

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 21st November 2024 at 14:00 hours (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 in respect of the premises known as The Longbar, Unit 2 Braithwell Road, Ravenfield, Rotherham, S65 4LH.

Report Author(s)

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Report Summary

The application under consideration is for the grant of a premises licence and was made on the 25th September 2024 by Mr David Marshall in respect of The Longbar, Unit 2 Braithwell Road, Ravenfield, Rotherham, S65 4LH.

The applicant, is seeking authorisation to allow the:

- Sale of alcohol, for consumption on and off the premises, commencing at 12:00 hours (12 noon) until:
 - 22:30 hours (10.30pm) on Monday to Friday;
 - 23:30 (11.30pm) on Saturday;
 - 17:30 hours (5.30pm) on Sunday; and
 - 01:30 hours (1.30am) on the day following New Years Eve.

- Provision of late night refreshment, for consumption on the premises, commencing at 23:00 hours (11pm) until:
 - 23:30 (11.30pm) on Saturday; and
 - 01:30 hours (1.30am) on the day following New Years Eve.

Representations from “Other Persons”, who are opposed to the grant of the application, are continuing to be made. Further detail of the application, and representations to it, are provided within the main body of the report.

Recommendations

1. That the Licensing Sub-Committee considers the information contained within this report (and associated appendices) along with any additional information presented at the hearing and subsequently determines the application that has been made.
2. 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 plan
- Appendix 2 Application & the premises layout plan.
- Appendix 3 Applicants response to the representations from “Other Persons”
- Appendix 4 Ongoing 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 (December 2023) 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 in respect of the premises known The Longbar located at Unit 2 Braithwell Road, Ravenfield, Rotherham, S65 4LH.

1. Background

- 1.1 The premises are not currently licensed under the Licensing Act 2003.
- 1.2 A location plan identifying the premises is attached at Appendix 1.

2. Key Issues

Initial Application

- 2.1 On 27th August 2024 an application for the grant of a premises licence was made by Mr David Marshall in respect of the premises known as The Longbar located at Unit 2 Braithwell Road, Ravenfield, Rotherham, S65 4LH.
- 2.2 Representations to the application were received from “Other Persons” , four of which were deemed to be relevant. All persons who had made irrelevant representations were provided with information to allow them to re-submit a relevant representations. However, due to the failure on the part of the applicant to advertise the application in a local newspaper within the statutory time frame set out in Licencing regulations this application was abandoned.

Application under consideration

- 2.3 The application for the grant of a Premises Licence was resubmitted on 26th September 2024, and it is this application which is under consideration today. The applicant, is seeking authorisation to allow the:
- Sale of alcohol, for consumption on and off the premises, commencing at 12:00 hours (12 noon) until:
 - 22:30 hours (10.30pm) on Monday to Friday;
 - 23:30 (11.30pm) on Saturday;
 - 17:30 hours (5.30pm) on Sunday; and
 - 01:30 hours (1.30am) on the day following New Years Eve.
 - Provision of late night refreshment, for consumption on the premises, commencing at 23:00 hours (11pm) until:
 - 23:30 (11.30pm) on Saturday; and
 - 01:30 hours (1.30am) on the day following New Years Eve.
- 2.4 The proposed operation of the premises, as provided in the application, is as a café/coffee shop and deli during the daytime and a small wine bar in the evening, with seating for 38 persons.

- 2.5 The applicant, Mr David Marshall, has himself as the Designated Premises Supervisor (DPS) in the application.
- 2.6 The management controls offered in the application, all of which would be made a condition of Annex 2 of any licence granted, are set out below:
- a) A Challenge 25 Policy shall be in operated. This Policy shall require that any person who appears to be under the age of 25 must provide ID prior to being served alcohol. Acceptable forms of ID are:
 - i. a passport;
 - ii. a UK photo driving licence; or
 - iii. a military ID card.
 - b) All refusals made under the Challenge 25 Policy shall be logged in a bound book. This log must show:
 - i. date of refusal made;
 - ii. member of staff who made the refusal; and
 - iii. if refused, whether fake ID was seized.
 - c) Signs shall be displayed inside the premises that advertise that the premises operates "Challenge 25".
 - d) A bound incident book shall be maintained, in which the following shall be recorded:
 - i. All incidents of crime and disorder occurring at the premises; and
 - ii. Details of when the Police are called.
 - e) The Challenge 25 log and the incident book shall be kept on the premises and shall be available for inspection upon request by the Police or an authorised officer of the Licensing Authority.
 - f) The DPS, or their nominated deputy, shall check the Challenge 25 log and the incident book at least once a week, and sign and date each check.
 - g) The DPS shall routinely attend meetings of the local Pubwatch.
 - h) The premises shall operate in accordance with the "ask Angela scheme" ; and notices to this effect shall be displayed.
 - i) The CCTV system installed at the premises, shall:
 - i. be maintained fully at all times;
 - ii. make and retain clear images; and
 - iii. show an accurate date and time that the images were made.
 - iv. be both internal and external.

- j) All CCTV images shall be retained for a period of not less than 31 days.
- k) CCTV images shall be immediately made available for review upon request of the Police or an authorised officer of the Licensing Authority.
- l) A copy of a CCTV image shall be provided within 24 hours upon request of the Police or an authorised officer of the Licensing Authority.
- m) A record of each member of staff who is authorised to sell alcohol shall be kept on the premises. This record shall include the staff members full name, address, and date of birth.
- n) There shall be a zero-drug tolerance policy in operation at the premises, which shall include the requirement that regular checks are carried out by management to prevent the use of drugs by patrons; and that such checks are recorded. A copy of the premises drugs policy, and associated records, shall kept at the premises and made available to the Police or an authorised officer of the Licensing Authority upon request.
- o) No adult entertainment or services shall be provided at the premises.
- p) Children must be accompanied by an adult(s) at all times.
- q) Children will not be permitted on the premises after 21.00 hours.
- r) There shall be no outdoor consumption of alcohol. Alcohol shall only be permitted to be taken off the premises in sealed containers.
- s) All staff shall receive training on induction and year thereafter, on:
 - i. operation of 'Challenge 25';
 - ii. types of acceptable ID;
 - iii. method of recording refusals;
 - iv. refusing sales of alcohol to persons who appear to be drunk;
 - v. preventing proxy sales;
 - vi. incident recording and when to call the Police;
 - vii. operation of the "ask Angela Scheme" ; and
 - viii. how to review the CCTV system if requested.
- t) Staff training shall be recorded, records shall be kept of the premises and shall, on request, be made available for inspection by the Police or an authorised officer of the Licensing Authority.

2.7 A copy of the application form, together with the proposed layout plan of the premises is attached at Appendix 2.

Consultation

- 2.8 Consultation on the application was carried out in accordance with all 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.
- 2.9 All parties who has made representations to the initial application, regardless of whether they had been accepted as "relevant", were directly consulted on the resubmitted application.
- 2.10 At the end of the consultation period representations, opposed to the grant of the application, were received from five (5) "Other Persons". Four of which were from local residents, with the remaining representation being submitted on behalf of the Ravenfield Parish Council.
- 2.11 No representation to the application have been received from the Responsible Authorities.

Conciliation

- 2.12 The applicant was provided with the detail of the representations and responded by way of a letter, providing more information on the proposed operation of the premises. A copy of the applicants response to the representations is attached at Appendix 3.
- 2.13 The information provided by the applicant led to the withdrawal of one of the representation made by a local resident.

Ongoing Representations

- 2.14 Two of the remaining three local residents who made representations to the application have confirmed that they wish to continue with their representations. The third did not respond to the applicants letter, so it is assumed that they are continuing with their representations.
- 2.15 At the time of writing the representation made on behalf of Ravenfield Parish Council remain in place. However this may change when the Parish Council next meet on 14th November 2024, which is their first opportunity to consider the applicant reply. An invite for the applicant, to attend this meeting and address the Parish Council in person was extended. This invite was passed on to Mr Marshall by the Licensing Office.
- 2.16 The detail of the ongoing representations from four (4) "Other Persons", three local residents and the Ravenfield Parish Council, is attached at Appendix 4.
- 2.17 An oral update will be provided at the meeting should any of the ongoing representation be subsequently withdrawn.

The Hearing

2.18 The applicant and “Other Persons” who are continuing to make representations have been invited to the hearing today. All parties attending, will be given the opportunity to address the Sub-Committee in relation to the matters raised in the application and the representations they have made to it.

2.19 Members of the Sub-Committee should give full consideration of application submitted and the and representations to it, together any supporting evidence provided by any party prior to the date of the hearing. Documentary evidence provided on the day of the hearing should only be considered with the consent.

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:

- 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; 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 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 Sub-Committee'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 the Sub-Committee to decide that no lesser step will achieve the aim, the Sub-Committee should aim to consider the potential burden that the condition would impose on the applicant/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 Sub-Committee ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the licensing objectives and nothing outside those parameters. The Sub-Committee may 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 Sub-Committee 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) and 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 Sub-Committee'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 the Sub-Committee 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 holder, which they should carry out before making their application for a premises licence. This would be translated into the steps recorded in the 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 in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder must be clear to the licence holder, enforcement officers and the courts.

Imposed conditions

- 3.15 The Sub-Committee 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.

Proportionality

- 3.17 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. 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. 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 Licensing 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.
- 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 Sub-Committee 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