

## PREMISES LICENCE APPLICATION

673 – 675 CHRISTCHURCH ROAD BOURNEMOUTH

### APPLICANT'S RESPONSE TO REPRESENTATIONS

#### Introduction

The premises is planned to be a general store, specialising in international produce and (in due course) bread baked freshly onsite, with an off-licence. This application is to licence the premises for off sales of alcohol. The provision of alcohol is to be ancillary to the premises' main purpose of providing international produce, with sales of alcohol projected to be roughly 5% - 15% of total turnover.

This application resulted in two representations. These are comprised of one representation from a member of the public who is a local resident and business owner, and another from LSL Solicitors on behalf of six members of the public, who are also local residents and/or business owners.

Before submitting the application, the applicant engaged in an informal consultation with the responsible authorities, as explained below. It should be noted that no representations have been received from the police, fire and rescue, Environmental Health or the local authority's licensing officers.

For the benefit of the members of the public who have made representations, a copy of the original full application (containing the comprehensive suggested conditions) is attached, along with a copy of the proposed layout plan.

#### History

The premises is the former site of the "Wetherspoons" pub which was called the Sir Percy Florence Shelley and ceased operating in or around 2016.

Since the pub ceased trading, the premises have been used as a cafe and most recently a gym, which is no longer trading.

#### Responsible authorities

Paragraph 8.26 of BCP Council's Statement of Licensing Policy (**the SOLP**) says that:

*"The Licensing Authority wishes to work in partnership with all parties to ensure that the licensing objectives are promoted collectively. To support this aim and to minimise disputes and the necessity for hearings, the Licensing Authority considers it sensible for applicants to seek the views of responsible authorities before formally submitting applications, but it acknowledges that there is no legal requirement to do this."*

With the above in mind, the applicant (through its solicitors) conducted an informal consultation with Dorset Police before formal submission of the application. At the request of the police, a number of proposed conditions were added to the application, to satisfy the police that the licensing objectives were being supported. Having taken into account the comments from the police and considered the licensing objectives, the applicant was happy to include the conditions as requested.

Once the application was formally submitted, Licensing Officer Louise Busfield of Dorset Police confirmed in an email of 11 June 2022 that Dorset Police were happy that the requested conditions had been included and “... *as such Dorset Police has no further comment in relation to this application*”.

In a letter of 22 June 2022, Fire Safety Officer Pascale Rowland of Dorset & Wiltshire Fire and Rescue Service confirmed that he had “*no adverse comments to make*” in relation to this application.

No representation was made by any of the licensing officers of BCP council, including environmental health.

The above statements, or absence of, from the relevant responsible authorities, should be given due weight and borne in mind when considering any of the received representations which we address below.

## **Detailed response**

### **1. Representation of Mr Vijay Bhasker Reddy Somannolla of 30/06/2022**

The text of the objection is shown in italics, with the applicant’s response below:

*As we already have several businesses who supply alcohol in the BH7 postcode area (christchurch [sic] road) not less than 15 shops within this area, I think we don't need any more alcohol supplying businesses around that place as the area already has increased crime and public nuisance.*

Though it is acknowledged that cumulative impact can be a consideration, there is currently no CIP in place in this area. None of those who have made representations have produced any evidence to the effect that, as a result of cumulative impact, the sale of alcohol from off-licenced premises is having a negative effect on the licensing objective of the prevention of crime and disorder. Therefore, the presumption is to grant this application, rather than refuse it.

Further, despite Mr Somannolla’s concern, “not needing” any more off-licences in the area is not a valid reason to deny this application.

It should also be noted that the address given by Mr Somannolla is 671 Christchurch Road, which is the address of the off-licence next door to the premises for which the applicant is seeking a premises licence. Companies House lists Mr Somanolla as the sole director and majority share owner of Boscombe Stores Ltd, whose registered address is the same. Consequently, we would suggest that this representation is

motivated by a desire to stifle potential competition and not from any genuine concern about the impact a grant would have on the promotion of the licensing objectives.

*This disorder might cause more problems to us residents, other businesses and the Dorset police too.*

It is clear that any existing issues in the area cannot be attributed to this application. Should there be any existing concerns, we suggest that these are considered by the local authority in respect of how the existing businesses (such as Mr Somannolla's business) are managing their licences and, if appropriate, conduct a review of the same.

*In view of the above issues I strongly urge you, the licensing authority to refuse this application for the supply of alcohol for consumption off the premises*

This application contains stronger conditions than exist on current premises licences in the area and the applicant will therefore have more stringent controls on the operation of its business. The applicant will also be happy to consider any further conditions, should the local authority consider that these are necessary. Given that the presumption is to grant a premises licence application, outright refusal would be a very extreme response.

## **2. LSL Solicitors on behalf of residents and/or business owners**

We comment as follows regarding the issues raised by LSL Solicitors in their letter of 5 July 2022, with reference to the sections of their letter.

### **Crime and disorder**

Before addressing the specific concerns raised by LSL, we repeat that no evidence has been adduced that this application will have any negative effect on the licensing objection of the prevention of crime and disorder.

**Location of CCTV:** the applicant is installing at least 16 of CCTV cameras in the premises.

Should the licensing committee consider it appropriate, the applicant would be content to amend application to add to the first proposed condition on CCTV the words "*to cover all public parts of the premises and the immediate external area*".

**Street drinking:** The letter claims that the application appears to have "*no awareness of the issues that street drinking can cause*".

On the contrary, the applicant takes this issue very seriously and specifically addressed this during the applicant's informal consultation with Dorset Police. During this consultation, Licensing Officer Busfield confirmed that Dorset Police had taken

into consideration the views of the Neighbourhood Policing team and BCP ASB teams, with whom they work closely, to endeavour to minimise the impact of street drinking.

As a result, the applicant offered conditions:

1. Limiting the ABV of beers, lager and cider.
2. A minimum four can policy. On this point, the applicant initially offered a two can minimum, in response to which Licensing Officer Busfield said

*“Whilst I am aware that some other licensed premises in this area also have this condition, there are other local premises conditioned for a minimum 4 cans per sale”.*

The applicant was therefore happy to include the more onerous condition in its application, to help in reducing potential issues caused by street-drinking.

3. Minimum staffing levels.

Accordingly, Dorset Police, confirmed that they have no concerns about the application and relevant conditions.

**Incident book:** this is a perfectly standard wording for such a condition. Nowhere in BCP Council’s “Model Pool of Licensing Conditions” are there examples of any condition which would put on obligation on a licence holder to take any specific action. In fact, an overly prescriptive obligation to take a certain form of action may prevent a licence holder from properly dealing with any incident. A more purposive and less proscriptive approach puts more responsibility on the licence holder to assess any individual incident and carry out an appropriate response.

Clearly, it is implied that the licence holder must take action if this appropriate and, if none is taken, this will be obvious to any authorised officer that wishes to, and who as a condition has a right to, review the incident book.

### **Public nuisance**

It is somewhat disingenuous to suggest that the applicant has “*taken the approach that responsibility ends at the door of the premises*”. All of the conditions are suggested with the goal of preventing noise emanating from the premises and have taken into consideration activities that may take place outside the premises, such as stock deliveries and rubbish collection.

We repeat that no representation was submitted by Environmental Health on this issue.

### **Protection of Children from Harm**

**Deliveries:** the applicant is not planning to immediately offer a delivery service. However this may change, especially considering that delivery services are becoming more and more common through, for example, services such as “Deliveroo”. The references to deliveries were included to place appropriate obligations on the licence holder should the business develop in this manner.

## **General**

**Training:** the suggested conditions relating to staff training are standard and proportionate to the nature of the business, being primarily an international food shop. The condition included on the application is materially no different to the suggested wording of BCP Council’s “Model Pool of Licensing Conditions” in the SOLP.

**Hours:** The hours for the sale of alcohol are to be the same as the hours during which the premises is to be open to the public. Consequently, the additional measures will not be necessary.

**Relationship with local businesses:** The letter appears to be concerned that if granted this application could lead to irresponsible promotions between competitor businesses.

This point is considered in the Revised Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State (**the Guidance**) at paragraph 10.11, which says that:

*Where there is direct evidence of specific incidents of irresponsible naming, packing or promotion of alcoholic drinks linked to the undermining of one of the licensing objectives, licensing authorities should, in the exercise of their licensing functions (in particular, in relation to an application for the grant, variation or review of a premises licence), consider whether it is appropriate to impose conditions on licences that require the licence holder to comply with the Portman Group’s Retailer Alert Bulletins.*

The applicant is not aware that there have been specific incidents of irresponsible promotion of alcoholic drinks in the area. However, if there is a genuine concern that irresponsible promotions may be taking place, this may be an opportunity for the local authority to review the applicable existing premises licences and include such conditions as it deems necessary to uphold this licensing objective.

Further, irresponsible promotions are prohibited by the mandatory conditions which shall apply to this licence, under paragraph 1 of the Schedule to The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014. It is likely that every premises licence held by the competitor businesses will have the same condition, depending on when their licences were issued.

While discussing competitor businesses, we are instructed to draw to the attention of the committee that Daniel Sulimierski, one of the six representors instructing LSL, owns and operates two international stores in the same area, with which the

applicant is likely to be in direct commercial competition. We are instructed by the director of our client, Krzysztof Dziebowski, that he and Mr Sulimierski were previously business partners. The position is confirmed on Companies House which provides the following information:

1. DK Foods LTD, with registered office at 532-534 Christchurch Road, Bournemouth BH1 4BE. We are instructed that this is also the physical address of the store trading as Polish Market. Mr Sulimierski is now the only director (Mr Dziebowski resigned on 8 December 2021) and listed as owning 75% or more of the shares.
2. UE Foods, with registered office at 553 Christchurch Road, Bournemouth BH1 4AH. We are instructed that this is the physical address of the store trading as Food Plus. Mr Sulimierski is the only director and again listed as owning 75% or more of the shares.

Again it appears that this gentleman is motivated by commercial concerns rather than any impact on the licensing objectives that the grant of this application is likely to have.

## Plan

We note LSL's comment on the plan, but refer the committee to paragraph 8.34 of the Guidance which confirms that:

*"Plans, for written and electronic applications, **will not be required to be submitted in any particular scale**, but they must be in a format which is "clear and legible in all material respects", i.e. they must be accessible and provides sufficient detail for the licensing authority to be able to determine the application, including the relative size of any features relevant to the application. **There is no requirement for plans to be professionally drawn as long as they clearly show all the prescribed information**"*

We therefore submit that the plan submitted with the application is adequate and proportional to its purpose.

Importantly to this application, the plan clearly shows the minimal amount of space which will be devoted to provision of alcohol. This is arranged as follows:

1. Along the left hand wall runs a set of fridges, for cold food and drinks. The space allocated to alcoholic drinks is less than a quarter of this total area.
2. All spirits will be displayed and secured behind the counter i.e. there will not be any alcohol, other than cold beers, cider and wine, displayed in the rest of the premises.
3. The total area allocated to provision of alcohol is roughly 5% - 10% of the total area of the shop. This reflects the position that the provision of alcohol, though admittedly potential revenue that cannot be ignored, will be an

ancillary service to the premises' main purpose of providing international produce.

## **Conclusion**

Having spent roughly the last 14 years working in premises licensed for off-sales, (around six of which in Boscombe itself), Mr Dziebowski (the director of the applicant) well understands the potential concerns of residents and the responsible authorities. This is why, prior to submission of the application, the applicant undertook an informal consultation with the responsible authorities, which led to further conditions being included, specifically designed to promote the licensing objectives as required in this area, as perceived by the responsible authorities. No evidence has been adduced to suggest otherwise and none of the responsible authorities submitted any representation.

Whilst we are confident that if the application were to be granted no issues would arise, might we take the opportunity to remind all concerned that should any of the licensing objectives (i.e. the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm) be undermined once the premises begin to operate, any of the responsible authorities and any other person (including of course local residents) will be at liberty to make an application at any time (and without having to pay any fee) to have the licence reviewed.

Should such an application be made and should the Licensing Authority find that the premises have not been upholding any of the licensing objectives, it has a wide range of powers including ultimately revoking the licence.

Finally, the applicant is eager to both work with and re-assure local residents regarding his intentions for operation of the premises, which is planned to focus on providing specialist international and fresh produce, with a relatively limited provision of alcohol as an ancillary service.

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