noise to an inaudible level at the nearest residence.*
- XXVII. *The Management will ensure that no extractor fan or exterior lighting will cause a nuisance to any local residence.*
- XXVIII. *The Management will operate an open-door policy whereby any nearby resident will be encouraged to report any matters of concern they have with the premises, regarding noise and noise nuisance.*
- XXIX. *All trade waste will be stored in lidded industrial bins. No glass bottles / waste will be disposed of between 20.00 and 08.00 on any day.*
- XXX. *All deliveries and collections of trade waste will only be carried out between 08.00 and 20.00 on weekdays.*
- XXXI. *When an event is to be held that is likely to attract under 18's, the premises licence holder will install, operate and maintain an identification and age verification system, for example, coloured wrist bands.*
- XXXII. *Proxy signs will be fitted near to all alcohol P.O.S positions warning people not to buy alcohol for children.*
- XXXIII. *The premises shall operate a Challenge 25 policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer the local authority/council.*

- XXXIV. *All staff engaged in the sale of alcohol shall be trained in Challenge 25. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by section 13 of the licensing act 2003) or an authorised trading standards officer of the local authority/council on demand.*
- XXXV. *Prominent, clear, and legible Challenge 25 signage shall also be displayed at all entrances to the premises as well as at, at least one location behind any counter advertising the scheme operated.*
- XXXVI. *No adult entertainment or services, activities, other entertainment shall be provided or allowed at the premises.*

The Designated Premises Supervisor

- 2.14 Miss Kvetoslava Janova, who is nominated on the application as the Designated Premises Supervisor (DPS), does not currently hold a Personal Licence and, at the time of writing, has yet to apply for one. Given this, the application is made without a nominated DPS.
- 2.15 The applicant Company has been asked to provide an update on the status of the nominated DPS and an oral update regarding this will be provided at the hearing.

Representations

- 2.16 All parties making representations to the initial application were notified of the amendments to the application and are continuing with their representations.
- 2.17 A copy of the ongoing representations, received from the Licensing Authority, Police, Council's Environmental Health service, a Ward Councillor and two local residents, are attached at Appendix 4.
- 2.18 Two sound recordings of the level of noise emanating from the premises in during the summer of 2022, have been submitted in support on the representation made by a local resident. Both recordings will be played at the hearing.
- 2.19 All parties making representations to the application 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 raised in their representations.
- 2.20 Members of the Sub-Committee should give full consideration of the issues raised in the representations when determining the application.

Additional Information

- 2.21 Any additional relevant documentation received in support of the application or the representations prior to the date of the hearing will be circulated at the hearing. Documentation received on the day of the hearing may only be considered by the Licensing Sub Committee with the consent of all relevant parties.

Important considerations in relation to Regulated Entertainment

- 2.22 As there is a possibility that live and/or recorded music may be provided at the premises, it is important that the following information is brought to the attention of the Licensing Committee.

- 2.23 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.

- 2.24 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?

- 2.25 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.

2.26 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.

2.27 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.

2.28 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 Sub 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 Sub Committee are:
- a. To grant the licence subject to the conditions consistent with the operating schedule accompanying the application, which the Sub Committee may modify to such extent as they consider appropriate, together with any conditions the Sub Committee may decide to impose; and/or
 - b. 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 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 Authorities Sub Committee 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 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 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 has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence 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 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. 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.

- 3.24 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. Timetable and Accountability for Implementing this Decision

- 4.1 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.
- 4.2 An appeal may be lodged by either the applicant or a party to the hearing that has made a relevant representation.
- 4.3 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).

5. Financial Implications

- 5.1 There are no specific financial implications arising from this application.
- 5.2 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.

6. Legal Advice and Implications

- 6.1 A Council Solicitor will be in attendance at the hearing to provide appropriate legal advice to the Sub-Committee in relation to specific aspects of the application / hearing, however the advice below is generally applicable to all applications.

- 6.2 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).
- 6.3 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.
- 6.4 The Panel may accept hearsay evidence and it will be a matter for the 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.
- 6.5 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.
- 6.6 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.
- 6.7 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).
- 6.8 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.

7. Risks and Mitigation

- 7.1 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.

- 7.2 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.
- 7.3 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.
- 7.4 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.

8. Accountable Officer(s)

Diane Kraus, Principal Licensing Officer, Community Safety and Street Scene