

## **Licensing Act 2003 - Hearing Procedure – Grant of a Premises Licence**

1. The Chairperson of the Licensing Sub Committee will introduce the Committee members and ask officers to introduce themselves.
2. The Chairperson will then ask the following parties to introduce themselves:
  - a. the applicant, any person representing them and any witnesses they wish to call.
  - b. any person who has made representations, any person representing them and any witnesses they wish to call.
3. The Chairperson will then ask the Licensing Officer to introduce the report and provide any updates.
  - a. Questions to the Licensing Officer may be asked, **solely concerning the report**, by Members, the applicant and by persons making representations.
4. The Chairperson will then invite:
  - a. **any person who has made representations** to present their representations and call any witnesses they may have.

**Note:** Members of the Sub Committee, followed by the applicant may ask questions of all persons who have made representations to the hearing and their witnesses.
  - b. **the applicant** to present their application, respond to the representations, and call any witnesses they may have.

**Note:** Members of the Sub Committee, followed by any person who has made representations at the hearing may ask questions of the applicant and their witnesses.
5. **The applicant will then be given the opportunity to sum up**
6. The public hearing will then be concluded, and Members of the Sub Committee will go into Closed session, together with the Councils Solicitor and the Clerk to the meeting.
7. The decision of the Licensing Committee will be given in accordance with the requirements of the Licensing Act 2003 and regulations made thereunder.

**Note:**

At any time throughout the hearing Members of the Licensing Sub Committee may request legal advice from the Council's Solicitor. Any advice sought during closed session will be included in the notice setting out the decision.

The Committee Hearing will be held in public unless and in accordance with relevant Regulations the Licensing Sub Committee determine that the public should be excluded.

### **Committee Name and Date of Committee Meeting**

Licensing Sub-Committee - 12<sup>th</sup> March 2025 at 14:00 hours (2pm)

### **Report Title**

Consideration of an application (made in accordance with s.17 of the Licensing Act 2003) by AKMS Retail Ltd for the Grant of a Premises Licence in respect of the premises known as Today's situated at Unit 4, Ox Close Avenue, Kimberworth Park, Rotherham S61 3QY.

### **Report Author(s)**

Diane Kraus, Principal Licensing Officer, Community Safety and Street Scene  
Tel: 01709 289536.

### **Report Summary**

On the 17th January 2025 an application for the grant of a Premises Licence was made by AKMS Retail Ltd in respect of the premises known as Today's situated at Unit 4, Ox Close Avenue, Kimberworth Park, Rotherham S61 3QY

The applicant, is seeking authorisation to allow the:

- 24 hour sale of alcohol, for consumption off the premises, on every day of the week; and
- provision of late night refreshment, for consumption off the premises, on every day of the week between 23:00 hours (11pm) and 05:00 (5am) on the following day. No licence is required outside of these hours.

Representations from Responsible Authorities and "Other Persons", all of whom are opposed to the grant of the application, have been received. 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, together with offered conditions & premises layout plan
- Appendix 3 Representation from Responsible Authorities
- Appendix 4 Representation from “Other Persons”

## **Background Papers**

Rotherham MBC Statement of Licensing Policy 2020 -2025  
(available at [www.rotherham.gov.uk/licensing](http://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 by AKMS Retail Ltd for the Grant of a Premises Licence in respect of the premises known as Today's situated at Unit 4, Ox Close Avenue, Kimberworth Park, Rotherham S61 3QY.**

**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**

The Application

- 2.1 On 17<sup>th</sup> January 2025 an application for the grant of a Premises Licence was made by AKMS Retail Ltd in respect of the premises known as Today's situated at Unit 4, Ox Close Avenue, Kimberworth Park, Rotherham S61 3QY. The application, which is accompanied by an Operating Schedule and a premises layout plan, is attached at Appendix 2.
- 2.2 The application seeks to allow the:
- Sale of Alcohol, for consumption off the premises, on every day of the week between 00:00 hours and 00:59 - 24 hour opening; and
  - Provision of Late-Night Refreshment, for consumption off the premises, on every day of the week between 23:00 hours and 05:00 - a licence for the provision of hot food and drink is not required outside of these hours.

The premises are described in the application as a general convenience store, selling an extensive range of goods and that the proposed 24-hour operation is to provide the greatest flexibility for the business.

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 CCTV camera system capable of providing good quality images in all lighting conditions shall be used. Images will be retained for a period of at least 28 days and be made available with the minimum of delay to the Police and other Authorised Persons upon reasonable request for evidential purposes, in accordance with the relevant data protection legislation (currently GDPR 2018).
- b) The CCTV recording equipment shall be kept in a secure environment under the control of the premises licence holder (PLH) and/or another named responsible individual.

- c) There shall be sufficient members of trained staff available to be able to download or view CCTV evidence with the minimum of delay at the reasonable request of an authorised officer.
- d) In the event of a breakdown of the CCTV equipment the PLH/DPS or another member of staff shall inform the Licensing Authority as soon as is reasonably practicable. This information shall be recorded in the incident report register and shall include the time, date and means this was reported. The breakdown shall be remedied as soon as possible.
- e) The PLH/DPS will run the premises well as a responsible retailer and be a good neighbour to promote the licensing objectives.
- f) An appropriate number of staff shall be on duty in the shop - the number of staff on duty will be assessed and determined on a regular basis by the PLH/DPS taking account of any peak periods in terms of sales, volume of customers, etc.
- g) All staff selling alcohol will be authorised to sell alcohol in writing and a record of the authorisation will be made available for inspection.
- h) The DPS and other staff will be vigilant and monitor the area immediately outside the shop to check that youths are not causing annoyance by congregating.
- i) Spirits will be kept behind the counter.
- j) Any incidents of crime and disorder at or immediately outside the premises, witnessed by staff, will be recorded in an incident book kept at the shop. This book will be made available for inspection by the Police and other Authorised Persons upon request.
- k) The shop shall operate an alcohol refusals policy as follows - alcohol will not be sold to any person;
  - i. recognised or identified as a street drinker (regardless of their level of inebriation at the time);
  - ii. found to be drinking alcohol in the street;
  - iii. who is drunk or appears to be drunk;
  - iv. suspected of trying to buy alcohol for another person who is drunk or appears to be drunk;
  - v. unable to provide valid ID when requested by staff;
  - vi. who is verbally or physically abusive towards staff or customers.
  - vii. suspected of trying to buy alcohol for another person(s) who may be under age.
- l) A notice advising customers of the refusals policy shall be on display.
- m) A notice(s) shall be on display telling customers not to drink alcohol in the street.
- n) The PLH and/or the DPS will seek regular contact with the Police and other parties as appropriate to receive updates on any relevant issues in connection with the promotion of the licensing objectives.

- o) A 'Crimestoppers' notice will on display to promote the initiative;
- p) The premises shall comply with the Portman Group code of practice on rules for the naming, packaging and promotion of alcoholic drinks.
- q) Notice(s) will be displayed asking customers to leave the shop quietly;
- r) Notice(s) will be displayed asking customers not to drop any litter on the floor.
- s) Staff will monitor the area immediately outside the shop on a regular basis to check for, and dispose of, any litter.
- t) Deliveries to and from the shop will be conducted to ensure no public nuisance is caused.
- u) Challenge 25 shall be used. Alcohol will only be sold to people who can satisfy or prove to the seller that they are 18 years old or over. The only acceptable form of ID will be a passport, photo driving licence, a PASS accredited proof of age card, or other form of photo ID as recommended by Trading Standards.
- v) The premises shall display clear and prominent signage advising customers that a Challenge 25 policy is in operation.
- w) An automatic till prompt system shall be used to assist staff carrying out age verification.
- x) An alcohol refusals register will be kept and maintained. The register will include details of the date of the refusal, the time, and the reason(s) for refusing the sale. It will be checked on a regular basis by the DPS and be made available for inspection by responsible authorities.
- y) A notice(s) shall be displayed in the premises where they can be seen clearly to advise customers that it is unlawful for persons under 18 to purchase alcohol or for any persons to purchase alcohol on behalf of a person under 18 years of age.
- z) A due diligence checklist will be used to help prevent underage sales.
- aa) All staff to be trained prior to serving alcohol and other age restricted products. The training will cover matters such as preventing underage sales, proxy sales, and refusing service.
- bb) Staff training will be refreshed every 12 months, records will be kept and be made available to responsible authorities upon request.

### Consultation

- 2.3 Consultation on the application has been 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.
- 2.4 At the end of the consultation period representations, all of which are opposed to the grant of the application, have been received from two (2) Responsible Authorities and thirty one (31) "Other Persons" .

### Representations

- 2.5 Two (2) of the Responsible Authorities have made representations to the application, namely South Yorkshire Police and the Licence Authority, the detail of which is attached at Appendix 3. Both of the Responsible Authorities object to the application as submitted.
- 2.6 Thirty one (31) "Other Persons", all of whom are opposed to the grant of the application, have made representations to it. A copy of the representation from three (3) local Councillors, the Parochial Church Council of St John's Church and twenty seven (27) local residents are attached at Appendix 4.

### Additional Evidence

- 2.7 At the time of writing no additional evidence has been received from the applicant, Responsible Authorities or "Other Persons."

### The Hearing

- 2.8 The applicant, Responsible Authorities and "Other Persons" have all 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.
- 2.9 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 3<sup>rd</sup> 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