

## Statutory Licensing Sub Committee

A meeting of Statutory Licensing Sub Committee was held on Thursday, 14th October, 2021.

**Present:** Cllr Paul Kirton( Chairman), Cllr Jacky Bright, Cllr Eileen Johnson.

**Officers:** Natalie Hodgson, Jonathan Nertney (HR,L&C), Stephen Donaghy, Rebecca Dunmore, Michael Fearman, Rebecca Dunmore (DCS&T), Elliot Beevers, Polly Edwards, Sarah Whaley (MD)

**Also in attendance:** Applicant; Spirit Pub Company (Services) Limited represented by Mr P Warne of TLT Solicitors, Operators; Mr K Robertson, Ms S Marshall and Mr T Marshall and Ms S Baron, Business Development Manager (Greene King).

Members of the Public who had made representation; Mr Carneiro and Mr & Mrs Shaw.  
Ward Councillor, Councillor Andrew Sherris

**Apologies:** None

**SLS  
6/21**      **Evacuation procedure**

The Evacuation Procedure was noted.

**SLS  
7/21**      **Declarations of Interest**

There were no declarations of interest.

**SLS  
8/21**      **LICENSING ACT 2003  
APPLICATION FOR THE VARIATION OF A PREMISE LICENCE  
MARSHALLS (FORMERLY UNION ARMS), 68 HIGH STREET, YARM, TS15  
9BH**

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee were asked to consider an application for variation of a Premise Licence for Union Arms, 68 High Street Yarm, TS15 9BH.

The Chair introduced all persons who were present and explained the procedure to be followed during the hearing.

A copy of the report and supporting documents had been provided to all persons present and to members of the Committee.

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee considered the above application, full details of which appeared before Members in their agenda and the background papers.

The Committee noted that the application was for the variation of a Premises Licence to authorise licensable activities as detailed within the application contained within the Committee report.

The Committee noted that in support of his representation local resident Mr Carneiro had e-mailed a copy of the Teesside Magistrates' Court Justices' 'On' Licence document granted on 3rd June 1999. This document had been omitted from the Committee report and a copy was provided to everyone present at the meeting. The two-page document set out the Licence Conditions imposed by the Magistrates (hereinafter referred to as the "embedded conditions"). When

the licensing regime was transferred from the Courts to Local Authorities embedded restrictions/conditions were included on the Premises Licence during the transfer process unless a request was made for them to be removed. In relation to this premises the embedded restrictions/conditions had been attached to the Premises Licence since 2005.

The Applicants representative Mr Warne explained to the Committee that he had made an error within the conditions that he had agreed with Environmental Health on his client's behalf. Condition number 10, contained within the agenda papers should have read 22:30, not 22:00. Mr Warne confirmed that this condition mirrored condition number 12 which had been agreed with Cleveland Police, and was also documented within the committee agenda papers.

Mr Warne confirmed that in respect of condition number 12 he was instructed that "... (except for bank holiday weekends to 23:30)" could be removed.

Mr Warne stated that the Union Arms was now trading as Marshall's, having benefitted from £250,000 of investment and new operators since May 2021. It was noted that the premises were now food led, serving food from around the world and afternoon teas, along with cocktails and craft beers. The Committee heard that the premises desired a sophisticated restaurant atmosphere and the music played was described as quiet background music.

Mr Warne explained to the Committee that the current licence was outdated, and the applicant sought to update this, along with extending opening hours on Fridays and Saturdays by 30 minutes as detailed within the main report.

Mr Warne also proposed condition number 13 replaced the previous requirement for door supervisors. If there were to be a live music event, the operators would have to risk assess the requirement for door staff on a case-by-case basis. If an incident did occur, Police would be required to check the risk assessment and ensure that it had been undertaken correctly. The requirement for permanent door staff was very costly and not proportionate for a food led premise.

Mr Warne submitted to the Committee that the Magistrates' ruling from 1999 was irrelevant to their application, as it was based upon the 1964 Licensing Act that was repealed in 2005.

The Committee heard that prior to the applicant's application to regain a piece of land at the rear of the premises, no complaints had been received in relation to the premises since 2011. The Committee noted that Environmental Health officers had visited the premises and neighbouring properties specifically in relation to noise and nuisance complaints and had found no issues.

Mr Warne confirmed that there was no evidence of dispersal issues at the premises, nor any evidence of crime and disorder. Mr Warne submitted that the public house next to Marshall's was noisier.

The Committee heard from Mr Warne that the application to licence the external area for the sale of alcohol was to enable customers to order and pay for alcohol whilst outside, rather than having to return inside to the bar. This manner of operation was now commonplace in licensed premises with the use

of mobile chip and pin terminals which allowed payments to be made from tables.

Mr Warne explained to the Committee that the operators wished to have speakers in the garden, which would be turned off at 22:30 when the garden was vacated, this being the requested terminal hour for use of the external area. Mr Warne confirmed that there was no space being added to the garden area.

Local residents Mr Carneiro and Mr and Mrs Shaw were given the opportunity to ask questions of the applicant.

Members of the Committee asked questions of the applicant.

It was noted that Cleveland Police and Environmental Health had not made a representation. The applicant had indicated amendments to his operating schedule which would be attached by way of conditions should the application be granted. A copy of the agreed conditions signed by the applicant was appended to the main committee report.

Environmental Health officers attended the meeting to provide any clarification required from all interested parties.

The Senior Environmental Health Officer explained to the Committee that he had visited the premises on 4th October 2021, following allegations of noise. Environmental Health tested the premises' sound system on full volume and found that in the external area with the premises' doors closed officers could only just hear music. Officers then went to the other side of the rear wall and they could not hear the music. Visits had been conducted with and without notice to the premises.

It was also confirmed that with the premises' doors open noise was heard, however the applicant had agreed to a condition that doors would be shut when music was played. The proposed conditions also required that doors be fitted with self-closing devices to ensure that they did not remain open or allow noise egress after their use by staff or customers. The Committee were informed that the premises' doors were fitted with self-closing mechanisms in compliance with the proposed conditions

It was however confirmed by The Senior Environmental Health Officer that noise assessments had not been undertaken inside residents' properties, however advised the Committee that if complaints were received in future, listening equipment could be installed to monitor noise.

The Committee read and had regard to the two representations received from residents who owned properties within Brewery Yard.

Residents expressed that they had no cause for complaint since 2011, as they believed that the premises' compliance with its current licence had allowed residents to live in harmony with the premises for twenty years.

The Committee heard that the embedded conditions were imposed by Magistrates in 1999 following residents' complaints at that time, which also resulted in the erection of the four-metre wall to the rear of the external area of

the premises.

The residents expressed that they wanted businesses to thrive in Yarm, but not at the expense of their health and wellbeing. The residents expressed how stressful the situation had been for them, and that they had lost sleep as a result.

The Committee heard that the residents refuted Environmental Health's findings in terms of there being no noise nuisance nor light pollution from the premises.

Members of the Committee and other parties were given an opportunity to ask questions.

All parties present were given an opportunity to sum up their case with the applicant invited to speak last.

Members had regard to the Committee papers, which had been circulated prior to the hearing and presented to them, in addition to the oral submissions made on behalf of the applicant and the other parties at the meeting.

Having carefully considered those matters brought before them and in reaching their decision, Members had full regard to both the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the Guidance Issued under Section 182 of the Licensing Act 2003 (as amended) and the Council's Licensing Policy.

The Committee noted that extensive conditions had been agreed between the applicant and the responsible authorities including Cleveland Police and Environmental Health. The Committee were of the view that they had to give weight to the fact that the relevant appropriate authorities had considered the application and were of the view that the proposed conditions would ensure that the premises would not undermine the licensing objectives. These conditions did seek to address the concerns which had been expressed by residents and property owners who had objected to the application.

The Committee were satisfied that the applicant understood their responsibilities and would operate the premises in a responsible manner.

The Committee noted that the residents who had objected to the application were extremely concerned at the potential for noise nuisance. The Committee accepted that some of the embedded conditions imposed by Magistrates in 1999 appeared to have ensured that no public nuisance or disorder had occurred in recent years. The Committee also noted that they must consider this application for a variation of the premises licence on its own merits.

The Committee were mindful that an application could not be refused based solely on residents' concerns, where no complaints had been received. On balance it appeared to the Committee that some of the conditions attached by the Magistrates Court in 1999 and which had operated as conditions on the Premises Licence since 2005 had ensured that residents were not caused disorder or public nuisance and that the licensing objectives were not undermined.

After considering all the evidence and representations, the Committee were of

the view that the application could be granted in part subject to three of the embedded conditions remaining on the licence, and the addition of two additional conditions to ensure that the operator provided contact details for any future complaints and responded proactively to any complaints.

As the Committee were not persuaded to remove three of the embedded restrictions, condition 16 as agreed by the applicant with Environmental Health would not be added to the licence.

The Committee were persuaded that if the second embedded condition was removed and customers of the premises were granted admission to the area to the east of the rear wall, there was potential for customers to congregate outside within this area. The grassed area on one side of the four-metre wall was in very close proximity to residential properties. It appeared that this area had acted as a buffer for local residents and property owners and ensured that no public nuisance or disorder had occurred in that area. The Committee were not persuaded to remove that embedded condition.

The Committee noted the applicant's submissions that they had no plans to install external play equipment, nor did they express a desire to modify the rear wall, and therefore confirmed to the Committee that they did not require the removal of the first and third embedded conditions.

The Committee granted the application with the following hours:-

Licensable activities including the supply of alcohol were granted as set out in the application with a terminal hour of 00:30 hours.

Hours premises are open to the public on Friday and Saturday with a terminal hour/closing time of 01:00 hours.

The current external area of the premises is licenced for the sale of alcohol until 22:30 hours.

The use of the current external area by customers is limited from 09:00 hours to 22:30 hours, including bank holiday weekends.

As well as conditions as detailed in the operating schedule the Committee also attached the following additional conditions to the Premises Licence: -

Conditions to be added to the Licence

The Committee agreed to attach the conditions to the licence that had been agreed between the Applicant, Cleveland Police and Environmental Health, subject to the removal of wording from condition 12 of the Police conditions and condition 16 of the Environmental Health conditions. The Panel agreed to amend Mr Warne's error within condition 12 of the Environmental Health conditions.

The Committee also added two conditions.

Conditions Added by the Committee

1.If requested, the premises must make a contact email address and telephone

number available to the residents of properties in the vicinity of the premises which can be used to report and log any complaints concerning the operation of the premises.

2.The premises will take all reasonable steps to ensure that all complaints they receive are investigated and the complainant provided with a response as soon as reasonably practicable.

#### Conditions agreed with Cleveland Police

1.The DPS and all other members of staff will ensure that no open vessels are taken off the premises by customers.

2.All staff will be fully trained and retrained on a 3 monthly basis in relation to the laws relating to the sale of alcohol to underage persons, persons buying on behalf of under 18's (proxy sales), persons appearing to be under the influence of alcohol and also the operation of the associated "Challenge 25" policy. Staff will receive refresher training at least every 3 months.

3.The business will maintain a refusals book to record all instances where the sale of alcohol has been refused. This shall include the date and time of the attempted sale, together with a description of the incident. The Designated Premise Supervisor/Premises Manager/Business Owner will check and sign each page and the refusals book will be made available to the Licensing Authority and/or Responsible Authorities upon request.

4.Training records, signed by both the staff member and the Designated Premise Supervisor/Premises Manager/Business Owner will be retained for future reference and shall be updated at least every 3 months. All staff training records will be made available to the Licensing Authority and/or Responsible Authorities upon request.

5.The business will maintain an incident book to record all instances where the staff deal with people who have been unruly, drunk, abusive, aggressive or have committed criminal acts or have had to call police for such incidents. This shall include the date and time of the incident, together with a description of the incident and whether the police were called/attended. The Designated Premise Supervisor/Store Manager/Business Owner will check and sign each page and the incident book will be made available to the Licensing Authority and/or Responsible Authorities upon request.

6.A digital Closed Circuit Television System (CCTV) will be installed and maintained in good working order and be correctly time and date stamped. The system will incorporate sufficient built-in hard drive capacity to suit the number of cameras installed, whilst complying with the Data Protection legislation. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition. Cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs. There will be a minimum of 30 days recording. The system will record for 24 hours a day. The system will incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer. The digital recorder will have the facility to be password protected to prevent unauthorised access, tampering, or deletion of images.

There will be at all times a member of staff on duty who is trained in the use of the equipment and upon receipt of a request for footage from a governing body, such as Cleveland Police or any other Responsible Authority, be able to produce the footage within a reasonable time, e.g. 24hrs routine or immediately if urgently required for investigation of serious crime.

7.All persons under the age of 18 must be escorted by an appropriate adult or legal guardian and must be entering the premises for food and soft drinks only and will have vacated the premises by 21.00 hours.

8.A "Challenge 25" policy will be implemented with all staff insisting on evidence of age from any person appearing to be under 25 years of age and who is attempting to buy alcohol. There shall be notices displayed at all points of sale and at all entrances and exits to inform customers and remind staff that the premises is operating a "Challenge 25" policy.

9.Only valid passports, UK "photo card style" driving licence, PASS approved proof-of-age cards or Ministry of Defence "Form 90" identification cards shall be accepted as proof of age or any other form of ID specifically permitted by government in relation to sales of alcohol.

10.There will be a minimum of two notices displayed on the premise indicating that the sale of alcohol to those under the age of 18 is illegal and that those adults who buy alcohol for immediate disposal to those under age the age of 18 are committing an offence.

11.No sale of alcohol in the external areas will take place after 22.30 hours.

12.The use of the beer garden by customers shall be limited from 09.00 hours until 22.30 hours.

13.The DPS/ manager will undertake a risk assessment in relation to any night where regulated entertainment is to be provided at the premises past 23.00 hours in order to determine whether SIA door staff will be required to promote the licensing objectives. Where the risk assessment identifies the need for SIA door staff, these will be provided at the times and in the numbers deemed by the risk assessment to be appropriate in the circumstances. This risk assessment can be undertaken once in relation to a series of nights where the same entertainment is to be provided (for instance, regular Friday night discos), so long as it is revisited regularly to ensure that the risk assessment remains appropriate for that night. The risk assessment is to be in written form and kept at the premises for at least 30 days after the night or series of nights to which it relates.

#### Conditions agreed with Environmental Health

1.All external doors and windows shall be kept closed (excluding for access and egress) while entertainment is in progress.

2.Noise from the premises shall not cause a public nuisance at any residential property in the vicinity.

3.All entertainment shall take place indoors only, except for up to 10 events per

year in the outside area, these shall cease by 22.00hours.

4. With the exception of up to 10 events per year, speakers in the outside area will play only low background music.

5. During the 10 events per year when music is played externally local residents who have not specifically requested not to be notified are to be notified in writing at least 7 days prior to the event and shall be provided with a telephone number to contact the premise should music be causing a disturbance. The phone number provided shall be manned at all times during the event. A log shall be made of all noise checks, complaints received and remedial action to resolve any complaints.

6. The use of the beer garden by customers shall be limited from 09.00 hours until 22:00 hours.

7. Use appropriate management controls to reduce the likelihood of customers causing a nuisance to local residents when using and vacating the premises. This should include placing at all exits from the premises, in a place where they can be seen and easily read by the public, notices requiring customers to use and leave the premises and the area quietly. (Note, this may also include a reference to vehicles).

8. The licence holder or his representative shall conduct periodic assessments of the noise coming from the premises and shall take steps to reduce the level of noise where it is likely to cause a public nuisance to local residents. A written record shall be made of those assessments and shall include, the time and date of the checks, the person making them and the results including any remedial action. All records shall be retained for one year.

9. There shall be provided at the premise's containers for the storage and disposal of waste foods and other refuse from the premises. Those containers shall be constructed, maintained, and located so that access to them by vermin and unauthorised persons is prevented and arrangements shall be made for the regular lawful disposal of their contents.

10. No sale of alcohol in the external areas will take place after 22:30 hours.

11. A noise limiting device should be provided covering all internal sound systems which at all times shall operate at the decibel level set by the Environmental Health Unit and shall be maintained in good working order.

12. All doors to the external area shall be fitted with a lobby or self-closing device to prevent ingress of smoke and egress of noise.

13. The DPS will request in writing that deliveries of alcohol to take place between 07:00 and 18:00 hours.

14. Refuse, including bottles shall be disposed of from the premises between the hours of 07:00hrs- 20:00hrs.

15. There shall be no use of flood lighting likely to cause a nuisance to local residential properties.

Embedded Restrictions Remaining on the Licence (i.e. not removed)

- 1.No external play equipment shall be installed.
- 2.The wall separating the "patio area" from the "grassed area" shown on the deposited plan (2881-60) shall be maintained in its current position and at not less than its existing height.
- 3.There shall be no sale, supply or consumption of intoxicating liquor nor admissions of patrons of the licensed premises in the area to the east of the said wall.

RESOLVED that the application for the variation of a premise licence, Marshalls (formerly the Union Arms), 68 High Street, Yarm TDS15 9BH be granted in part subject to three of the embedded conditions remaining on the licence, and the addition of two additional conditions to ensure that the operator provided contact details for any future complaints and responded proactively to any complaints. Conditions to also be included as agreed between the applicant, Environmental Health and Cleveland Police as detailed above.