

IN THE MATTER OF :

S53 LICENSING ACT 2003 PREMISES LICENCE REVIEW

THE BELL, SEABOURNE, BOURNEMOUTH

MARSTON'S PLC

Premise Licence Holder

**WRITTEN SUBMISSION
ON BEHALF OF THE PREMISE LICENCE HOLDER**

1. This is an application by Dorset Police pursuant to S53 Licensing Act 2003. The premises has been trading as a public house since the 1850's and is located on a busy high street and opposite the train station (see items 1 and 2 of the Bundle for photos of the interior and exterior of the premises)
2. Following an incident on 18th May Dorset Police issued Review proceedings and during the consultation period no additional representations have been received.
3. The Review hearing is required to determine the application.
4. Prior to receipt of the Review proceedings Marston's Plc via their Area Manager Stefanie Kent and Marston's Solicitors had met with Dorset Police online to discuss the operation of the premises and answer points arising from the latter part of 2023 particularly as to the provision of CCTV at the premises and other matters which will be addressed later. The Premises Licence Holder confirms that following the meeting of January 2024 a new DVR was installed at the premises resolving issues as to data retention, picture quality along with reassessment as to camera locations and data capture.

Background

5. The premises is owned by Marston's Plc and at the time of the incident in May was and continues to be operated by Mr. Adam Sealy who holds an agreement to trade with Marston's and is the Designated Premises Supervisor. Mr. Sealy has operated a number of public house in the past, and has been the Designated Premises Supervisor at the Bell since March 2021. During that period of time an LPGMP Gaming Machine Permit was secured without objection.
6. The premises is substantial in size and has been maintained to a high standard. The external area has been developed with considerable funds invested in furniture and décor along with provision of space for children as a significant number of families frequent the premises.
7. The premises provides a range of activities to members of the public, it is particularly well known for viewing sport and during the recent Euros experienced no disorder. The extensive external areas have been utilised during the summers whilst the current DPS has been in charge and it is to be noted that despite being in a heavily residential area there are no representations from residents nor Environmental Health as to noise issues.
8. The premises provides menu options during the course of the year (see item 5 of the bundle) - during the winter cooked breakfasts, roast dinners along with light bites, during the summer months it principally undertakes Barbecues and external food provided by a Burger Truck situated on land adjacent to the front of the property.
9. The premises has an active programme of supporting the local community. Item 6 of the Bundle contains information regarding annual event known as Bellfest which is a weekend event providing music, games and food. The Event raised in 2022 £600 for Amelia Rainbow Fund and in 2024 over £1000 for the Air Ambulance along with over £1000 for the Teenage Cancer Trust. Each event was risk assessed as to licensing objective of preventing crime and disorder, protection of children from harm, public safety and prevention of public nuisance. Despite heavy attendance at the events along with the Euros, no incidents, issues or complaints arose.
10. The premises is a strong supporter of local veterans. The premises was entered into and was a semi finalist in the Pub of the Year Competition (See item 7 of the Bundle).

11. The premises focusses itself as being part of the local community and as a result has strong links with community be that traditional regulars, families, hosting special events including weddings, organising and coordinating motor cycle meets and ride outs along with supporting local families during the school holidays with a "kids can eat for free" offer.
12. The Premises Licence Holder and DPS have endeavoured to have strong lines of communication with Dorset Police, BCP licensing and other operators within the area.

The Licensing Objectives.

13. 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

14. 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.
15. 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".

In respect of this review hearing the licensing sub committee have to consider the potential impact from the outcome of the Review itself.

16. At the review hearing, the licensing authority must consider what steps are appropriate for the promotion of the licensing objectives taking into account the application and any change in circumstances since any interim steps were imposed, consider any relevant representations, and review the interim steps already taken (if any).

Response to Allegations within Review Papers.

17. The Premises Licence Holder will look at each allegation raised by the Police within the Review papers and supplemental submission however the Premises Licence Holder is in agreement with Dorset Police that a review of the conditions endorsed upon the Premises Licence should be undertaken and a revised Operating Schedule has been prepared based upon those comments made by the Police in the additional submission along with points considered to be beneficial to promotion of the licensing objectives by the Premises Licence Holder.

The latest version of this document is within the Bundle at Item 16.

Response to Allegations

18. Incident 18th May 2024. This incident was the catalyst for the service of Review proceedings and arises out of the attendance at the premises by a third party carrying a weapon and whose aggressive demeanour resulted in the altercation with third parties.

19. The Premises Licence Holder and DPS have observed the Local authority CCTV footage and would confirm as follows:

- The DPS (Adam Sealy) had arranged an event to celebrate the birthday of a friend and knowing that he would be engaged within the celebratory event itself had arranged for employees to cover that shift and be responsible for the operation of the premises. See Item 12 as to staff provision.
- On site were the additional Personal Licence Holders being Simone Sealy and David Rogers (application pending at point in time).
- During the course of the afternoon the aggressor was present at the premises and was noted to display negative attitudes and demeanour. The aggressor was therefore asked to leave and indicated he would be better

being at home and not drinking. The aggressor departed voluntarily and it can be seen on the CCTV footage whilst the DPS was to the external front of the premises socialising with others the aggressor returned. The DPS engages with the aggressor encouraging him to vacate the premises but the aggressor becomes increasingly animated and aggressive and despite endeavouring to pacify the individual, he starts to threaten the DPS. The DPS continues to try to communicate with the aggressor and de-escalate the situation at which point those persons in the immediate vicinity who are aware of the potential danger of a bladed weapon seek to intervene along with the SIA door supervisor.

- There thereafter follows an altercation between the aggressor and other members of the public within which the DPS was not involved.
- He left matters of control with the SIA.
- One of the nominated Personal Licence Holders (Simone Sealy) is observed on the CCTV footage on 5 occasions and liaises with British Transport Police so as to engage Dorset Police by virtue of a direct call.
- Communication was made to David Rogers (the remaining other deputy manager at site) to maintain control of the interior of the premises.
- During this period the DPS did not engage further with the aggressor nor the situation.
- It is the DPS's position that he made it clear that he was the named DPS of the premises and sought to cooperate with them and assist.
- It was communicated within that dialogue as to the presence of another Personal Licence Holder and a Deputy Manager.
- The site was aware that necessary communication had been undertaken directly to the Police, it regrets that in the heat of the situation it did not seek to post onto the Pubwatch Whats App Group, it is their considered view that they relied too much upon what they thought would be the best line of communication between British Transport Police and Dorset Police.
- The Premises Licence Holder and DPS would be pleased to provide a commentary to this CCTV footage correctly identifying those individuals

involved and the approach and position taken by particularly the DPS and the SIA Officer present.

CCTV

20. Within the supplemental submission the Police indicate of the CCTV downloaded there is a period of approximately 30 minutes when recording failed. The Premises Licence Holder had recently updated the CCTV following a meeting in January of 2024 and there was no logical explanation as to the failure to record at an intermittent period. The Premises Licence Holder initially thought the failure related to issues with a dishwasher however the Licensing Sub Committee is referred to item 8 of the Bundle confirming mini power outages from the National Grid were causing the CCTV to cease recording periodically (and issues with the dishwasher) the problem was identified following attendance by ADT and rectification works are completed. It is respectfully submitted that neither the Premises Licence Holder nor DPS could have known the same to be occurring and the Premises Licence Holder responded positively to the situation once diagnosed thereby upholding the licensing objectives.

SIA Allegations

21. During the course of 2023 and at the meeting of January 2024 Dorset Police raised queries regarding the provision of a door supervisor (not required by condition) at the property and that individual's status. The Licensing Sub Committee is referred to item 9 of the Bundle which confirms the communication between the Designated Premises Supervisor and Dorset Police as to the validity of the authorisation of Mr. Glen Campbell along with his status under the Security Industry Authority regulations and his insurance provision. The Designated Premises Supervisor risk assesses all events undertaken at the premises as to the benefit of SIA particularly but not exclusively when Bournemouth AFC play at home, televised football games and fundraising activities undertaken externally. The Premises Licence Holder would respectfully submit that observations of SIA on the date of the incident in May show a proactive professional approach being adopted, furthermore that the risk assessments have been adequate and appropriate as no issues arose during the Euros period nor at any events held by the premises. The Premises Licence Holder will respectfully submit that matters as to Mr. Campbell and the provision of SIA were answered some time ago.

Allegation of presence of shoplifters.

22. The premises has never permitted and does not condone the sale of stolen goods, should such individuals still be believed to be frequenting the premises based on Police intelligence the Premises Licence Holder and DPS would wish to work with Dorset Police as to their exclusion in addition to any Pubwatch ban.

Condition compliance

23. The Review and supplemental submission seeks to indicate that the premises is not run to the highest standards and there are breaches of conditions endorsed upon the Licence. The Licensing Sub Committee is referred to in particular an indication that the DPS has been unwilling to join and/or participate within the Pubwatch or the Whats App communication link.
24. The Licensing Sub Committee is referred to items 10 and 11 of the Bundle. Item 10 illustrates the dialogue between the DPS and the Chair of Pubwatch following the DPS's removal from the Group and his endeavours to be readmitted along with screenshot from the 11th November 2023 verifying his membership of the group once given access. The Premises Licence Holder and DPS acknowledge that there was a level of confusion in relation to the payment of a fee and what that fee related to at that time. Within verbal discussions it has also been intimated by Dorset Police that the DPS was unwilling to engage with a new Pubwatch forum and Whats App Group. Dorset Police allege that the DPS refused to become a member due to a comment made to them and the Chair of Pubwatch. The Designated Premises Supervisor regrets the sarcastic tone of that comment as, he was aware at the time of questioning and criticism that he was already a member evidenced by the screenshot from the group dated 17th June at which point the Licensing Officer was added.
25. Additionally at item 11 is confirmation as to the number of logins undertaken by the DPS up to that date and subsequent postings by him in relation to an event occurring elsewhere in the area 2nd August.
26. Additionally items 13, 14 and 15 provide examples of documentation undertaken by the premises pursuant to the conditions endorsed upon the Licence.
27. The premise licence holder respectfully asks the licensing committee bear in mind that since 2021 the premises has responded to those points raised by the Police

and answered queries raised and cured CCTV issues despite there being no condition at that time on the Licence in respect of CCTV. Furthermore that in respect of both violent incidents the premises responded and dealt with the situation and on neither occasion endeavoured to cultivate the situation nor by the event being undertaken stimulated such behaviour. Indeed on the latter occasion they had identified the risk in relation to the aggressor and requested his departure. Those other matters raised can be seen from the evidence adduced to be either responded to or misconstrued save for the failure to post upon the Group Whats App chat the scenario which had arisen on the 18th May.

Determination of the Application

28. The Guidance sets out direction in respect of Review positions at section 11.

Paragraph 11 Review

In making its final determination the steps the licensing authority can take are:

- the modification of the conditions of the premises licence;
- the exclusion of a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months; and
- the revocation of the licence.

Paragraph 11 Standard Review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

Requests particularly in relation to CCTV have been directly addressed and questions raised in respect of SIA answered.

- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

Although communication had taken place with Dorset Police no formal warning had been issued.

- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
 - modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)[\[footnote 10\]](#);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence

financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again.

However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

29. The Premise Licence Holder requests the Licensing Sub Committee to consider the quality of the evidence raised.

30. The new conditions will provide a clear framework for promotion of the licensing objectives.

31. The Premise Licence Holder respectfully submit that the Licensing Authority must take note of additional sections of the Guidance.

32. 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.9.44 - 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.

- e) 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.

33. The Premises Licence Holder and DPS acknowledge the severity of the nature of the incident which occurred in May and have looked at their procedures and protocols in responding to such an attack upon themselves and their customers during the incident the premises sought to keep via their SIA, members of the public safe and to achieve direct and rapid communication with enforcement agencies particularly the Police via the British Transport Police Officer present along with dialogue with the Police post event. They monitored the departure of the aggressor and their most significant fault was when they regrouped they failed to message on the Whats App Group believing that as the individual was now being tracked by Local Authority cameras and the Police aware of his whereabouts that the individual would be intercepted and the risk removed.

34. The Premises Licence Holder acknowledges that from any situation of this nature learnings can be made and it has sought to work with the Police in connection with the preparation of an updated Operating Schedule and considers that the imposition of the new set of conditions would promote the licensing objectives without the need for the removal of the Designated Premises Supervisor who has been in position for in excess of 3 years in relation to a premises which is significant in size and has a geographical hinterland which brings with it issues of societal behaviours which have to be addressed and managed. During that time there have been two incidents the most recent of a particularly frightening nature but it has to be said that when the management team of the Bell requested the individual to leave earlier in the afternoon it was not within theirs nor any reasonable persons contemplation that he would return with weapon and in a state of acute agitation. The Premises Licence Holder humbly submits to the Licensing

Sub Committee that the DPS did not generate nor exasperate that situation and in all other respects the evidence before the Licensing Sub Committee illustrates a premises which sits at the heart of its community and is well run.

JOHN GAUNT & PARTNERS

August 2024