

# Appendix 4b

## Written Submission- Sagaa News,30 Deansgate, Blackpool FY1 1BN

1.1 The application relates to a Temporary Event Notice, a light touch process under the Licensing Act 2003 allowing a Licensable Activity to occur within parameters laid down in law. Para 7.2 of the Section 182 Guidance states.

*The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead, a person wishing to hold an event at which such activities are proposed to be carried on (the “premises user”) gives notice to the licensing authority of the event (a “temporary event notice” or “TEN”).*

1.2 Prior to the submission of the application the Licensing Authority were consulted informally over the phone. Mr Petrak was appraised of some of the pending applications that may come before him, and these premises were raised.

1.3 Mr Petrak raised an immediate concern about an individual who possibly worked at the premises, and I was asked to find out the details of the staff member in the shop. I replied by text with the name and date of birth of the individual. A reply was received by text stating the details provided were a new name he had not heard of and was not the previous incumbent who was a safeguarding concern.

1.4 Following this confirmation an application was submitted.

1.5 The application was made with a firm eye on the details raised in the Cumulative Impact Assessment. The following paragraph was born in mind when considering hours of operation for the TEN

Further interrogation of the data referred to in Figures 2 & 3 indicates that the majority of alcohol related Police incidents in Talbot and Claremont occur during the night time economy. Figures 4 and 5 below show data relating to the number of Police incidents containing an alcohol qualifier reported in Talbot ward during the calendar year 2019. This data set is broken down into hourly intervals displayed in 24 hour clock terminology. The data shown at Figure 4 shows that in Talbot ward the worst affected period lies between 2100 hours to 0300 hours with 225 of 438 incidents taking place during these core hours. Identical data for Claremont ward is contained in Figure 5 showing that the worst affected period is between the hours of 2100 and 0400 with 361 of 604 incidents taking place between these hours.

1.6 It was noted that the major times of concern are between 21.00hrs to 03.00hrs. As such a terminal hour of 21.00hrs was chosen.

1.7 On Friday the 21st of October 2022 the Licensing Authority made contact to advise that the Police would be objecting and did we wish to withdraw. Further consideration was made to reduce any potential risk and the following suggestions were made via the Licensing Authority. The following information was relayed verbally to Lisa Ashton at 11.50hrs on the 21st of October 2022 on the telephone.

**1. The terminal hour was to be reduced to 6 pm**

**2.No beer or cider above 5.5% ABV would be sold**

**3.No single cans of beer or cider would be sold**

**4. Proof of age training would be in place for any person selling alcohol during the event.**

**5. No more than 20% of the shop display area would be used for alcohol products**

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1.8 The Licensing Authority relayed the amendments but confirmed that the Objection still stood.

1.9 The Police or Environmental Health can request a modification to try and address the concerns they have, see Para 7.37 of the Guidance below.

*As noted above, the police or EHA (as "relevant persons") may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.*

1.10 The police objection goes into some detail about an application for a premises licence which was subsequently withdrawn after taking advice. The whole of this section of the Police Objection is not relevant to this TEN. They also add that nothing has changed, the modification in paragraph 1.7 demonstrates a substantial change of position and this is not a Premises Licence Application it is a TEN. Both are looked at from a completely different lens. The applicant was naive in making the application without first properly understanding the challenges and whilst he has significant experience as an operator it is in another area of the country. If a premises licence application was to be considered by the applicant, it would **only** be done at a point where he has sufficient information to demonstrate the Objectives would not be harmed. The only application under consideration at this moment is a TEN between the 4<sup>th</sup> and 10<sup>th</sup> of November 2022.

1.11 The TEN process is exempt from the Cumulative Impact Policy (rebuttable presumption to refuse does not apply), but the police can refer to the evidence of Cumulative Impact but the burden rests with them to demonstrate how this TEN will impact on the Objectives. They refer to an oversupply in the immediate locality but do not indicate how a modest provision operated under strict controls for 7 days will have a significant impact on the Licensing Objectives. The term significant impact is not proportionate. By its very nature, everything about this application is not significant.

### **Extract from LGA Handbook for Councillors**

*Recent changes under the Policing and Crime Act 2017 have now put cumulative impact on a statutory footing and the Section 182 guidance has been updated to include CIAs. Existing CIPs will need to be reviewed to ensure they comply with the principles in new legislation, primarily the need for evidence, rules around consultation and the need to review CIAs at least every three years. A CIA sits apart from the SLP but the statement should include a summary of the CIA.*

*The effect of having a CIA is that it no longer creates a presumption that applications for new (or variations to) licences that receive relevant representations will be refused unless the applicant can show that granting the application will not add to the cumulative impact of existing premises. A CIA does not change the fundamental way that licensing applications are made under the Licensing Act.*

### **Sec 182 Guidance**

14.26 *The CIA must include a statement saying that the licensing authority considers that the number of premises licences and/or club premises certificates in one or more parts of the area described is such that it is likely that granting further licences would be inconsistent with the authority's duty to promote the licensing objectives. As part of the publication a licensing authority must set out the evidential basis for its opinion.*

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14.27 CIAs may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on or off the premises, and the provision of late night refreshment. This includes late night refreshment providers which are not licensed to sell alcohol. A CIA may relate to all premises licences and club premises certificates in the area described in the assessment or parts thereof, or only to premises of a particular kind described in the assessment. For example, it may be appropriate for the licensing authority to only include off-licences or nightclubs within the scope of its assessment. The licensing authority must make clear, when publishing its CIA, which premises types it applies to. **CIAs do not apply to TENs; however it is open to the police and environmental health authority (as relevant persons) to refer to evidence published within a CIA when objecting to a TEN.**

14.28 While the evidence underpinning the publication of a CIA should generally be suitable as the basis for a decision to refuse an application or impose conditions, it does not change the fundamental way that decisions are made under the 2003 Act. Each decision in an area subject to a CIA therefore still needs to be made on a case-by-case basis and with a view to what is appropriate for the promotion of the licensing objectives. Importantly, the publication of a CIA would not remove a licensing authority's discretion to grant applications for new licences or applications to vary existing licences, where the authority considers this to be appropriate in the light of the individual circumstances of the case.

1.12 With the extra steps proposed detailed in paragraph 1.7 and the time of year (closed season) it would seem to be difficult to reduce the risk further. The premises is a maximum of 15 metres in length by 5 meters wide, the plan below shows the internal layout. By way of securing the method of operation, the Applicant is agreeable to adopting the controls laid out as conditions. Extract from Blackpool Licensing Policy ;

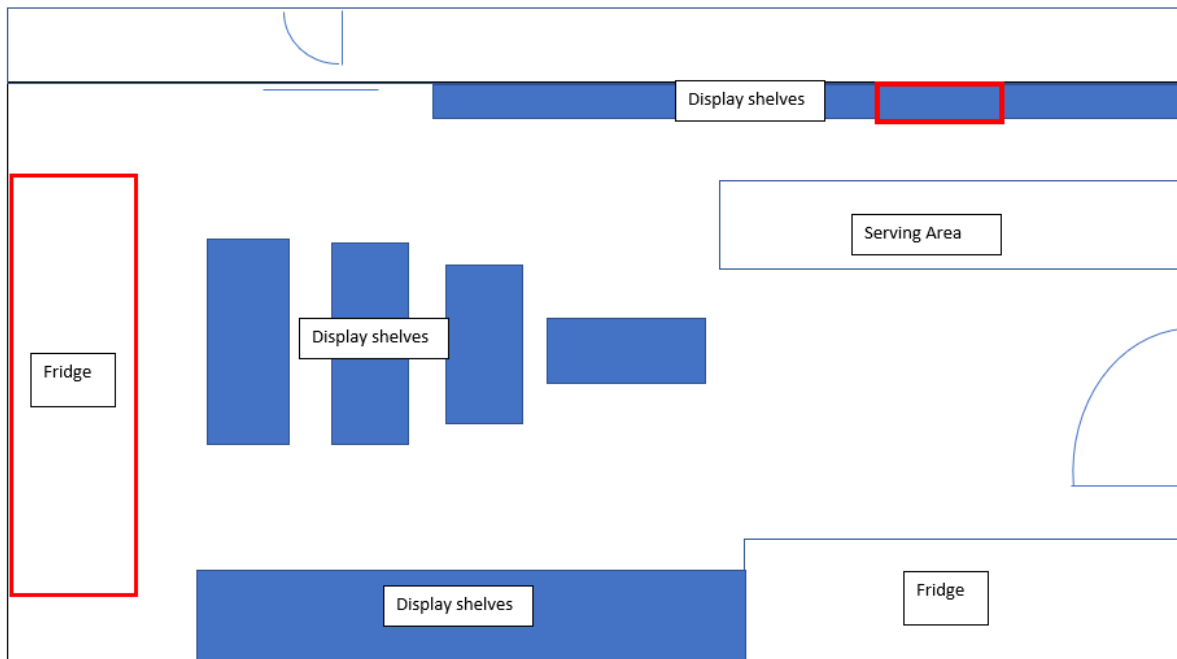
*Display area – will alcohol be displayed in a fixed specified area, if so the area should be identified on a plan. It is however the authority's view that alcohol displays should not be located:*

- At the entrance/exit points*
- In aisles which interfere with customer flow*
- At or near checkouts (unless the alcohol is only available from behind the counter)*
- In close proximity to products which are attractive to children, such as sweets and children's magazines*

*Availability/Price – suggested measures to deter street drinkers might include:*

- Not selling beers or ciders with over 7% abv*
- Not allowing self-service of these products*
- Restricting single can sales*
- Preventing sales on credit*

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1.13 The areas highlighted with the redline are the proposed areas where alcohol will be displayed for the 7-day period. Higher-strength spirits will be placed behind the counter and average-strength beers, cider, and wines in the chiller at the rear of the premises.

### **Approach to Policy**

2.1 Blackpool's Statement of Licensing policy encourages pre-application discussion. It has been noted through recent applications that the Authorities have adopted a strict approach to applications, reluctant to offer advice or guidance but instead preferring to highlight the evidence from the Cumulative Impact Assessment.

2.2 When dealing with matters that fall under Cumulative impact there are 3 occasions where the applicant may be able to overcome Policy Hurdles.

*4.10.3 Examples of factors, which the Council may consider, demonstrate that there will be no impact may include:*

- Premises ceasing operation before midnight
- Premises which are not alcohol led and only operate during the day-time
- Situations where the applicant is relocating their business within the cumulative impact area but is retaining the same style of business, operating hours and conditions

2.3 With the amendments made the applicant will clearly fall under the 2<sup>nd</sup> bullet point

2.4 The current position being adopted by the Authorities is one of a "locked door" which cannot be opened by any key. The reality of any policy is that it can never be an absolute prohibition and whilst it is acceptable not to give advice on how the key can be made to open the door an Applicant should be entitled to offer measures or adopt a style of operation that will not adversely affect the Licensing Objectives

2.5 The Licensing Policy also refers to the Council Plan

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*The Council Plan 2019 – 2024 has two priorities ‘maximising growth and opportunity across Blackpool’ and ‘creating stronger communities & increasing resilience’.*

- 2.6 The current approach being adopted could prevent new business which has an element of alcohol involved from even being considered. New investments, no matter how modest is a rarity in the current economic climate. Does the retail offer under Bickerstaffe House fit the vision that was in place in 2014 when it was built? We would suggest not but the offer increases the overall vibrancy and occupies retail space at a time when retailers are turning their backs on town centres.
- 2.7 Across the road from the premises is an empty retail space which looks worse for wear with boarded-up windows and would no doubt be a deterrent for investment in the area. This applicant has invested £40,000 in the premises, this is an occasion where the Council could maximise growth and opportunity. Small units being occupied and presented in a smart fashion can only be a positive for the town.
- 2.8 With the bar for applications being set so high no conditions or times of operation would be suitable, perhaps the Authorities are hoping to see a eutopia that does not exist, it certainly feels like the iron curtain is being brought down around the town centre a phrase used in the case of Brewdog Bars Ltd v Leeds City Council.
- 2.9 The approach also brings bigger concerns; Blackpool clearly does have issues with outlet density and the negative effects that flow from alcohol and a Cumulative Impact Policy is more than justifiable. However repeated interventions from the Authorities that can't be properly evidenced will undermine the credibility of that policy especially if challenges are made that subsequently overturn the Council Decision. Looking back to the summer of 2018 B& M Super Store on Church Street obtained a premises licence without a police objection. They clearly are not alcohol-led and trade in the day they also offered a condition that no more than 10% of the display area would be used for alcohol. These premises are many times bigger than the applicants.
- 2.10 This demonstrates the substantial change in approach over the last few years and it feels like the pendulum has swung too far in the opposite direction. The consequence of the change in approach is already beginning to reveal itself with Off Licences in Saturation areas exchanging hands for inflated values due to the perception that it is impossible to obtain a licence no matter how modest the operation is.

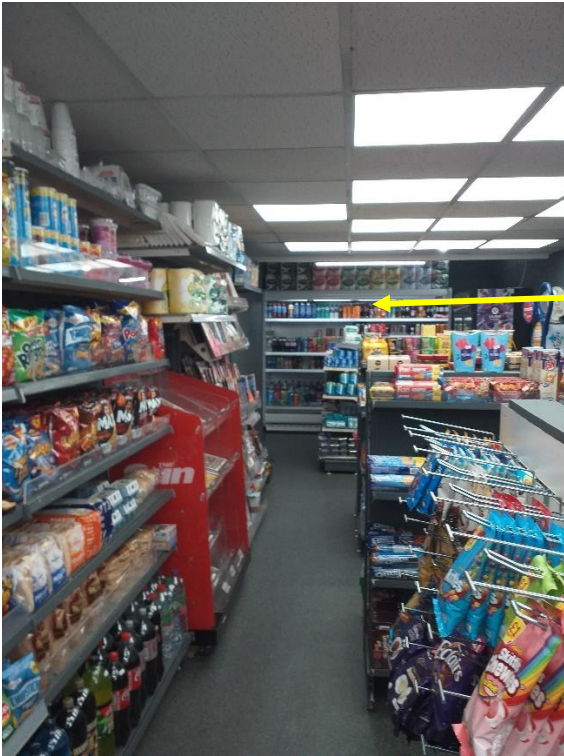
### **Conclusion**

- 3.1 The application on the table is that of a Temporary Event Notice, modifications contained herewith in paragraph 1.7 will be readily accepted as an approved method of operation. This reduces the risk to a low level.
- 3.2 The time of year is also an important factor; it is the first week in November one of the quieter times of the year for retailers in Blackpool and with the extremely small footprint the shop occupies the risk is reduced even further
- 3.3 The applicant is an experienced man working as a manager in the alcohol retail sector since 2007. In April 2021 he acquired 2 petrol stations both with Licences to sell alcohol. He also has another Off Licence in Peterborough.

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3.4 It is our view that a postage stamp size premises which this is offering the type of controls which go with the grain of the Policy will have little if any impact on the Licensing Objectives

Some internal photos of the layout will follow.



Proposed Chiller for beers and wines



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Google Maps Ariel view to indicate the location of the premises

*Mark Marshall*

Mark Marshall ( FCILEX)

Date: 26th October 2022