

# Cheltenham Borough Council

## Licensing Sub Committee – 20 February 2024

### Licensing Act 2003: Determination of Application for a Premises Licence

284 High Street, Cheltenham, GL50 3HQ

#### Report of the Head of Public Protection

#### 1. Introduction

1.1 The Licensing Act 2003 (the Act) allows applicants to apply for a premises licence at any time. In this case, an application was received on 08.01.2024 from RSN Retail Ltd. in respect of 284 High Street, Cheltenham, GL50 3HQ. A copy of the application is included at appendix 1.

1.2 The applicant has requested for a premises licence to permit:

Off Sale by Retail of Alcohol - Every Day 07:00 - 23:00

#### 1.3 Implications

1.3.1 Legal A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

**One Legal**

E-mail: [legalservices@onelegal.org.uk](mailto:legalservices@onelegal.org.uk)

#### 2. Application (Ref. 24/00026/PRMA)

2.1 Applicant: RSN Retail Ltd.

2.2 Agent: The Licensing Guys

2.3 Premises: 284 High Street, Cheltenham, GL50 3HQ

#### 3. Responsible Authorities

3.1 No representations were received from any of the statutory responsible authorities.

#### 4. Interested Parties

4.1 Three representations have been received from other interested parties. These are enclosed at appendix 2 of this report.

#### 5. Local Policy Considerations

5.1 The current licensing act policy statement was adopted by Council in December 2020. Below are relevant extracts from the policy statement but Members are encouraged to review the document as a whole to ensure they are adequately informed of the authority's policy.

5.2 The policy seeks to promote the vision of a town is safe and clean that offers a greater diversity in the night time economy that is less focused on alcohol and protects the quality of life for residents.

5.3 The objective of this policy is to:

- a) promote the four licensing objectives;
- b) ensure that the premises are appropriate for their proposed use;
- c) ensure the premises layout and condition is acceptable for the proposed use;
- d) ensure that the premises are being managed responsibly; and
- e) promote the policy vision statement.

5.4 In determining a licensing application, the overriding principle adopted by the authority will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed.

5.5 The authority will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure.

5.6 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity.

### **Operating Schedule**

5.7 The operating schedule is a key document and, if prepared comprehensively, will form the basis on which premises can be licensed without the need for additional extensive conditions. The authority expects an operating schedule to indicate the steps that the applicant proposes to take to promote the licensing objectives.

5.8 Applicants will also be expected to propose practical measures to prevent disturbance to local residents and to indicate what action will be taken to prevent or reduce noise emanating from the premises.

### **Crime and Disorder**

5.9 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.

5.10 Section 3.12 of the policy statement includes specific guidance on the considerations to promote the prevention of crime and disorder.

5.11 In making their decision, regard should be given to the levels of crime and disorder in and around the venue, the level of compliance with conditions on existing licences and any available evidence on crime and disorder issues.

### **Public Nuisance**

5.12 The authority will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises.

5.13 Section 3.22 outlines specific consideration in relation to the prevention of public nuisance.

## **Integrating Strategies & Specific Policies - Core Hours for Licensable Activities**

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- 5.14 The authority will avoid arbitrary restrictions on licensing hours that undermine the principles of flexibility and consideration of each application is on its own merit.
- 5.15 The authority believes that licensable activities carried on within the core hours set out below will generally not have a harmful impact on the licensing objectives, address the concerns raised by local residents and businesses and are less likely to attract representations.

Type of premises	Commencement Hour No earlier than	Terminal hour No later than
Off licence	09:00	23:00
Restaurants	10:00	01:00
Theatres, cinemas and other performance venues	10:00	00:00
Pubs/Bars/Nightclubs	Town centre <sup>1</sup>	

- 5.16 In relation to the above, Members will note that the acceptable terminal licensable hour for off-licences is 23:00.
- 5.17 In cases where relevant representations have been received, 6.42 of the policy statement sets out considerations the committee may wish to take into account when determining the application.

### Shops Selling Alcohol (Off Licences)

- 5.18 Section 6.62 deals specifically policy consideration in relation to shops selling alcohol for consumption off the premises.

## 6. National Guidance

- 6.1 Revised guidance issued under section 182 of the Licensing Act 2003 (December 2023). Below are relevant extracts from the statutory guidance but Members are encouraged to review the document as a whole to ensure they are adequately informed of the guidance.
- 6.2 The committee must have regard to the statutory guidance when discharging its functions under the Licensing Act 2003.

### Licence conditions – general principles

- 6.3 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
  - must be precise and enforceable;
  - must be unambiguous and clear in what they intend to achieve;
  - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
  - must be tailored to the individual type, location and characteristics of the premises and events concerned;
  - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;

- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

### **Each application on its own merits**

6.4 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

### **Steps to promote the licensing objectives**

6.5 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives.

6.6 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact assessment), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

### **Relevant, vexatious and frivolous representations**

6.7 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

6.8 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

### **Hearings**

6.9 If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, where the applicant and all of the persons who made relevant representations have given notice to the authority that they consider a hearing to be unnecessary.

6.10 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.

6.11 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 any 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.

## 7. Licensing Comments

7.1 A plan of the location of the premises is attached appendix 3 and the plan accompanying the application is attached at appendix 4.

7.2 The committee must determine the application with a view of promoting the licensing objectives. Furthermore, the committee should only take action or steps appropriate to the promotion of the licensing objectives.

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

7.3 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

7.4 As outlined in the Statutory Guidance and in light of the representations received, in determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the committee must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy

7.5 In terms of the representations received, a representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. Representations should relate to the impact of licensable activities carried on from premises on the objectives. Officer’s comments in relation to the representations received:

7.5.1 Members must be mindful that this is a new application and must be determined on its merits. Any representations in relation to a likely increase in crime and disorder and public nuisance must be carefully weighed in light of the evidence presented to the committee.

7.5.2 Members will note representations refer to existing issues faced by objectors in the vicinity of the premises at 284 High Street with the suggestion that this licence is likely to exacerbate these issues. In relation to this, Member’s attention is drawn to paragraph 7.3 above and in particular the steps identified by the applicant, in their proposed operating schedule, to promote the licensing objectives. The committee must be confident that these proposed steps are appropriate for the promotion of the licensing objectives.

7.5.3 Members are advised to disregard the comments in relation to the community value of this premises, this is not a relevant objection because it does not apply to any of the licensing objectives.

7.5.4 Furthermore, any concerns and comments relating to other regulatory regimens, such as planning and building control, should be disregarded because these are not in scope of the licensing considerations and the committee should avoid statutory duplication. The aforementioned is likely to be relevant to the sound proofing issues referred to in the representations.

7.6 The committee must have regard to all of the representations made and the evidence it hears. The committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives which can include:

- Granting the application as requested;
- Modifying the conditions attached to the licence; or
- Rejecting all or part of the application.

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**Background Papers****Service Records****Report Author**

**Contact officer:** Mr Louis Krog  
**E-mail:** [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)  
**Tel no:** 01242 262626