

Temporary Event Notice 11th & 12th & also 18th & 19th September 2021

Applicant – Raphael Suski

Premises- Shadow Bar ,19-23 Clifton Street, Blackpool, FY1 1JD

Date 7th September 2021

This written submission is made on behalf of the Applicant in this case and will seek to deal with the concerns laid out in the representation submitted by PC Guy Harrison on behalf of Lancashire Constabulary.

The Police representation covers 4 strands, numbered below (starting at page 3 of this document) in paragraph format. The response to each strand will be inserted below and will offer explanation, suggested problem-solving solutions and in some cases rebuttal.

Introduction

Mr Suski is the owner of multiple businesses including hotels and other licensed premises, he also has numerous other business interests in a variety of fields. As such he relies on the competence and integrity of his employees to ensure that the businesses are compliant and cooperate fully with the requests of Responsible Authorities.

As such it is essential that his systems or due diligence are constantly reviewed and fit for their intended purpose, that being to ensure that all reasonable precautions to ensure compliance with the law are in place.

Case law has established a principal that due diligence and reasonable precautions will be relevant to the size and complexity of the organisation, a simple example may be a national supermarket who would have a comprehensive system that covers all areas of compliance, where a smaller local convenience store may have much lower-level simplified systems that have very little in the way of paperwork or processes involved. The overall aim being, that the organisation should have done all that is reasonable to avoid the commission of an offence.

It is also established that no system can be infallible and the important aspect when a gap or omission emerges is that the system evolves to close that gap and the business should be able to demonstrate continuous improvement.

This basic model is enshrined within almost all regulatory requirements some of which require periodic reviews of systems, reviewing a Health and Safety Risk Assessment annually is good example.

Mr Suski takes his relationship with Regulators seriously and seeks to have an open dialogue. In relation to the premises in question he does have ambitions to improve and develop the performance of the business which may mean on a future date he would like to discuss the prospect of extending the hours at the premises. Earning some sort of credits with the Authorities is therefore important if any future variation is on the horizon. Applying for TENs are a useful way of demonstrating to the Authorities that the Premises can operate later into the night without any significant impact on the Licensing Objectives

On the 8th July 2021 Mr Suski met with Mr Petrak, Licensing and Trading Standards Manager who informally reviewed the conditions of the premises licence in order to assess the level of compliance. Mr Petrak was apparently pleased to see that all matters that he checked on were in order.

Shortly after this date Mr Suski sought advice from Mark Marshall in relation to extending the hours at the premises.

The advice given was that he needed to establish what track record the premises had with Regulators and were there any patterns of Crime and Disorder to be concerned about. He was advised to apply for a Freedom of Information Request.

Paragraph 8.42 and 8.44 of the Section 182 Guidance encourages pre application research in order to tailor applications to address matters of local concern. Blackpool Councils Statement of Policy also replicates the Governments advice.

An FOI (Freedom of Information) Request was made to Lancashire Constabulary on the 22nd July 2021. No reply was received

On the 18th August 2021 a follow up e mail was sent chasing the original request made on the 22nd July, to date no response has been received. A public body is legally obliged to respond to an FOI request within 20 working days.

When the objection to the TEN applications was lodged by the Police an e mail enquiry was made with Guy Harrison asking for the number of incidents at the premises from the 12th April 2021 till the 1st September 2021 and to conduct a crude comparison with premises of a similar footprint in the locality, those being Ma Kelly's on Talbot Road and Shenanigans on the Promenade.

The police have no responsibility to produce a comprehensive history of incidents (see para 9.4 of the Sec 182 Guidance) but it would be useful to understand if there is a pattern of crime or if this is a one off incident.

A response to this request was received on the 7th September 2021 suggesting the request must be made via an FOI. The Original FOI is still being chased.

The applicant therefore applied for the TENS somewhat blind and was surprised to discover the level of feeling the Police had about his proposal on later hours over 2 weekends.

Mr Suski maintains the only communication he has had with Regulators is the relatively positive interaction on the 8th July 2021 with Mr Petrak.

The Section 182 Guidance promotes an open communication line with Licence Holders where they should be put on early notice of any concerns – see para 11.10 of the Sec 182 Guidance and Mr Suski states he has received no letters, calls or e mails disclosing concerns. He does not dispute that comments may have been passed to staff on site, but the guidance specifically refers to Licence Holders being notified.

Considering the Police concerns he is formally offering to reduce the terminal hour for the sale of alcohol on both applications to 03.00hrs, this is a reduction of 1hour which minimises the risk of any impact on the Licensing Objectives.

Police Objections

As indicated in the opening remarks, we have broken the Police Representation down into the 4 key strands and seek to deal with each point in chronological order;

1. A recent example of this was at 23:58 hours on 13/08/2021 when the Police were called to attend an incident at the premises, whereby 2 males within the establishment were attacked by a female wielding a glass. One of the males received a significant wound to the head. The other suffered a smaller cut to the head but both required hospital treatment as a result. Given the circumstances of the assault and the serious nature of the injury, the incident was recorded as a "Wounding with intent to do grievous bodily harm".

The incident occurred at the time and date stated, we have enclosed a CCTV video clip of the incident which demonstrates there are some substantial mitigating factors which come to light when this footage is viewed in the cold light of day, they are:

1. There were very little warning signs that a serious conflict was about to arise, there was a substantial distance between the offending female and the aggrieved male which appeared to be no more than a verbal disagreement
2. The aggrieved male is clearly the protagonist, the only assumption that can be drawn is that he has made some offensive remark which has triggered a disproportionate reaction
3. The door staff were at the point of dispute within approximately 20 seconds, so they were clearly alert and vigilant and ready to intervene.
4. The second aggrieved male was a victim of unfortunate circumstance, no doubt if he was injured by this female actions it would come under the heading of" transferred malice "this female was clearly reckless in her act as to whether anyone other than her intended victim would be injured.
5. The female had left the premises as soon as this glass was thrown leaving her apprehension difficult. The long-established advice to door staff is, beyond the premises they have no jurisdiction, the case of Hawely v Luminar Liesure established the dangers that occur when door staff leave the premises and get involved in disputes away from the premises.

The question we would pose is what more could have been done to prevent this incident, it was the unwanted advances of the male which lit the fuse and the disproportionate reaction

of the female which led to a crime being committed. We would say that there was nothing that could be done from a prevention perspective.

It must be accepted that improvements to assist in the detection of that crime could be made but the impediment that the police refer too with the regards to the CCTV turns very much on several other factors. For example:

1. The time of arrival, in the absence of the log the police could have arrived 10-15 minutes after the incident therefor locating the offender would have been extremely difficult even with CCTV images.
2. What if the incident wasn't covered by CCTV, it is not always achievable to have 100% coverage on a premise?
3. The positive aspect of this matter is the CCTV was working, the images are saved and available to assist with the investigation, this therefore leaves reasonable lines of enquiry still open to trace this offender.

The next strand of the Police representation relates to a historic condition that was put on after a Review when the premises was under previous management. It is clearly drafted for premises that operated very differently in terms of layout and design. See para 8.72 & 8.73 of the Sec 182 Guidance

*2. Of particular concern was the fact that the premises **has a specific condition that only polycarbonate or other non- glass vessels are to be used after 22:00 hours. Glass may only be used after this time in the restaurant area when alcohol is served ancillary to a meal.** This incident happened in the bar area at a time when glass vessels should not have been available. A serious crime was committed as a direct consequence of this failure to adhere to the provisions of the licence.*

This condition is contradictory to a later condition on the licence and creates ambiguity.

45 The licence holder and designated premises supervisor shall ensure that only toughened glass or polycarbonate vessels are used to dispense beverages to customers

The glass used at the premises is toughened, the condition quoted by the Police was implemented after a hearing in circa 2007 but sadly did not have an expiry. The ambiguity created by condition 45 along with the historic nature of its origins and purpose calls into question the enforceability of condition 35. The matter needs clarification.

This condition remains one of the most onerous and unreasonable conditions on any Premises Licence issued by Blackpool Council. It was put on over a decade ago, but we must accept that scrutinising the relevance of conditions is a job for the Licence Holder.

3. Furthermore, the conditions of the licence state that a staff member who is conversant with the CCTV system should be present on the premises at all time. On the night of the incident the staff present were unable to access the system at the request of the police. During their attempts to do so they actually locked themselves out of the system. This was a serious impediment to the police on the night of the incident, as they were unable to obtain footage that may have led to the identification of suspects.

Mr Suski must take some learning away from this point, this is a prime example where the reasonable precautions have revealed a failure so must be addressed. By way of explanation the staffing issues around the hospitality sector this year have been very difficult. Staff retention, levels of competence and difficulties in recruitment have been widely reported nationally. Mr Suski has suffered with staffing issues across his business portfolio.

The easy answer for those not in business is to simply shut the business, it is a rare and an extreme circumstance that a business would be forced to close, and Mr Suski has always staffed the business to the best of his ability but the competence and learning that a business achieves from having a consistency of staff simply hasn't been there for anyone this year.

In order to remedy this area a step-by-step instruction guide has been produced to cover any inadequacies. This will be posted next to the CCTV room meaning that there will always be a staff member on the premises who is conversant with the system.

4. In July of this year two separate Licensing visits had been carried out to the premises and advice given to the management. This followed reports of individuals who are subject of "Pubwatch" bans frequenting the premises as well as reports of excessive noise and failure to adhere to aspects of the Covid 19 legislation. The management were warned of the potential consequences to their licence if such breaches were evidenced.

2 elements of concern are disclosed in the 4th strand, they are the references to the Covid non-compliance and the potential "pub watch barred person list".

Firstly, the Covid non-Compliance is not relevant to this application, virtually all emergency legislation relating to Covid Control and Hospitality Businesses has now fallen away. There are very few businesses nationally who didn't struggle with compliance in some way shape or form, whether this was issues with customers failing to wear masks, issues around signage or the ambiguous restriction around back ground music.

The controls in place nationally were emergency measures designed to address a specific issue at a point in time. On a positive note, if the Police are having to refer to Covid related concerns it indicates that there may be a lack of other meaningful incidents that they can highlight.

We do not wish to dilute the Covid concerns but they are not relevant to the Crime and Disorder Objective at the time this application will be considered. See par 9.12 of the Sec 182 Guidance which refers to the need to produce evidence and explain the relevance to the application and indeed for any representation to withstand scrutiny.

The second element is the Pub Watch barred persons frequenting the premises. Numerous issues arise with this. National Pub Watch advise against making it a Licensing Condition for various reasons set out on their web site, the snip below was taken from the national Pub Watch web site and can be authenticated by following the link.

<https://www.nationalpubwatch.org.uk/faq/#faq-1465>

Is membership of pubwatch compulsory in any part of the country and is compulsory membership a good idea?

We think that Pubwatch should be acknowledged by the Licensing Authorities and Police as a demonstration of good management and a commitment to the four Licensing Objectives. However Pubwatch membership has traditionally been a voluntary activity undertaken by licensees for their own benefit.

Unfortunately when the new Premises Licence was introduced in November 2005, some Licensing Authorities obtained blanket conditions for licenses in their area which included the requirement that premises should be a member of the local Pubwatch scheme. We advised against this course of action but the advice was either ignored or not received. We do not doubt that the decision taken at that time was made with the best of intentions, as Pubwatch

membership is seen as good practice. However we do not believe that Licensing Authorities understood the way that Pubwatch has developed and the potential consequences of making such a requirement.

It is not uncommon for a Pubwatch scheme to collapse due to a variety of reasons such as lack of funding, people unwilling to take up the offices of the watch or due to general apathy. In the strict interpretation of the law, if this happened in an area where membership was a requirement then the Premises Licence holders could be seen as failing to comply with a condition of the licence. We see this as problematic for all concerned. Similarly if a premise is thrown out of a scheme for breach of the rules or refusing to conform to the majority decisions of the watch and such a condition was present the same problem would arise.

There are other difficulties that occur with viewing images of banned persons, whilst the system to view barred person has now been modernised and digitised it requires facilities such as IT or competence with mobile phone Apps all of which have a myriad of data protection controls associated with them. These are not always present in every business and individual capability with mobile phone technology is varied.

Ryan Skyrme who facilitates the Pub Watch scheme has provided some useful information which highlights some of the constraints but has also confirmed the positive engagement with the scheme that occurs on Premises connected with the Applicant.

From: Mark Marshall [mailto:markmarshall74@gmail.com]

Sent: 06 September 2021 19:59

To: ryan.skyrme@blackpoolbid.org; r.m.suski@hotmail.com

Subject: Shadow Bar Clifton Street, Blackpool

Dear Ryan

Further to our telephone call today I write to follow up on the conversation.

Mr Suski who operates Shadow Bar is due to attend a licensing hearing this Friday in relation to 2 Temporary Events.

One of the strands of concerns noted in the Police Response relates to banned persons from the pub watch barred list, entering the premises, we have not been told who these individuals are. [All active members receive an email notification or a push notification if using the Schemelink Pubwatch App every time a new barred person has been added to the local Pubwatch scheme alerting all members of the recent update.](#)

I would like you to provide a short summary of what Pub Watch have been doing over the last 18 months ? You mentioned remote meetings have occurred, could you confirm how many and the approximate numbers of attendees at each meeting? Over the last 18 months during the lockdowns, Pubwatch held 2 virtual meetings but sadly these were poorly attended (no more than 10 members attended each meeting) due to licensed premises managed being placed on Furlough, therefore it was extremely impossible to contact licensed premises managers inviting them to participate in the virtual meetings. Moving forward now that restrictions have eased far greater Pubwatch meetings will shortly resume in the normal environment settings. Within the last 6 months, the Pubwatch Committee has met on several occasions to discuss/action Pubwatch incidents that have been submitted by members. This has resulted in 9 additional barred persons being added to the scheme in the last 4 months.

Further to this can you confirm that Shadow Bar are active members of pub watch and engage with the partnership, confirmation that the radio equipment has been paid for would also be useful. I can confirm that all Pubwatch Membership fees also including the purchase of the Pubwatch Licensed premises Scheme Link radio was paid in full on 02/07/21. No further invoices are outstanding at this current time. The manager where the Pubwatch account is registered for the venue is an active user and has recently logged into the Pubwatch Schemelink website on 05/09/21.

Finally if you can just outline how images of barred persons are shared, I understand there is no book anymore and you have moved to a digital system which will no doubt be subject to strict GDPR controls, what I am looking for confirmation of is that access to images will be to account holders only and if there is any restriction on printing images off the system for non account holders to view? Images of barred persons are shared via the secure Pubwatch Schemelink website or mobile app. The account is registered to the manager/DPS of the venue and it is his/her responsibility to ensure they are updating staff and door supervisors regular (at the start of their shifts) when an update has been received either via email or mobile push notification. The Manager/DPS can also nominate access to those who they trust working at the venue resulting in login credentials been shared as agreed with the registered user. All images of barred persons are securely watermarked representing an identification resulting back the registered venue. Images are not allowed to be printed and should be viewed via the Pubwatch website or mobile app. Images of barred persons cannot be accessed by non-account holders.

Grateful if you can come back to me before COP on Wednesday 8th September 2021.

Kind Regards Mark Marshall

Conclusion

The Applicant is a well-established businessman in Blackpool who is motivated and ambitious, he is also someone with a wholesome sense of moral duty and is ready to accept development feedback. The objection by the Police has been useful for him to read as he now has a clear direction of areas of the business that require more attention.

The Regulators Code is now a well-established document that sets out a list of recommendations on how enforcement bodies should seek to regulate businesses. Certain areas contained within the Regulators Codes are picked out and are contained with the Councils Statement of Licensing Policy for example risk-based inspections and offering good business a lighter touch regime.

Mr Suski would like to be in the lower risk category and does not want to be drain on scare resources. However, for a business to develop and improve it relies on finance, the strength of the business income allows it to invest in better staff, improved training and facilities for staff and in turn it provides a more engaged workforce. When you are relying on staff to run a business this is critical.

We believe we have taken the Police objection and analysed its contents respectfully and carefully and have provided explanation, suggested problem-solving solutions and in some cases, rebuttal as previously indicated in the opening remarks.

The final statement made by the Police is ;

Therefore, due to the increased risk of crime and disorder Lancashire Constabulary wishes to object to the Temporary Event Notice. The Police recommend to the Panel that a Counter Notice be served by the Licensing Authority

The Applicant believes that the Police have not submitted a representation that can with stand scrutiny for the following reasons.

Strand number 1 shows an incident that occurred that was beyond the control of the Applicant or staff, he had appropriate security in place to intervene within 20 seconds of the event.

Strand number 2 is a matter of some ambiguity to have 2 conditions relating to the type of glass wear is confusing to a reader, on first examination this condition relates to a different premise, one that offers a restaurant facility. It is understandable how this could have been overlooked especially given the fact that the Premises has not had a restaurant facility for well over 10 years.

Strand number 3 can be rectified by implementing a step-by step instruction and

Strand number 4 is an area that is more complex than portrayed but can be developed and improved as the communication between Pub Watch and Licence holders resumes normality.

The 4 strands have largely been removed, the remaining strand, the incident itself should be considered carefully, the burden of proof that the evidence disclosed would impact on the Prevention of Crime and Disorder Objective rests with the Police and they must discharge that duty to the civil burden, the balance of probabilities.

To this end if there was history of incidents provided it would add more weight to the Police representation, but in the absence of any other detail one must assume the Police records are deficient of any such information meaning all their concerns are focused on a one-off incident.

Throughout our response I have linked my comments to certain paragraphs of the Section 182 Guidance, any decision the Committee make should not only consider the Representation's made but also the Guidance and its own statement of Licensing Policy.

I have inserted the relevant paragraphs of the guidance referred to in this submission below.

I hope this has been of assistance to all concerned.

Extracts from Sec 182 Guidance (for Reference)

8.42 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand: 56 | Revised Guidance issued under section 182 of the Licensing Act 2003 • the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;

- *any risk posed to the local area by the applicants' proposed licensable activities; and*
- *any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risk*

8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.

8.72 However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.

8.73 Changes in legislation may invalidate certain conditions. Although the conditions do not have to be removed from the licence, licence holders and licensing authorities may agree that this is desirable to clarify the licence holder's legal obligations. There may also be cases where it is appropriate to revise the wording of a condition that is unclear or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged.

Such a change could be expected to promote the licensing objectives by making it easier for the licence holder to understand and comply with the condition and easier for the licensing authority to enforce it

9.4 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. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority’s main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should usually therefore be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority’s interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

9.34 Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by the application before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.

9.43 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

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.

SHADOW BAR CLIFTON STREET – CCTV ACCESS(Record)

Venue has 2 separate system

FIRST SYSTEM (outside area, entry, main floor, right hand side stage)

- Press right mouse button to access menu – over choices press PLAY BACK
- Add password and press OK twice
- Choose date and time (you can choose 30 days back)
- To select camera in the right bottom corner you can choose with one will be best, you can choose ALL or CAMERA 1,2,3,4 etc.
- On the main screen all camera you choose play back video, you can manage time over this day
- To record selected video Yale cctv system you can put stick over HDMI entry, most device have USB entry, so easier way to record situation is use for example phone and use laptop to transfer folder.

SECOND SYSTEM (backstage, pool table area, entry to toilets, all bar area)

- Password pattern
- Top line above main screen with all cameras need to press PLAY BACK
- Left hand side you should choose camera

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- Select date and time
 - To record video put USB stick in the back over black box next to monitor
 - On the bottom of play back video on the main screen press Clip over new window be open choose VIDEO + LOG
 - Select device (all information and folder from the stick should open in this window), select record.