

Written Submission

Re; New Premises Licence Application- Marvin's, Highfield Road, Blackpool, FY4 2JD

General Background

1. The documentation is submitted in advance of the hearing scheduled for 10 am on the 24th of March 2022 to set out why the Committee should consider the application favorably.
2. The application has attracted 2 objections from interested parties, the contents of which will be addressed in this submission.
3. The application is made by Marvin's Blackpool Ltd, a Limited Company operated by 3 Directors, Graham Barr, Adam Reed, and Alex Huckerby.
4. An introduction of Mr. Huckerby who will be present at the hearing will be made verbally on the day.
5. The application was submitted with careful thought and consideration, especially with regards to the views from the Responsible Authorities, as such Mr Huckerby made contact by email on the 3rd of August 2021 to Ms. Jennifer Clayton who is the Manager for Environmental Protection and has responsibility for noise-related issues and is a statutory consultee in both the Licensing and Planning Process.
6. A series of conditions were offered as a starting point with an open offer of being receptive to any other controls they deem appropriate.
7. A similar exercise was also undertaken with the Police who offered some suggested conditions, all of which were duly incorporated into the operating schedule.
8. As a result of this diligent and considerate approach no objections have been submitted by the relevant Responsible Authorities.
9. Mr. Huckerby's operating style is well known to the Police due to the fact he operates in neighboring Authorities these being, Fylde and Wyre. Marvin's in Poulton has been in operation since 2018 and the Lytham premises since 2019. Mr. Huckerby has also had experience with other premises in Poulton (no longer operating) called Truth. Truth also faced opposition at the application stage and the issue of adjoining premises fearing noise break out was a substantial ingredient of the objections. With careful planning and construction of sound installation within the premises and added measures which included carrying work out within neighboring properties, they were able to address the concerns and operated without concern for over 2 years.

Policy and Guidance Considerations

10. The application accords well with numerous paragraphs of the Section 182 Guidance as well as the Statement of Licensing Policy. Paragraphs 8.41-8.48 from the Guidance are shown below with comments (in blue text) that demonstrate due consideration to best practice has been made.

8.41 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. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

The applicant was aware of the expectations of Responsible Authorities by conducting pre-application consultation.

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 risks.

8.43 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 policy), 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.

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.

The applicant has been in contact with the owner of nearby properties and is very familiar with the local issues and has experience of overcoming difficulties from his experience of operating multiple premises.

8.45 The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly available sources which may be of use to applicants include: • the Crime Mapping website; • Neighbourhood Statistics websites; • websites or publications by local responsible authorities; • websites or publications by local voluntary schemes and initiatives; and • on-line mapping tools.

8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

The applicant took the advice from the Police and Environmental Protection in formulating the Operating schedule.

8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached.

The applicant is prepared to stand by the Operating Schedule and is open to any additional conditions being added that the Committee feels are necessary and appropriate in the circumstances.

11. The Policy areas highlighted largely replicate the requirements of the guidance but provide a useful tick list which again demonstrates the careful and considerate approach to the application.

4.4.1 The authority wishes to encourage high quality, well-managed premises. The operating schedule should describe how these high management standards will be achieved. In particular, applicants will be expected to demonstrate:

- Knowledge of best practice
- That they understand the legal requirements of operating a licensed business

- Knowledge and understanding of the licensing objectives, relevant parts of the licensing policy, and their responsibilities under the Licensing Act 2003

The applicant's track record operating high-quality establishments, the high regard he is held in by Responsible Authorities, peers, and his commitment to achieving the best possible outcome for all parties meet the requirements of the paragraph above.

4.1.2 The operating schedule must include all of the information necessary to enable the licensing authority, responsible authorities and members of the public to assess whether the steps outlined for the promotion of the licensing objectives are sufficient. This will mean that applicants will need to complete their own risk assessments on their businesses. Where the operating schedule does not provide enough detail, there is an increased likelihood that representations will be made.

The applicant has produced a detailed and comprehensive operating schedule that has satisfied the Responsible Authorities.

4.1.3 Applicants are not required to seek the views of responsible authorities before submitting their applications however they may find them a useful source of expert advice about the local issues that should be taken into consideration when making an application. Discussions with the responsible authorities, and where relevant local residents, before applications are submitted may minimise disputes during the application process.

4.1.4 The authority will expect that the completed operating schedule is specific to the premises subject to the application and the licensable activities to be carried out rather than containing general or standard terms. Key Message: Applicants are expected to demonstrate knowledge of the local area in which they propose to operate and an understanding of the problems and issues in that area

The applicant has excellent local knowledge of the area understanding the demographic and issues that he needs to be mindful of.

. 4.1.5 For an applicant to assess what steps are appropriate for the promotion of the licensing objectives, they must first understand the area in which they intend to operate. By way of example the controls required in an area suffering from a high level of deprivation, alcohol dependency and street drinking may be completely different to those required in other areas. Applicants are expected to make their own enquiries and demonstrate how they have considered the following in the operating schedule:

- The layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children and young persons may congregate;
- Any risk posed to the local area by the proposed licensable activities; and
- Any local initiatives (for example local crime reduction initiatives or voluntary schemes which may help mitigate potential risks)

4.4.1 There are no standard permitted hours for the sale of alcohol prescribed in the Act instead the Council has the power to make decisions on hours based on local

knowledge. In some circumstances, staggered licensing hours will allow for a more gradual dispersal of customers reducing potential disorder and disturbance at for example late night food outlets and taxi ranks. There is no general presumption in favour of lengthening licensing hours and the four licensing objectives will be the paramount consideration at all times

The applicant considered the operating hours of premises in the locality and purposefully chose his operating hours to mirror those of his competitors. The reason for this is he believes that staggered closing times in an area such as this may only seek to exacerbate issues of migration. Whilst some schools of thought encourage staggered closing times, in this location, it is not a good idea. If all premises close at a similar time customers are left with little or no choice but to go home rather than make their way to nearby premises that perhaps have a later terminal hour.

The agenda pack produced by the Licensing Authority also highlights areas of the Guidance and Policy, found in paragraphs 6.4-6.6 of the report.

Our comments are as follows;

We believe the conditions proposed on the Operating Schedule are appropriate for the location, the experts (Responsible Authorities) were consulted and helped to influence the measures.

There will be no designated outside area as the premises is landlocked. Smokers will be supervised and controlled at the front of the premises.

Extensive planning and design have been done to control the noise that could emanate from the premises.

Relevant Representations

11.Mr Newman states; (our comments inserted in blue text)

To whom it may concern.

I live in Flat 5,3 Mayfield Avenue, Blackpool, FY42NT. Where I live backs directly onto the proposed property where Marvin's is going to be located.

I am obviously more than a little concerned about the granting of licensing for this concerned.

The playing of music from 11am in the morning to at times 1.30am will be unbearable and being as though where I live is next to the proposed building I can foresee endless days of continuous noise coming into my property.

The noise attenuation works which will be influenced by the applicants own expert should reduce the risk of noise breakout, to suggest that the issues will be unbearable seem to be based on a speculative theory. However, the applicant recognises that no system of construction is perfect and is committed to conducting a post-development

assessment. This assessment can include taking measurements of the sound from within Mr Newmans property to ensure inaudibility is achieved

I put in a concern when it was first proposed and I did not even get a email to say that permission had been granted. Having only finding out because of the building work going on in said property. That and the selling of alcohol I can only believe will make Highfield Road into even more of an area of bad reputation where police are called to other premises just a short distance away from myself.

Mr Newmans comments are based on his experiences of existing operators, not the applicant, the Police appear satisfied with the style of operation proposed and can base their experiences on the applicant's other venues in neighboring authorities, if these concerns had serious merit the experts would have made their opinions clear and lodged an objection.

I can only say in the strongest possible way that I am against the granting of a licence for this concern.

It will, I'm sure lead myself and others in the immediate vacinity to look elsewhere for somewhere to live and perhaps leading to a environment of an area that only those who drink and don't mind the licensing of alcohol and loud music to be heard every single day and night to live.

The applicant is committed to maintaining good relationships with his neighbours and if required with conduct assessments from within Mr Newmans property to ensure that his quiet enjoyment of his property is maintained

I'm sure that nobody if asked would choose to live next door to such a place where you will be unable to sleep or relax in your own home,worried about drunkeness and possible violence outside your front door.

If there is the promise of soundproofing which I believe there is,then I hope someone checks out that it is the case by coming into our building and gauging the noise level. Is there any offer of help to find somewhere else to live if the licence is granted because it seems like it will be a nightmare living here. This is a given

Thank you very much for taking the time to read and I'm sorry for complaining but feel as if I didn't I would have to grin and bear it which I don't intend to do.

12. Mr Etherington states;

As the owner of 25/27 Highfield Road, 1 & 5 Mayfield Avenue and six residential apartments at 3 Mayfield Avenue Blackpool . My tenants and I strongly oppose the granting of an alcohol late night music venue at the above address on the following grounds;

Prevention of crime and disorder

I am assuming that the venue will employ door supervisors to deal with any assaults and drunk and disorderly patrons. Whilst I accept that this is common place at drinking venues, the close proximity to residents is likely to cause further offences such as breach of the peace.

The applicant has offered a condition that imposes the requirement for door staff on a Friday and Saturday night however from the first moment he opens his doors he understands that there will be a need to set out his stall. As such he will be employing doors staff every night of the week in order to clearly lay out the standard of behavior expected at the premises. This will enable him to accurately assess the risk and

respond to any initial teething problems that may come about from people exploring the new premises on the road

Prevention of public nuisance

The bedroom and living room windows are only a few metres away from the private dwellings. The living room windows are almost vertically above the entrance/exit of the establishment. The building shares a dividing wall between the two properties that even when soundproofed will undoubtedly cause distress and nuisance to the residents.

As highlighted in Mr. Newman's objection the applicant will be conducting a post-development assessment, this again can be done from within any unit of Mr Etherington's choosing, the offer to make improvements (additional soundproofing) into either the applicant's premises or Mr. Ehringtons premises will be fully funded by the applicant

A designated smoking area would possibly be provided outside of the front doors of the building, irrespective of this, people will congregate and smoke there, causing further disruption to the residents until the early hours of the morning, exacerbated by people entering and leaving the venue. This will therefore be a breach of the peace.

The applicant has offered the only condition possible to control smokers outside, that being that they will be supervised by a competent person. The installation of an acoustic lobby will mitigate the noise from the premises as customers step outside to smoke. The door staff will be positioned at the front door and will always maintain order. Sadly, the applicant can only be responsible for customers when they are under his control, once away from the premises their behaviour is a matter of personal responsibility. This is also supported by paragraph 2.21 of the Section 182 Guidance which states :

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

The applicant will have prominent notices posted at the entrance/exit advising customers to respect the needs of the residents, this has already been offered as a condition within the operating schedule.

Construction and Operational Steps to Control Noise

13. The applicant has already been through the Planning Process where matters of noise nuisance were considered in depth. The Decision notice was signed on the 8th of February 2022. The Planning Authority has insisted that the works to soundproof the building are to be carried out in accordance with Neil Martins report (the applicant's noise consultant)

14. The Committee should be aware that if the works are carried out in accordance with the recommendations this should achieve a reduction of 54db meaning that the sound from within the premises could be set at 84db.
15. The applicant will be taking a further step, over and above what is required by Planning which will be the post-development assessment. In other words when the premises are fully fitted out. Technical issues such as where speakers are mounted or pointing can change the way sound moves around the building and consequently, a “belt and braces” approach is to be taken.
16. The condition proposed in the Operator Schedule already requires this additional step to be made so is therefore enforceable. The condition also compels the applicant to adopt any measures or steps proposed in the further assessment.
17. With all these steps the risk of offending the Protection from Public Nuisance Objective has been reduced to an acceptable level.
18. A copy of the assessment produced by Mr. Martin is included with this submission for the Committee’s assistance.

Conclusion

19. Passing reference within the submission has been made to the absence of any Responsible Authority in these proceedings. It is of considerable importance to highlight this as they are the Licensing Authorities experts in their respective fields.
20. The case of Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin), CO/5533/2006 deals with many points.
21. Commentators will pull out the relevant parts of the case to assist their own arguments one of which is there must be tangible or empirical evidence to support any representations, mere speculation will not be enough.
22. The GOV.UK web site provides a short narrative about the case which is as follows;

This case, referred to as ‘the Thwaites case’, is important because it emphasises the important role that Responsible Authorities have in providing information to decision makers to contextualise the issue before them.

This case is sometimes misconstrued as requiring decisions to be based on ‘real evidence’, and that conditions cannot be imposed until problems have actually occurred. This is wrong. The purpose of the

Act is to prevent problems from happening. Decisions can and should be based on well-informed common sense. The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. It is most relevant when opposing grant applications.

The Honourable Mrs Justice Black said:

[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.

23. The Government summary of the case focuses on the issue of Responsible Authorities being experts in their respective fields and the absence of those Authorities, in this case, supports the following comments.

The Applicant is experienced at running similar establishments, has a good track record, and enjoys the confidence of the Authorities (particularly the police)

The proposal submitted in both pre-application communication and the application itself has given the Authorities the necessary confidence that the Licence Objectives will not be harmed

There is a belief that the applicant will deliver on any commitments made or will adjust his style to rectify any concerns raised.

24. In most cases when dealing with new applications it will be difficult for anyone to adduce actual evidence that problems will occur, residents know the area they live in better than anyone and the applicant takes all the points raised very seriously.

25. He has sought to focus his attention on offering practical solutions to maintain good relations with his neighbors. His commitment to having an ongoing dialogue with them is sincere. He also has commercial interests to ensure noise containment as the flats above his premises will in time be used for residential purposes.

26. The venture will be marketed to a more mature demographic and the pricing and entertainment policies will be something that the younger end of the market would not necessarily be attracted to.

27. The premises will take a disused store and transform the facade into a modern and attractive premise which will be an immediate visual improvement to the area.
28. For all the reasons raised in this submission we believe the Committee can have confidence in the applicant and if granted, this licence with the conditions proposed will not have an adverse impact on the Licensing Objectives.



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Director