

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

Licensing Sub-Committee – 28<sup>th</sup> May 2024 at 10:00 hours (10am)

### **Report Title**

Consideration of an application (made in accordance with s.34 of the Licensing Act 2003) for the variation of the Premises Licence issued to TBO Limited in respect of the premises known as Yellow Broom situated at Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE.

### **Report Author**

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### **Report Summary**

On the 26<sup>th</sup> March 2024 an application was made by TBO Limited to vary the terms, conditions, and restrictions of the Premises Licence currently in force in respect Yellow Broom, Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE.

Representations to the application have been made.

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 Current Premises Licence (P1152)
- Appendix 2 Location details
- Appendix 3 Application under consideration
- Appendix 4 Representations
- Appendix 5 Conciliation - applicants response to the representations

## **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 (Dec 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.34 of the Licensing Act 2003) by TBO Limited for the variation of the Premises Licence currently in force in respect of Yellow Broom, Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE**

## **1. Background**

- 1.1 A Premises Licence was first issued to TBO Limited in respect of Yellow Broom, Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE on 1<sup>st</sup> September 2023. Previous to this the premises had not had the benefit of a licence issued under the Licensing Act 2003. The application for the grant of a Licence was unopposed and therefore issued under Officer delegated authority.
- 1.2 A copy of the Licence issued to TBO Limited on 1<sup>st</sup> September 2023 for the premises known Yellow Broom and situated at Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE is attached at Appendix 1. This Licence authorises the sale of alcohol for consumption on the premises on:
- Monday to Thursday between 12:00 hours and 21:30 hours; and
  - Friday to Sunday between 12:00 hours and 23:00 hours
- 1.3 The Licence is subject to the mandatory conditions, set out in Annex 1, together with the conditions offered by the applicant during the initial application process, which are set out in Annex 2. Annex 3 of the Licence is blank, as there have been no conditions attached to date by the Licencing Authority. The layout plan of the premises, which identifies the outdoor patio area, is attached at Annex 4 of the Licence.

## **2. Key Issues**

### Location of the Premises

- 2.1 Attached at Appendix 2 to the report are plans showing the location of Yellow Broom, Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE.

### The application

- 2.2 On 26<sup>th</sup> March 2024 an application was made by TBO Limited for a variation of the Licence issued to the Company in respect of Yellow Broom, Unit 2 AEON Court, 108 Main Street, Bramley, Rotherham S66 2SE. A copy of the application is attached at Appendix 3.
- 2.3 The application seeks to:
- Extend the latest hour for the sale of alcohol by one hour on each of the days Monday to Thursday, from 9.30pm to 10.30pm;
  - Extend the latest hour for the sale of alcohol on New Year's Eve until 1am on the day following; and

- Allow the sale of alcohol for consumption off the premises on every day of the week.

Note: The application also requests to extend the latest hour to 10.30pm on Bank Holiday Mondays and Christmas Eve and Boxing Day, when they fall on a Monday to Thursday. However, a 10.30pm finish will automatically apply on these dates if the application is granted.

2.4 Section M of the variation application form (attached at Appendix 3) sets out the steps the Licence holder will take to promote the licensing objectives. These steps are all already a condition of the existing Licence. However, during the conciliation process the Licence holder offered that, if the application is granted and the sale of alcohol for consumption off the premises allowed, the following additional condition:

- The purchase of alcohol for off-site consumption is limited to 'specialist craft beer'.

### Consultation

2.5 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.

### Representations received

2.6 A letter making representations against the grant of the variation application was received, a copy of which is attached at Appendix 4.

2.7 The detail of the representation was provided to the applicant, TBO Limited. Mr Simmonite responded to the representation on behalf of the Company, via the Licensing Office. A copy of this response is attached at Appendix 5.

2.8 Conciliation failed to lead to the withdrawal of the representation. In response to the conciliation letter the person making representations stated:

- *I am grateful for the offer to meet the owners and staff, or to phone, however I do not want to have this contact.*
- *Regarding the offer to amend the licensing application to state that only "specialist craft beer" may be sold for consumption off the premises: I am not aware that licensing and consumer law in England and Wales have a clear and legal definition of "specialist craft beer". If so it would not be possible to enforce such a licensing condition. It also remains a more significant concern that the sale of alcoholic drinks, at night and later than the closing time of nearby retail outlets which sell alcohol (Aldi Supermarket on Bawtry Road, and James Retail which operates a*

*confectionery/news/tobacco and groceries/ convenience/off-licence type shop under the title Bargain Booze, on Main Street, both of which have licences to sell alcohol) would increase the risk of antisocial behaviour and crime and disorder.*

2.9 Having regard to their response, the Licensing Officer provided the person making representations with the following additional information:

- *Aldi Supermarket on Bawtry Road has a Licence that allows the sale of alcohol for consumption off the premises on every day of the week between 7am and 11pm, albeit they may not operate as late as this.*
- *Bargain Booze on Main Street has a Licence that allows the sale of alcohol for consumption off the premises on each of the days Monday to Saturday between 9am and 11pm and on Sunday between 10am and 10.30pm.*
- *There is no definition of “specialist craft beer”. If this condition was on the Licence, then it would be a matter for Council and Police Licensing Officers to determine any breach.*

2.10 The person local making representations to the application has been invited to the hearing today and advised that, if attending, they 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.

#### Additional Information

2.12 At the time of writing no additional information in support of the application or the representations has been received. Any additional relevant documentation received prior to the date of the hearing will be circulated at the hearing. Documentation received on the day of the hearing may only be considered by the Licensing Sub Committee with the consent of all relevant parties.

#### Important considerations in relation to Regulated Entertainment

2.13 The following information is brought to the attention of the Licensing Sub Committee with regard to the provision of live and/or recorded music may be provided at the premises.

2.14 There are a number of exemptions that mean that a licence (or other authorisation) under the 2003 Act is not required. The following activities are examples of entertainment which are not licensable:

- Incidental music – the performance of live music or the playing of recorded music if it is incidental to some other activity (see below).

- A spontaneous performance of music, singing or dancing.
- Stand-up comedy.

2.15 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?

2.16 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.

2.17 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.

2.18 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.

- 2.19 If the Licensing Committee grant the licence, and the licence includes permission for the retail sale of alcohol, then any live or recorded music taking place at the premises (subject to the above requirements) will not be licensable between the hours of 0800hrs and 2300hrs. In addition, any conditions that are applied to live or recorded music will not be effective during these hours (subject to certain conditions being met). Further detail in relation to conditions is contained within section 3 of this report.

### **3. Options available to the Licensing Sub-Committee**

- 3.1 A licensing authority must carry out its functions under the Licensing Act with a view to promoting the licensing objectives:

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

- 3.2 In considering this matter, the 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 Committee are:

- To grant the application to vary the licence subject to the existing conditions, or
- To reject the whole, or part of the application for variation, which may include modifying existing conditions, imposing additional conditions and/or a reducing the hours sought in the application.

- 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 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.
- 3.5 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. The licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business (if appropriate).
- 3.6 The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination. Conditions may be placed on the licence – further information in relation to conditions is provided later in this report.
- 3.7 All licensing determinations should be considered on the individual merits of the application. The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.
- 3.8 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

### Conditions

- 3.9 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence 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 or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.
- 3.12 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

#### Consistency with steps described in operating schedule

- 3.13 The 2003 Act provides that where an operating schedule or club 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 or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 3.14 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

#### Imposed conditions

- 3.15 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as

a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.

- 3.16 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

#### 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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

### **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 (as amended).
- 6.3 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.
- 6.4 The Panel may accept hearsay evidence and it will be a matter for the Licensing 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)**

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene