

IN THE MATTER OF :

**VARIATION OF PREMISES LICENCE FOR THE EIGHT FARMER, 7 PARKERS HILL,
ROAD, COPPENHALL, CREWE, CW1 4PY**

MARSTON'S PLC

APPLICANT

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

1. This is an application for a variation of an existing premises licence pursuant to Section 34 Licensing Act 2003. The premises has been traded by Marston's for a considerable period of time and is known as the Eight Farmers. It forms part of Marston's Plc retail division. The premises is a large community pub which has a high level of food sales and community engagement.
2. The applicant is Marston's Plc which operates some 1500 licensed premises nationwide. This premises falls within the retail division of which there are some 600 premises.
3. The premises was granted a Licence pursuant to the 1964 legislation which was converted in 2005. The application seeks to vary the Premises Licence. The application does not seek to change the interior of the premises but looks to license the external area adjacent to the premises and to incorporate the car park area within the licensed area on limited terms.
4. The premises stands in significant grounds and has a shared access point with a small Co-operative Supermarket. Additionally, since the premises was constructed, new flats have been built immediately adjacent (where it was proposed the Doctors Surgery should be constructed). To the side and rear of the premises is residential accommodation.

The Application

5. To confirm, the application seeks to licence the area immediately to the front of the premises which is landscaped, the area immediately to side of the premises which forms the beer garden and described as patio and play area. It is anticipated that these areas will be used on a regular basis and will support the operation of the premises, particularly during the period of Covid allowing additional space for customers and facilitating social distancing.
6. Secondly, the application seeks to licence the car park area. It is not anticipated that this will be used on a regular basis and the space is sought to be used on occasions throughout the year but particularly to host Christmas Markets or fairs, Farmers Markets and Car Boot events along with other community events such as those which arise on the occasion of a Royal Wedding or the VE/VJ Day celebrations which had hoped to have been undertaken during the course of this summer.
7. The external area is sought to be licensed only in respect of retail sale of alcohol and late night refreshment. Retail sale of alcohol is to a lesser hour than that permitted under the existing licence being Monday to Saturday, 10:00 to 22:30, and Sunday, 11:00 to 22:30.
8. The application requests the licensable activity of late night refreshment for a period of 30 minutes between 23:00 and 23:30. It is anticipated that this will be used rarely but is there to provide a potential for hot drinks and food externally on winter events such as Bonfire Night, Halloween, Christmas Eve when people may remain outside for the purpose of a celebratory event after the cessation of sales of alcohol.
9. Representations have been received from a number of residents. The representations predominantly focus upon the existence of anti-social behaviour and noise in the area.
10. A bundle of documentation has been produced to support the Applicant's position and this is annexed. Reference will be made to the Bundle during the course of the hearing and within this Written Submission. Early release of the

Written Submission and bundle have been undertaken so as to try and assist the Committee and those making representations during the course of the hearing and to understand the position of Marston's plc in respect of the application.

The Applicant

11. Marston's are a responsible and experienced operator of licenced premises with robust systems in place for the exercise of due diligence to ensure that their premises are properly and responsibly run in accordance with the law and to ensure the avoidance of the commission of regulatory offences and, in particular to guard against anti-social behaviour and the sale of alcohol to persons under the age of 18, on the easing of lockdown Marston's were the first company to develop a QR code in respect of Track and Trace a system now being adopted by the Government in conjunction with the Track & Trace App, the company engaged internally health and safety experts who have prepared COVID secure risk assessments for all premises and have a regime for ensuring the compliance with social distancing requirements and compliance with the Government guidelines.
12. The Designated Premises Supervisor is Lisa Hamlett, she has been the DPS since April 2015 and is an active member of the local community. In addition to being the Designated Premises Supervisor at the Eight Farmers, she is also a Parish Councillor and is known for her work in the community and particularly her charitable works. It is her genuine intention to utilise the extension of the licence to benefit the community. In recent times, the premises has undertaken significant fund raising activities supporting Leightons Hospitals Children Ward, local food bank and numerous local causes of the last year – see page 10 for pictures of food parcels.
13. As a key location within the community, the DPS has used Christmas as an opportunity to assist those that are less privileged providing Christmas lunches for the homeless and has supported the emergency services by providing a Blue Light Christmas dinner for those working over the festive period. (See pages 6 -9) of Bundle for press coverage of these events.

14. The premises has a strong home cooked food offer (see page 11 – 13) of the Bundle enclosing the menu). Food sales represent some 30% of overall trade.

15. The application has not attracted adverse comment from the Police, Trading Standards or Environmental Health, all of which would be quick to raise their concerns should from their objective assessment of the situation believe they exist. It should be noted that the majority of residential representations were raised after a request to do so was made by Councillor Evans.

16. A hearing is required to determine the application.

The Licensing Objectives.

17. 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

18. 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.

19. 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".

The Application Process

20. Section 34 sets out the procedure for making a variation of Premises Licence Application and Section 35 sets out the provisions for determination of that application where representations have been made by the Responsible Authorities or other persons.
21. Section 35 provides that where an application for a variation of a Licence is properly made, following receipt of relevant representations, the Licensing Authority must hold a hearing following which it may, if it thinks it is necessary, take such steps necessary for the promotion of the licensing objectives. The Licensing authority can determine that no steps are required as it should seek to focus on the steps appropriate to promote the particular licensing objective.(9.37)

Representations

22. Those objecting to the grant of the variation raise various matters which the applicant will address during the course of the hearing. However, the Applicant will submit as follows:

(i) Anti-social behaviour

It is acknowledged that there is a level of anti-social behaviour in the area, however it is disputed that the same is manifestly caused or attributable to the Eight Farmers, in particular:

- (a) Allegations are made that disruption occurs late at night. The premises closes at 11p.m. weekdays and 01:00 on weekends, with the car park and external areas cleared. The premises is aware that third parties utilise the car park facility of the premises and the Co-op late at night and have reported the same.
- (b) Use of the Cut – The Applicant acknowledge that issues exist as to use of the Cut by third parties however it disputes that the majority of these are

linked to the operation of the Eight Farmers please see Bundle of documents and request by the DPs in her capacity as Parish Councillor for a gate to be installed. The closure of the footpath or erection of a gate would be a matter for Highways Department of the Local Authority (see pages 16 – 17 of the Bundle as to Parish Council Meeting Minutes).

(ii) Noise Nuisance

It is acknowledged that the beer garden generates a level of noise but this is predominantly used by families and is supervised by the premises. However, evidence can be provided as to noise generated by third parties, in particular video footage of loud parties undertaken along Harris Close and noise generated by the block of flats adjacent to the premises. The applicant and in particular the DPS acknowledge the noise nuisance impact of these and has made complaints directly to Mark Vyse – see Bundle, page 14 - 15.

The premises actively engages with its customers requiring them to remain quiet whilst outside and to leave in an orderly manner. The licensing of the external area will formally bring the space under the regulation afforded by the Licensing Act 2003.

A number of local residents have signed a petition in support of the application and confirming to the level to which the premises is operated – please see Bundle, page 18 to 21.

(iii) Crime and Disorder

When the premises re-opened on 4th July, one incident arose, prior to that the premises has been incident free, with no attendance by the Police. Those individuals who caused issue on 4th July (the first day pubs were allowed to re-open following lockdown) have been barred from the premises and this is a procedure which is undertaken when necessary in respect of customers who fail to comply with the standard of the premises.

On 16th September the premises was visited by the PCSO and Police Officer Byron. Those Offices confirmed they have no objection to the variation and that the callout since re-opening on 4th July has been recorded as “unjustified callouts” and have not been adversely noted against the premises.

(iv)The Smell of Cannabis

Various residents recite in their representations the smell of cannabis or what they believe to be a drug. The DPS has experienced the same and on those occasions has checked the garden and those persons within it. It is the view of the Designated Premises Supervisor that the smell emanates from the flats. She has raised this with the Police. She has also raised this with the flats management company.

On the 16th September, the DPS spoke with the Police regarding the use of drugs within the adjacent flats, in particular the smoking of cannabis. The Officers confirmed that as far as they are aware there had been no calls to them regarding cannabis use at the premises and noted the concerns raised by the DPs as to potential usage of drugs within the domestic accommodation of the flats.

(v) Covid 19

The premises has the benefit of a comprehensive Covid Risk Assessment to which it has worked since 4th July. That Risk Assessment has been adapted with each change in the Government's guidelines. The Assessment was prepared by the Designated Premises Supervisor working with Health & Safety Officer employed by Marston's plc. Our client's Risk Assessment is checked by the Area Manager and also unannounced checks of the In-House Health & Safety Team. No enforcement body has raised issue with the steps undertaken at the premises to make it Covid secure.

The Role of the EHO/Police

23. At paragraph 9.12 of the Guidance it is stated that in their roles as a Responsible Authorities, the Police and Environmental Health Officers are experts in their fields and will be the Licensing Authority's main source of advice. The Licensing Authority must determine on an evidential basis and justified on the evidence before it and taking into account the evidence that is not before it. There are no representations from either Responsible Authority

24. At paragraph 10.8 of the Guidance the Licensing Authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of the hearing it is appropriate to impose conditions to promote one or more of the four licensing objectives. It should be noted that at paragraph 10.9 the Guidance confirms that it is possible in some cases no additional conditions will be appropriate to promote the licensing objectives. It is submitted in this case that no additional conditions are required in view of those already endorsed upon the licence

At paragraph 10.10 of the Guidance it is confirmed thatthe Licensing Authority should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

It is submitted in this case that the potential risk arising has been proportionately addressed by the existing conditions and to add more would be a disproportionate response

Applicant's Case

25. The premises seeks to change the extent to which it is licensed but that change makes no impact on the:

- a. overall operation of the premise,
- b. the customers it attracts
- c. occupancy of the premise
- d. licensable activities

The bundle provides details of the Menu offered.

26. It is not envisaged that there will be a potential increase to noise generated by the premises, the beer garden is already used. By bringing it within the licensed area, it enhances the regulation of the area and will provide increased supervision.
27. The Applicant will rely upon the decision in the case of Daniel Thwaites plc –and- The Wirral Borough Magistrates Court (2008 EWHC 838), in particular paragraph 63.
28. "The fact that the Police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they have appeared to have dismissed the Police's view because it did not agree with their own.....they proceeded without proper evidence and gave their own views, excessive weight and their resulting decision, limiting the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives..... ."
29. In this application there is no evidence to illustrate that the current operation at the premises impacts adversely upon the licensing objective of public nuisance, the evidence put forward by the residents relates predominantly to matters happening in the area over which the premises has no control and often takes place at times when the premises is closed.
30. Changes will allow for greater social distancing of customers.
31. The proposed use of the car park is for an on occasional basis. It is considered that the events proposed will enhance the community by providing local opportunities. Separate risk assessments will be completed for each such event and if required the Applicant will liaise with the Police and Licensing Authority.

John Gaunt & Partners

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