

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 13th March 2024 at 13:30 hours (1.30 pm)

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 the premises to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE.

Report Author(s)

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

Report Summary

On the 17th January 2024 an application the grant of a premises licence was made by Mrs Denisa Mirela LINCA in respect of La Sandy, 34 Kimberworth Road, Rotherham S61 1AE.

The applicant, as amended, is seeking authorisation to allow the sale of alcohol for consumption on the premises on each of the days Monday to Thursday between 10:00 hours and 22:00 hours, and on Friday, Saturday & Sunday between 10:00 hours and 23:00 hours each of the days.

Representations to the application have been made by Rotherham Metropolitan Borough Council's Environmental Health Service, in their role as a designated Responsible Authority under the Licensing Act 2003. The Environmental Health Service is opposed to the grant of the application. Further detail of the application, as amended, 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 Advisory letter
- Appendix 3 Application form, email confirming amendments & premises plans
- Appendix 4 Offered conditions
- Appendix 5 Representations from Rotherham MBC Environmental Health Service
- Appendix 6 Abatement Notice in respect of Statutory Nuisance
- Appendix 7 Photographs of Abatement Notice fixed to railings at the premises

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 to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE.

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.
- 1.3 The premises first came to the attention of the Licensing Service in October 2023 following an allegation that licensable activities were being provided without the benefit of a licence. This led to an advisory letter being sent to Mr Aurel Sandi & Ms Denisa Linka (the current applicant). A copy of this letter is attached at Appendix 2.
- 1.4 From October 2023 Temporary Event Notices in respect of the premises have been served by Mr Aurel Sandi for events on the following dates:
- 01/12/2023
 - 24/12/2023
 - 30/12/2023
 - 31/12/2023
 - 22/02/2024 – see paragraphs 2.19 to 2.23 below for further information.
 - 08/03/2024 – see paragraph 2.24 below for further information.

2. Key Issues

The application

- 2.1 On 17TH January 2024 an application for the grant of a premises licence was made by Mrs Denisa Mirela Linca, in respect of the premises to be known as La Sandy situated at 34 Kimberworth Road, Rotherham S61 1AE. In the first instance the application sought consent to allow the sale of alcohol and the provision of live and recorded music at the premises. However, on 8th February 2024, the application was amended and the request to allow live and recorded music was withdrawn from the application with immediate effect.
- 2.2 A copy of the application and email making amendments to it, together with the plan identifying the extent of the applicant premises, and a second plan showing the layout of the building located within the site, is attached at Appendix 2. The licensed area, as identified on the plan, includes both the building and outside area.
- 2.3 The application, as amended, seeks authorisation to allow the sale of alcohol for consumption within the licensed area on each of the days Monday to Thursday between 10:00 hours and 22:00 hours, and on Friday, Saturday & Sunday between 10:00 hours and 23:00 hours.

- 2.4 The opening hours of the licensed area, as stated in the application, are between 10:00 hours and 22:30 hours on Monday to Wednesday and between 10:00 hours and 23:30 hours on Friday to Sunday.
- 2.5 The applicant, Mrs Linca, has named herself as the Designated Premises Supervisor (DPS). Mrs Linca holds a Personal Licence issued by Rotherham MBC.

Consultation

- 2.6 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.
- 2.7 During the consultation period the Licensing Authority made representations seeking the addition of a further management control conditions. The conditions sought by the Licensing Authority are set out below: :
- A CCTV system shall be installed at premises and shall:
 - be maintained fully operational and in good working order at all times;
 - make and retain clear images; and
 - show an accurate date and time that the images were made.
 - All CCTV images shall be retained for a period of not less than 31 days.
 - CCTV images shall be made immediately available for viewing, upon request, of the Police or an authorised officer of the Licensing Authority.
 - The original CCTV images, or a copy, shall be provided to any police officer or authorised officer of the Licensing Authority within 48 hours of a request having been made in a format that can be viewed on readily available equipment without the need for specialist software
 - A member of staff trained on the operation of the CCTV system shall be on duty at the premises, or on call and available to attend the premises, at all times the premises are open.
 - Signage shall be displayed in the customer area of the premises to advise that CCTV is in operation
- 2.8 The applicant agreed to include the conditions sought by the Licensing Authority in the operating schedule which resulted in the Licensing Authority's representations being withdrawn.

- 2.9 The conditions offered in the application, together with those agreed by the applicant during the application process, are set out at Appendix 4. These Conditions will be applied at Annex 2 to any Licence that may be granted.
- 2.10 The Council's Environmental Health Service also made representations to the application which are ongoing. Further detail these representations is provided in paragraphs 2.15 to 2.24 below.
- 2.11 No "Other Persons" have made representations to the application.
- 2.12 The applicant has been provided with the detail of the representations received from the Council's Environmental Health Service.
- 2.13 The applicant and the Council's Environmental Health Service 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.
- 2.14 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 of all parties.

Representations from Rotherham MBC Environmental Health Service

- 2.15 The representations made to the application by the Environmental Health Service, in their role as a designated Responsible Authority under the Licensing Act 2003, are attached at Appendix 5. The representations ask for a Noise Impact Survey to be carried out at the premises, as the application fails to address how local residents would not be subject to noise nuisance.
- 2.16 The applicant responded by stating that the requirement to carry out a Noise Impact Survey was costly and beyond her means. By way of a compromise a suggestion was made that a noise limiting device could be installed at the premises.
- 2.17 The Environmental Health Service did not agree the suggested compromise and maintained their initial representations. At the point the applicant withdrew the request to allow live and recorded music to be provided at the premises. However, the amendment to the application did not result in the withdrawal of the representations.

2.18 The Environmental Health Service explained that the representation were continuing, as licensing deregulation allows any premises authorised to sell alcohol to provide live amplified music or the playing of recorded music between 8am and 11pm, before an audience of no more than 500 people. Given this, the removal of live and recorded music from the application did not negate the requirement for a Noise Impact Survey to be provided.

Additional submitted by Rotherham MBC Environmental Health Service

2.19 During the application process two Temporary Event Notices (TENs) were served to allow licensable activities to be provided at the premises on 22nd February 2024 and 8th March 2024. Both Notices were served by Mr Aurel Sandi.

2.20 Despite representations having made to this application the Environmental Health Service did not object to either TEN. Instead they opted to monitor the activities at the premises when they were operating under the TEN.

2.21 Officers of the Environmental Health Service carried out monitoring visits throughout the duration of the event held on 22nd February 2024 and found that amplified music was being played at a level to constitute a statutory noise nuisance.

2.22 On 23rd February 2024 the Environmental Health Service served a Noise Abatement Notice in respect of the premises, a copy is at Appendix 6.

2.23 It was brought to the attention of the Environmental Health Service that, during a meeting with her licensing agent on 28th February 2024 Mrs Linca claimed to have no knowledge that a Noise Abatement Notice has been served in respect of the premises. Given this, a further copy of the Noise Abatement Notice was hand delivered to the premises on 29th February 2024, and on the same date a copy was affixed to the railings at the premises. A photograph of the Notice in place is attached at Appendix 7.

2.24 Further monitoring of the premises is scheduled to take place on the 8th March 2024, the date of the second TEN, and an oral update will be provided at the meeting.

Additional Evidence submitted by Applicant

2.25 At the time of writing no additional documentary evidence in support of the application has been received.

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