

**IN THE MATTER OF :**

**VARIATION OF PREMISES LICENCE FOR THE NEW INN, HOLBORNE**

**MARSTON'S PLC**

**APPLICANT**

**WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT**

1. This is an application for a variation of an existing premises licence pursuant to Section 34 Licensing Act 2003. The premises has been traded by Marston's for many years.
2. The applicant is Marston's Plc which operates some 1400 licensed premises nationwide. This premises falls within the Retail division of which there are some 600 premises. The premise has operated under the Retail Agreement system for a considerable period of time and is overseen by an Area Manager.
3. The current DPS Katy Mullett took over the premises in November 2019.
4. During consultation no representations were received from any residents nor from Environmental Health. A representation has been received from West Midlands Police which opposes the extension of the use of the outside area by a period of 1 hour and 30 minutes of the outside area until 22:30 for licensable activities with closure of the external beer garden by 23:00 hours save for use by smokers.
5. A hearing is required to determine the application on the basis that a Police representation has been received.
6. The area licensed is shown on drawing P0518/6984/0. Permission to use the external bar counter was granted in 2017. No new or additional area is sought to be licensed by this application. All conditions already endorsed upon the Licence will continue to

apply and thereby continue to promote the licensing objectives save for the amendment to the hours of use

### **Application History**

7. West Midlands Police reference the hearing in July 2018 and the curtailment of hours of operation of the rear servery and use of the beer garden. Just prior to the 2018 submission the external area had been utilised with a large screen and had undertaken the broadcast of football games and films. The undertaking of the regulated entertainment and broadcast of live sporting events externally resulted in noise nuisance to those persons in the immediate vicinity. That application attracted many residential representations along with a representation from the Environmental Health. The Environmental Health Officer recommending cessation of licensable activities at 9.30 p.m. with closure of the beer garden by 10 p.m. save for those persons who wish to smoke externally. Since that date the premises has operated on the terms granted and there are no records of noise nuisance or crime and disorder arising from the operation of the external bar servery or use of the garden area.
8. The Applicant does not seek to permit regulated entertainment within the external area nor to license the same but to simply extend the period of time for use of the area.
9. Marston's are a responsible and experienced operator of licenced premises with robust systems in place for the exercise of due diligence to ensure that their premises are properly and responsibly run in accordance with the law and to ensure the avoidance of the commission of regulatory offences and, in particular to guard against anti-social behaviour and the sale of alcohol to persons under the age of 18.

### **The Licensing Objectives.**

10. Central to the statutory regime are the four licensing objectives which are the only relevant areas for consideration and licensing objectives. They are as follows
  - Prevention of crime and disorder.
  - Public safety
  - Prevention of public nuisance.
  - Protection of children from harm.

### **The Guidance**

11. Under Section 182, the Secretary of State is required to issue Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4(3) requires Licensing Authorities to have regard to the Guidance.

12. So whilst the requirement to have regard to the Guidance is binding on Licensing Authorities, paragraph 1.9 of the Guidance recognises that :

“This Guidance cannot anticipate every possible scenario such as 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. Departure from this Guidance 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”.

13. During the intervening period and particularly during the easing of the lockdown restrictions lessons have been learnt in connection with the management of the external area in particular managing noise generated by patrons and monitoring of behaviours and behaviour patterns. Since 2018 a considerable period of time has passed during which new understandings have been achieved. What was considered appropriate to promote the licensing objectives at that time may not be considered proportionate, justifiable and each application as per the Guidance 1.17 must be reviewed on its own merits at that point in time. The Legislation does not prohibit reapplication nor provide a period of time during which reapplication is prohibited.

### **The Application Process**

14. Section 34 sets out the procedure for making a variation of Premises Licence Application and Section 35 sets out the provisions for determination of that application where representations have been made by the Responsible Authorities or other persons.

15. Section 35 provides that where an application for a variation of a Licence is properly made, following receipt of relevant representations, the Licensing Authority must hold a hearing following which it may, if it thinks it is necessary, take such steps necessary for the promotion of the licensing objectives. The Licensing authority can determine

that no steps are required as it should seek to focus on the steps appropriate to promote the particular licensing objective.(9.37).

16. The premise already has the benefit of the activities of sale of alcohol for on and off the premises and consumption prior to 2018 the beer garden had been operated for a long period of time without material issues arising, the understandable concerns of the residents materialised following the use of a large screen, a matter which is not sought to be repeated by virtue of this application.

### **The Role of the EHO**

17. At paragraph 9.12 of the Guidance it is stated that in their role as a Responsible Authority, the EHO are an expert in their field and will be the licensing authorities main source of advice. The Licensing Authority must determine on an evidential basis and justified on the evidence before it and take into account the evidence that is not before it.

### **Applicant's Case**

18. The licensing objectives which the Police seek to engage is the prevention of crime and disorder and public nuisance. The premise seeks to change the conditions to allow the existing external bar servery to operate for an extra 1 hour 30 minutes and consequential access to the beer garden and that change makes no impact on the:

1. overall operation of the premise (it remains food lead),
2. the customers it attracts (families, diners and tourist locals),
3. occupancy of the premise
4. licensable activities

19. The application provides for continued immediate human supervision of the area when the bar servery is in use.

20. The changes provide enhancement to customer service and this is known to reduce potential conflict, plus will assist in the gradual dispersal of persons from the area.

### **Determination of the Application**

21. The Applicant requests the Licensing Sub Committee to consider the basis of the evidence raised in opposition to the extension of use of the external bar server. To

reference events from 4 years ago and to contend that the same scenarios will arise is without evidential foundation due to the lapse of time and the trigger use of screens for key sporting events and lapse of 4 years. The application currently before the Licensing Sub Committee is therefore different in context, time and principle.

22. The Licensing Sub Committee is referred to the photos annexed illustrating the size and location of the external server.

23. The Respondent respectfully submit that the Licensing Authority must take note of the Guidance issued under Section 182 of the Licensing Act.

24. Relevant extracts from the guidance are as follows:

- a) All licensing determined should be considered on a case by case basis (9.42).
- b) The Authorities 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 (9.43).
- c) Para 9.12 continues to confirm the Licensing Authority should accept all reasonable and proportionate representations made by the Police unless the Authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the Police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.
- d) Para.9.12 equally applies to the Environmental Health Department who are the primary arbiters of noise nuisance. Noise nuisance was the key point raised by residential objectors to the previous application. It is to be noted that the Environmental Health Officer has raised no objection to the small extension sought.
- e) Para.9.44 - 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.

- f) Para 10.10 - 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.

25. The purpose of the Licensing Act 2003 is to promote the licensing objectives, the Act implicitly accepts that licensing is a dynamic environment during which over a period of time matters can change. This is why there is no prohibition on multiple applications and why the language of the legislation is to look forward referencing identifying causes and cures (Paragraph 11.20). The legislation is at its heart forward looking seeking to promote best practice and equally applaud improvement.

26. It is the Applicant's submission that the Licensing Committee should they consider not granting the application question as to whether this is on the basis of real evidence or speculation and whether the decision falls within the criteria set out in the case of Daniel Thwaites (2008 EWHC 838).

27. The Applicant respectfully submits that the primary objection raised by the Police is to refer back to events over some four years ago and to request the Sub Committee to accept that no change could have arisen during that intervening period of time. The Applicant respectfully submits that this is not the basis upon which an application which has attracted no representations from those who live closest and observe the day to day operation of the premises or those who have statutory duties to uphold prevention of public nuisance have objected.

JOHN GAUNT & PARTNERS  
July 2021