

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

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

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

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

Note:

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

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

Committee Name and Date of Committee Meeting

Licensing Sub-Committee - 25th March 2025 at 14:30 hours (2.30pm)

Report Title

Consideration of an application (made in accordance with s.17 of the Licensing Act 2003) by Anna Witham for the Grant of a Premises Licence in respect of the premises known as Fuzion Bitez, situated at 62 Wales Road, Kiveton Park, Sheffield S26 6RD.

Report Author(s)

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

Report Summary

On the 30th January 2025 an application for the grant of a Premises Licence was made by Anna Witham in respect of the premises known as Fuzion Bitez, situated at 62 Wales Road, Kiveton Park, Sheffield S26 6RD.

The applicant, is seeking authorisation to allow the:

- Sale of Alcohol, for consumption on the premises, on every day of the week between 12 noon and 10.30pm; and
- Provision of Recorded Music, inside the premises, on every day of the week between 12 noon and 10.30pm.

Representations from seven (7) "Other Persons", all of whom are opposed to the grant of the application, have been received, together with a petition signed by twenty four (24) local residents who oppose to the application. Further detail of the application, and representations to it, are provided within the main body of the report.

Recommendations

1. That the Licensing Sub-Committee considers the information contained within this report (and associated appendices) along with any additional information presented at the hearing and subsequently determines the application that has been made.
2. The Licensing Sub-Committee should inform the Licensing Manager of the decision in accordance with the requirements of the Licensing Act 2003 and Regulations made thereunder.

List of Appendices Included

- Appendix 1 Location plan
- Appendix 2 Application form, together with premises layout plan
- Appendix 3 Representation from "Other Persons
- Appendix 4 Additional Information provided by the 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 (December 2023) available at <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>)

Council Approval Required

No

Exempt from the Press and Public

No

Consideration of an application (made in accordance with s.17 of the Licensing Act 2003 by Anna Witham for the Grant of a Premises Licence in respect of the premises known as Fuzion Bitez, situated at 62 Wales Road, Kiveton Park, Sheffield S26 6RD.

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 30th January 2025 an application for the grant of a Premises Licence was made by Anna Witham for the Grant of a Premises Licence in respect of the premises known as Fuzion Bitez, situated at 62 Wales Road, Kiveton Park, Sheffield S26 6RD. A copy of the application form, and accompanying layout plan, is attached at Appendix 2.

2.2 The application seeks to allow the:

- Sale of Alcohol, for consumption on the premises, on every day of the week between 12 noon and 10.30pm; and
- Provision of Recorded Music, inside the premises, on every day of the week between 12 noon and 10.30pm.

The premises are described as a restaurant, with a bar and seating area on both the ground and first floors, that also provides a takeaway service.

2.3 The Sub Committee will be aware that licensing deregulation allows limited forms of live and recorded music to be provided at a premises without the need for a Premises Licence. Sections 2.13 to 2.19 of the report provides additional information on licensing deregulation.

Offered Management Control Conditions

2.4 The management controls offered in the application, all of which would be made a condition of Annex 2 of any licence granted, are set out below:

- a) A CCTV system that covers the internal and exterior of the premises shall be fully maintained and operational.
- b) The CCTV system shall show accurate dates and times that images are recorded.
- c) CCTV images shall be kept for a minimum of 31 days and, if requested, made available for viewing, by the Police and/or Licencing Authority.

- d) There will be a Personal Licence Holder on the premises at all times.
- e) The Designated Premises Supervisor, or their nominated deputy, shall regularly attend local Pubwatch meetings.
- f) A record of each member of staff who is authorised to sell alcohol shall be kept on the premises. This record shall include the staff members full name, address, and date of birth.
- g) All staff shall be trained to request photographic identification to control the sale of alcohol to anyone under the age of 18 years old, and a “challenge 25” policy shall be operated.
- h) “Challenge 25” signs shall be on display at the premises..
- i) A log of all refusals made under the “Challenge 25” policy shall be kept on the premises. This log shall include the date of the refusal, the name of the member of staff who made the refusal and whether fake ID was used/seized.
- j) An incident book shall be kept on the premises. Any incidents of crime/disorder at the premises, together with whether the police have been called, shall be recorded in this book.
- k) The Designated Premises Supervisor, or their nominated deputy, shall check the “Challenge 25” log and incident book each week, and sign and date each check.
- l) The “Challenge 25” log and incident book shall be kept on the premises and will, if requested, made available for viewing, by the Police and/or Licencing Authority.
- m) The ‘Ask Angela’ scheme shall be in operation at the premises.
- n) A zero drug tolerance policy shall be in operation at the premises. This policy shall require that regular checks are carried out, and recorded, by management to prevent the use of drugs by customers.
- o) A copy of the premises drugs policy, and all associated records, shall be kept at the premises and, if requested, made available for viewing, by the Police and/or Licencing Authority.
- p) Doors, except for access and egress, and windows shall be kept closed and there will be no outside entertainment provided at the premises.
- q) Noise restrictive speakers shall be positioned away from external walls and regular sound checks to the inside & outside of the premises shall be carried out.
- r) Signage shall be is in place at the premises asking people to arrive and leave quietly

- s) There will be a sufficient number of staff on the premises at all times, regular glass collections shall be carried out and a taxi booking service shall be provided.
- t) No adult entertainment or services shall be provided at the premises.
- u) Children must be accompanied by a responsible adult at all times and shall not be permitted in the first floor bar area or the outside smoking area.
- v) The following measures are in place at the premises to ensure public safety:
- Employers & public liability insurance.
 - Annual gas safety check.
 - Annual electrical check, PAT testing safety checks.
 - Up to date health & safety policy & risk assessments and asbestos survey of premises.
 - Sufficient lighting internally & externally.
 - Regular fire checks & servicing of fire detection & extinguishing equipment including 5 extinguishers located throughout the building.
 - Staff trained in emergency procedures.
- w) All staff will receive training on induction and yearly, on, 'Challenge 25', types of acceptable ID, method of recording refusals, refusing sales of alcohol to persons who appear to be drunk, preventing proxy sales, incident recording and when to call the Police, operation of the "ask Angela Scheme" and how to review the CCTV system if requested.
- x) Staff training shall be recorded and training records, shall be kept at the premises and, if requested, made available for viewing, by the Police and/or Licencing Authority.

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.
- 2.6 At the end of the consultation period representations, all of which are opposed to the grant of the application, have been received from seven (7) "Other Persons". In addition a petition, signed by twenty four (24) local residents who oppose to the application, has been submitted.

Representations

- 2.7 A copy of the representations received from "Other Persons", which comprise of two (2) from local Councillors and five (5) from local residents, together with the grounds of the petition signed by twenty four (24) local residents, is attached at Appendix 4.

- 2.8 The Sub Committee will note that the grounds of the petition state that signatories object to the grant of the application but fails to say which of the licensing objectives would be undermined if the application were to be granted. Having regard to this it is a matter for the Sub Committee to attach appropriate weight to the relevance of the petition.

Additional Information provided by the Applicant

- 2.9 The applicant, Anna Witham responded to the “Other Persons” in an attempt to address their concerns. A copy of the additional conciliation letter provided by Ms Witham, which has been circulated to the “other Persons” and the petition organiser, is attached at Appendix 4.
- 2.10 At the time of writing the additional information provided by the applicant has not led to the withdrawal of any of the representations or the petition.

The Hearing

- 2.11 The applicant, “Other Persons” and petition organiser have all been invited to the hearing today. All parties attending, will be given the opportunity to address the Sub-Committee in relation to the matters raised in the application and the representations they have made to it.
- 2.12 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

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 Sub 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 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

