

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 29th November 2022 at 10:00 hours (10.00am)

Report Title

Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) for the review of the Premises Licence issued to Ei Group Limited in respect of the premises known as The Joker situated at Blackthorn Avenue, Bramley, Rotherham, S66 2LU.

Report Author

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Report Summary

On the 15th September 2022 an application was made by a local resident for the review of the Premises Licence currently in force in respect of The Joker, Blackthorn Avenue, Bramley, Rotherham, S66 2LU.

Representations in support of the application to review have been received from three (3) local residents.

Further details on the application 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 plan
- Appendix 2 Premises Licence
- Appendix 3 Application under consideration
- Appendix 4 Representations (in support of the application)
- Appendix 5 Supporting evidence submitted by applicant

Background Papers

Rotherham MBC Statement of Licensing Policy 2020 -2025
(Available at www.rotherham.gov.uk/licensing)

Revised guidance issued under section 182 of the Licensing Act 2003 (April 2018)
(Available at <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>)

Council Approval Required

No

Exempt from the Press and Public

No

Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) for the review of the Premises Licence issued to Ei Group Limited in respect of the premises known as The Joker and situated at Blackthorn Avenue, Bramley, Rotherham, S66 2LU.

1. Background

- 1.1 Rotherham Metropolitan Borough Council (MBC) first licensed The Joker, Blackthorn Avenue, Bramley, Rotherham, S66 2LU in September 2005. The Premises Licence was issued following an application made under transitional provisions of the Licensing Act 2003. The transitional provisions allowed for the transfer, and variation, of the various licenses and certificates previously issued by the Magistrates Court to the local authority.
- 1.2 Between September 2005 and April 2015 the Premises Licence was held by two individuals. It was then briefly held by the current holder, Ei Group Limited, prior being transferred to a different company in June 2015. This company held the Premises Licence until November 2018 when it was transferred back to the current holder, Ei Group Limited.
- 1.3 An application to amend the plan attached to the Premises Licence was granted under the minor variation system in May 2016.
- 1.4 On the 15th September 2022 the application currently under consideration for the review of the Premises Licence was made. Further detail regarding this application is set out in 2 of the report.
- 1.5 On 13th October 2022 an application for the minor variation of the Premises Licence was made on behalf of the Ei Group Limited. This application sought to reduce the terminal hour authorised for the playing of recorded music, the provision of the facilities for dancing and the provision of late night refreshment on Fridays and Saturdays to 12 midnight (previously 1am on the day following) and to 29 management control conditions to the licence.
- 1.6 Whilst several local residents made representations to the minor variation application none were deemed relevant as they failed to demonstrate how the grant of the application would undermine the promotion of the licensing objectives.
- 1.7 It was apparent from the comments received that the local residents thought that they were objecting to the grant of a new Premises Licence as opposed to an application to reduce the authorised hours, and add management control conditions, to an existing licence.
- 1.8 In the absence of relevant representation the application for the minor variation of the Premises Licence was granted on 2nd November 2022 and the terms of the licence amended in accordance this application. Paragraph 2.4 of the report sets out the 29 management control conditions that were added to the Premises Licence.

2. Key Issues

Location of the Premises

2.1 A location plan of The Joker, Blackthorn Avenue, Bramley, Rotherham, S66 2LU is attached at Appendix 1. The Licence includes the plan of the approved layout of the premises. The plan also identifies the outdoor drinking and smoking areas. A larger version of this plan will be circulated at the hearing.

Premises Licence

2.2 A copy of the current Premises Licence issued to Ei Group Limited in respect of The Joker, Blackthorn Avenue, Bramley, Rotherham, S66 2LU is attached at Appendix 2.

2.3 In summary the Premises Licence routinely authorises:

Sale by retail of alcohol (on and off the premises)

- Sunday to Thursday between 10am and 11pm; and
- Friday and Saturday between 10am and Midnight

Playing of recorded music & provision of facilities for dancing (indoors)

- Sunday to Saturday between 10am and Midnight

Provision of facilities for making music (indoors)

- Sunday to Thursday between 10am and Midnight
- Friday and Saturday between 10am and 1am on the following day

Provision of late night refreshment (on the premises)

- Sunday to Saturday between 11pm and Midnight

Opening Hours

- Sunday to Thursday between 10am and Midnight
- Friday and Saturday between 10am and 1am on the following day

2.4 The Premises Licence is subject to the mandatory conditions and the 29 management controls conditions offered by the applicant in the minor variation application granted on 2nd November 2022. These conditions are listed below:

- 1) *A CCTV system shall be installed at the premises, recording for the entirety of each 24-hour period and for a minimum of 28 days. CCTV footage must be made available within 48 hours to the Police or officers of the Council upon request and be of evidential quality.*
- 2) *The DPS must ensure that at least 1 member of staff in addition to the designated premises supervisor is trained in the recording and retrieval of CCTV images.*
- 3) *The CCTV cameras shall cover all entrances and exits, the area in which payment is made for alcohol and all areas to which the public have access including all external areas. The licence holder must ensure that the hard drive is located in an area that is easily accessed by officers.*

- 4) *The DPS shall adopt an age verification scheme which incorporates "Challenge 25" The premises licence holder shall ensure that challenge 25 notices are on display in view of the public and in the area in which payment for alcohol is made.*
- 5) *The DPS shall keep a register of refused sales of all age- restricted products. The Refusals Book must be retained on the premises and made available for inspection by the police or officers of the Council upon request.*
- 6) *The refusals book must contain details of time and date, description of the attempting purchaser, description of the age restricted products they attempted to purchase, reason why the sale was refused and the name/signature of the person refusing the sale.*
- 7) *The Refusals book must be examined on a weekly basis by the designated premises supervisor or a suitably trained member of staff. Upon examination the book must be signed and dated.*
- 8) *The DPS shall ensure that an Incident report register is maintained and kept onsite at all times to record all incidents involving anti-social behaviour injury and ejections from the premises. This shall be completed as soon as possible and, in any event no later than the close of business on the day of the incident. The time and date when the report was completed, and by whom, is to form part of the entry.*
- 9) *The incident report register is to be kept on the premises and made available for inspection by the police or officers of the Council upon request.*
- 10) *The DPS shall ensure that a written record of all staff authorised to sell alcohol is always kept on the premises and made available for inspection by the police or officers of the Council upon request.*
- 11) *All staff involved in the sale of alcohol shall receive training in underage sales, serving to persons in drink, drug awareness and how to deal with abusive and aggressive customers.*
- 12) *Staff refresher training shall take place on an annual basis and be recorded.*
- 13) *New staff shall receive induction training at the commencement of their employment at the premises, including drug awareness, underage sales training, and serving to persons in drink. This training shall be recorded.*
- 14) *Persons under the age of 18 years must always be accompanied and supervised by a responsible adult whilst they are on the premises. This includes all external areas and the customer car park.*
- 15) *Persons under the age of 18 years must not be permitted entry to the premises (including all external areas and customer car park) or permitted to remain on the premises after 21.00hrs.*
- 16) *The DPS shall ensure that documented security arrangements are implemented at the premises to discourage the sale and consumption of controlled substances. Security arrangements shall include having a member of staff regularly check toilet areas and external areas.*
- 17) *The date and times of all checks to be recorded in a bound book kept for that purpose and to be produced upon request to an authorised officer of the Licensing Authority or a constable.*

- 18) *The DPS shall ensure that a clearly visible notice will be placed on the premises within the toilets and external areas. Advising those attending that regular checks are being undertaken and that the Police will be informed if anyone is found in possession of controlled substances or weapons.*
- 19) *The DPS shall ensure that regular checks are carried out outside of the premises to ensure that the area is free from litter and nuisance behaviour associated with the operation of the business.*
- 20) *Save for access and egress the external areas of the premises including the carpark must not be used after 23:00 hrs Monday to Sunday and cleared of customers by 23:30 hrs. Adequate notices shall be displayed to inform patrons of this requirement.*
- 21) *Customers shall not be permitted to take vessels containing alcoholic products into the premises, and no open vessels containing alcoholic products shall be allowed to be taken from the premises save for consumption in an external area provided for that purpose whilst the premises are conducting licensable activities.*
- 22) *Amplified music shall not be played at a level that will cause unreasonable disturbance to the occupants of any properties in the vicinity. No speakers for amplification of music shall be placed in any external area or on the outside of any building forming a part of the premises.*
- 23) *The designated premises supervisor or other competent person shall carry out observations in the vicinity of closest residential property, on at least hourly intervals between 18:00hrs and 00:00hrs on Friday Saturday and Sunday, to establish whether there is a noise breakout from the premises whenever regulated entertainment is being provided at the premises. If the observation reveals noise breakout at a level likely to cause disturbance to the occupants of properties in the vicinity then the volume of music shall be reduced to a level that does not cause disturbance. A record of such observations shall be kept in a book for that purpose.*
- 24) *A clear notice shall be displayed at every exit from the premises to instruct customers to respect the needs of local residents and leave the premises and the area quietly.*
- 25) *The DPS shall ensure attendance at the local Pub Watch Scheme meeting on a regular basis by either the DPS or nominated representative.*
- 26) *The DPS shall undertake a regular risk assessment of the premises to determine whether door supervisors shall be required.*
- 27) *Whenever there are anticipated changes to the normal operating framework of the premises, where it is reasonable to assume there will be an increase in customers, for example a home football game or the advertising and promoting of a sporting event, a risk assessment shall be carried out by the DPS to determine whether door supervisors shall be required. The risk assessment shall be documented in a register, kept at the premises and available for inspection by the Police or Council licensing enforcement officer upon request.*
- 28) *The DPS shall ensure there is adequate lighting in the external area and car park area of the premise.*
- 29) *The DPS shall appoint a designated member of staff to carry out regular checks of the outside area, to ensure all external lights are working.*

2.5 The Sub Committee will note that there is no Designated Premises Supervisor (DPS) named on the Premises Licence. The Licence holder, Ei Group Limited, is fully aware that alcohol may not be sold at the premises until such time that a DPS is nominated. They have confirmed in writing that "*the site is currently closed, secured and not trading*".

Application under Consideration.

2.6 On 15th September 2022 an application was made by Mrs Sarah Bedford, in the capacity of "other person", for the review of the Premises Licence issued to Ei Group Limited in respect of The Joker, Blackthorn Avenue, Bramley, Rotherham, S66 2LU. A copy of the application is attached at Appendix 3.

2.7 The applicant lives in the locality of the premises and the application is made on the grounds that the Licence holder is failing to promote the licensing objectives, namely:

- the prevention of crime and disorder;
- public safety,
- the prevention of public nuisance; and
- the protection of children from harm.

Consultation

2.8 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.

2.9 At the end of the prescribed period two letters, from three local residents all of whom support the review application, had been received. The letters making representations are attached at Appendix 4.

2.10 All persons 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.

2.11 Members of the Sub-Committee should give full consideration of the issues raised in the representations when determining the application.

Evidence provided in support of the Review Application

2.12 Additional documentation, supplied by Mrs Sarah Bedford, in support of the review application is attached at Appendix 5.

Delay in Determination by the Licensing Sub Committee

2.13 The applicant requested, and the Licence Holder agreed, to extend the time period permitted for the Sub Committee to determine the application to review the Premises Licence. This was to consideration of the minor variation application made part way through the review process.

Important considerations in relation to Regulated Entertainment

2.14 With regard to the provision of live and/or recorded music at the premises, it is important that the following of exemptions, that mean that a licence (or other authorisation) under the 2003 Act is not required, is brought to the attention of the Sub Committee.

2.15 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.

2.16 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?

2.17 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.

2.18 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.

2.19 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.

2.20 Where a 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 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, together with any representations made by the licence holder. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council's licensing policy statement.

3.3 In relation to this application, the options available to the Sub Committee are to:

- modify the conditions of the licence;
- exclude a licensable activity from the scope of the certificate;
- suspend the licence for a period not exceeding 3 months;
- to revoke the certificate.

Given that there is no designated premises supervisor currently nominated on the licence, the option to remove them is not relevant in respect of this application.

- 3.4 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 3.5 However, where responsible authorities such as the Police or Environmental Health Officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 3.6 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 3.7 Licensing authorities should also note that modifications of conditions and exclusions of authorised activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could have a financial impact and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.
- 3.8 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.

3.9 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.

4. Timetable and Accountability for Implementing this Decision

4.1 Any decision made by the 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 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 (Policy & Administration), Community Safety and Street Scene

This report is published on the Council's website.

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.