

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

1. The Chair of the Licensing Sub Committee will introduce the Committee and ask officers to introduce themselves.

The Chair of the Licensing Sub Committee will ask the following parties to introduce themselves:

- a) the applicant and any witnesses they wish to call.
- b) any person who has made representations and any witnesses they wish to call.

2. The Licensing Officer will introduce the report and provide any updates.

Note: Questions solely concerning the report can be asked by Members, the applicant and by persons making representations.

3. The Chair of the Licensing Sub Committee will then invite any person who has made representations to present their representations and call any witnesses

Note: Members of the Sub Committee, followed by the applicant may ask questions of persons who have made representations and their witnesses.

4. The Chair of the Licensing Sub Committee will then invite the applicant to present their application, respond to the representations, and call any witnesses

Note: Members of the Sub Committee, followed by any person who has made representations may ask questions of the applicant and their witnesses.

5. The licence holder will then be given the opportunity to sum up

6. The public hearing will then be concluded, and 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 – 23rd July 2024 at 10:00 hours (10am)

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 Happy Local situated at 98A Claypit Lane, Rawmarsh, Rotherham S62 5JL.

Report Author(s)

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Report Summary

On the 20th May 2024 an application the grant of a premises licence was made by Mr Khvinder Kumar in respect of Happy Local, 98A Claypit Lane, Rawmarsh, Rotherham S62 5JL.

The applicant is seeking authorisation to allow the sale of alcohol for consumption off the premises on every day of the week between 08:00 hours and 22:00 hours.

Representations to the application have been made by “Other Persons”, all of whom are opposed to the grant of the application. A petition, in opposition to the application, has also been submitted. Further detail of the application, 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 form
- Appendix 3 Premises layout plan
- Appendix 4 Representations from “Other Persons”
- Appendix 5 Petition from “Other Persons”

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 Happy Local situated at 98A Claypit Lane, Rawmarsh, Rotherham S62 5JL.

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 20th May 2024 an application for the grant of a premises licence was made by Mr Khvinder Kumar, in respect of the premises to be known as Happy Local situated at 98A Claypit Lane, Rawmarsh, Rotherham S62 5JL. The application indicates that the premises will operate as a convenience store.
- 2.2 A copy of the application form is attached at Appendix 2. The application seeks authorisation to allow the sale of alcohol for consumption off the premises on every day of the week between 08:00 hours and 22:00. The layout plan of the premises licensed area is attached at Appendix 3.
- 2.3 The opening hours of the premises, as stated in the application, are between 08:00 hours and 22:00 on every day of the week.
- 2.4 The applicant, Mr Khvinder Kumar, has named himself as the Designated Premises Supervisor (DPS). Mr Kumar holds a Personal Licence issued by Rotherham MBC.
- 2.5 Section M of the application form, known as the “operating schedule”, sets out the management controls the applicant, Mr Khvinder Kumar, has offered to put in place should the application be granted. These management controls, which would be made a condition of Annex 2 of any licence granted, are set out below:
 - a) There shall be a suitable colour digital CCTV recording system in operation at the premises, which shall be capable of providing 28 days recording.
 - b) CCTV images recorded shall be retained for 28 days and made available to the police or other enforcement agencies upon reasonable request (within 48 hours) in line with data protection legislation. DVD/USB copies of relevant CCTV footage shall be provided to the police or other enforcement agencies at no cost.

- c) A Challenge 25 scheme shall be operated, whereby any person who appears to be under the age of 25 years of age is required to produce on request an item which meets the mandatory age verification requirement and is either a:
 - i. Biometric Home Office photo ID
 - ii. European National ID Card
 - iii. MILITARY ID
 - iv. VETERANS ID
 - v. Passport (UK or International)
 - vi. Photo Driving Licence (UK or European)
 - vii. Proof of Age Standards Scheme (PASS) card

- d) Where Home Office approved digital proof of identity or age assurance technology is in use, this condition applies only when confirming that a person is 18 years or older following a failure of that technology to do so.

- e) The premises shall clearly display signs that a 'Challenge 25' policy is in force.

- f) The licence holder shall ensure that a refusals register is kept on the premises and that this shall be immediately available upon request of an authorised officer. The register shall record any refused sale of alcohol.

- g) Signage shall be displayed in a prominent position on the premises requesting that customers leave quietly.

- h) All staff involved in the sale of alcohol shall undertake staff training. Staff training shall be recorded and updated every 6 months. Training shall cover the requirements for ID as part of age verification, and other matters regarding the Licensing Act 2003, relevant to the staff members role in the premises

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 Nineteen (19) "Other Persons" have made relevant representations to the application, all of whom are opposed to the grant of the application. Copies of the representations are attached at Appendix 4.

- 2.8 A petition in opposition to the application, signed by five hundred & sixty three (563) "Other Persons" has been received. The summary of this petition is attached at Appendix 5. A copy of the petition in its entirety will be provided to the Sub Committee at the hearing.

- 2.9 There have been no representation received from the Responsible Authorities.

- 2.10 The applicant has been provided with the detail of the representations received from “other Persons”, together with the summary of the petition.
- 2.11 The applicant, “Other Parties” and the petition organiser 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.
- 2.12 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

Additional Evidence

- 2.13 At the time of writing no additional documentary evidence has been received.

For information only

- 2.14 The Council’s Development Control service has confirmed that planning permission would not be required to change the use of the fish and chip shop into a shop, under Part 3 Class A of Town and Country Planning General Permitted Development Order.
- 2.15 The twenty (20) working days’ time period in which to hear the application, as laid out by licensing regulations, was extended at the request of the applicant in order for his representative to be present at today’s hearing. It was not in the public interest to deny this request. .

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