

Version 2.

1. REPRESENTATION

This license representation is made by Nigel Shearing, the chair of RESPECT WEYMOUTH action group, set up by local residents and hospitality support businesses in and around the North Harbourside. The group's members are extremely concerned about the potential impact this application could have on their business, health, wellbeing and quality of life. The application is ambiguous and seems to be at odds with the professed intention of the council's new, draft licensing policy to promote all these things as important. The group is all about:

Respecting People. Respecting Rights. Respecting Place. Respecting Balance.

It has been encouraging this since July 2019.

Nineteen residents and business owners have contributed to this collective report. They are identified in Appendix 1. All have fears over retaliation and criminal damage because of events and reasonable suspicions over the last 12 months. (It is requested that Appendix 1 is redacted for all public documents, press releases, the licensee, and the licensee's representative. It is understood that council officers and hearing councillors will need to see this information to validate the representation.)¹

Residents and business owners making this collective representation wish to mediate through RESPECT WEYMOUTH.

Given the level of community interest, if the applicant makes changes to the variation before a hearing, RESPECT WEYMOUTH would like an extension of variation time to consider the new position.

2. NOTICE

Notice ID: WEY1752351

Notice effective from 17th June 2020 to 17th July 2020

Notice is given that Jamie Cragge has applied to Dorset Council for a variation of premises licence in respect of Somewhere Else, 23 St Edmunds Street, Weymouth, DT4 8AS. For the removal of conditions 40, 41 & 42 from Annex 2. Any interested party or responsible authority may make representations in writing to, The Licensing Section, Dorset Council, South Walks House, South Walks Road, Dorchester, Dorset, DT1 1UZ within 28 days from the date of notice.

Note: the electronic variation document in the council's Dorset For You page is not clear on the matters of variation.

Representations to be made BY 9 JULY 2020

Link to Existing License https://wam.westdorset-dc.gov.uk/PAforLalpaLIVE/2/LicensingActPremises/Search/8176/Detail?LIC_ID=28799

3. VARIATION

The proposed variations are to:

REMOVE CONDITION 40) Glass and Bottles. Drinks, open bottles and glasses will not be taken from the premises at any time. Empty bottles and glasses will be collected regularly and promptly. Glass and other sharp objects will be stored and disposed of using tamper proof receptacles. Receptacles will be secured and not accessible to the customers.

Meaning all drinks that are available inside can be taken outside.

REMOVE CONDITION 41) The PLH/DPS will prominently display notices which inform customers that open bottles or glasses may not be taken off the premises.

Meaning display notices can be removed. They won't apply.

REMOVE CONDITION 42) Plastic/toughened polycarbonate (or similar) glasses/bottles will be used in all outdoor areas.

Meaning glass can be used for all drinks, inside and outside. And carried/left away from the venue.

¹ Supported by Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)

The full application states:

This application is to assist with the rising challenges to support the government requirements to operate safely during the Covid 19 pandemic. The purpose of the change is to be able to extend the current offering of products to safely deliver a takeaway service of cold and hot beverages.

Using one way systems throughout the venue for entrances and exits adhering to the 2 meter distance rule.

The proposed plan is to use the main entrance for customers to sit in for consumption of products on the premises. Using the rear door as exit only.

The use of the 2nd door to the left of the main entrance for take away sales only for consumption off the premises these products will be hot beverages, iced drinks, and cold beverages between the hours of 11am - 10pm. This entrance will be safely monitored for social distancing and a queuing system will be implanted for the safety of staff and the public.

It is noted that, for crime and prevention, the applicant will:

Continue to work with local authorities and local pubwatch scheme.

Display all relevant signage required for respecting the neighbourhood.

Refuse entry and service for any one who is drunk, violent, or under the influence of drugs.

And for public safety

Drinks will be served in plastic where suitable

All sales will be subject to the challenge 25 policy

The reasons for justifying the removal of conditions may not be conditional on the license.

4. THE AREA

Appendix 1 shows the location of the venue and its immediate surroundings. It is located on the edge of the town next to a long standing residential area tucked behind the North Harbourside. This is a conservation area. The venue was once a jeweller's shop. The music style has changed significantly in recent years, as have the visitor profiles. And it is now very young. Long term residents have verified that its public nuisance impacts have got worse in recent years.

The burned out church opposite the venue is due for conversion into 30 small but high quality apartments. Development is due to start this year. Other recent developments include a new block of harbour view apartments in Helen lane, a stunning warehouse conversion into apartments at the end of Helen lane, and an ongoing conversion for high quality apartments in a large warehouse abutting Helen Lane and the harbour. The residential population of the area is increasing while the impacts from bars and clubs are getting worse.

Maiden Street provides a busy one-way route through the centre of town - day and night. To date, there are no plans to close it for 'opening-up' the local economy during the lifting of pandemic restrictions.² It is noted that a new application for a sitting out license has been submitted by Somewhere Else, to use the loading bays. A separate representation will be made for this given the likely nuisance impacts and 'Covid Secure' risks for patrons, road users and passers by.

The harbour area is covered by the Weymouth & Portland Anti Social Behaviour Related Public Spaces Protection Order 2018 (PSPO) and a Cumulative Impact Area (CIA) policy. The harbour itself has a drinking culture that condones open drinks in glass containers. Even though it is covered by the PSPO. More recently this has escalated towards public nuisance but, in any event, it's all over when the sun disappears as crowds disperse and move on. This permanent variation will add to this by encouraging new drinking arrangements into the streets of Weymouth's CIA.

4. OVERALL APPLICATION & LICENSING OBJECTIVE ISSUES

The application seems ambiguous. Permanent removal of these conditions could pave the way for future changes beyond the proposed operating model, with others following suit, and added impacts for cumulative impact (CIA).

The variation is being used to secure permanent changes for temporary problems and economic hardship. These

² Confirmed by Dorset Highways on 7 July.

changes will go beyond the imminent support measures of emerging legislation³, due to end 30 September 2021.

This representation is therefore made for the proposal and its potential worst case impacts.

The full application does not state how patrons would be managed in controlled areas with new 'open' off-sales.

There is potential for conflict with the council's strategic licensing policy in a number of areas.

There is potential for conflict with the council's image and tourist vision for Weymouth.

The variation could pave the way for uncontrolled, unregulated and expanding street drinking in a CIA and well established residential, hospitality support and conservation area.

There is potential for conflict with the Weymouth & Portland Anti Social Behaviour Related Public Spaces Protection Order 2018 (PSPO) enforcement principles, and challenges to enforcement with limited resources.

There is potential for new impacts to influence the future of Purple Flag awards, with reduced safety, wider public nuisance, more reporting, less enforcement resources and more serious crime with glass in the street.

There is potential for conflict with the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 (as amended) due to the venue's inability to be 'Covid Secure' and safe for patrons and passers by with drinking in the street. Including the emerging guidance for sitting out licenses. See Appendix 3.

The permanent variation is limited to Somewhere Else, but the applicant also runs the adjacent nightclub, The Closet. Both are being promoted for a new, daily joint venture between 09.00 and 03.00. It is foreseeable that the proposed operating model could change, especially in the summer months. And this could increase the numbers of customers in very limited areas outside of both venues. To date, the controlled areas of both have unresolved nuisance issues.

The existing license permits 'contained' off-sales between 09.00 to 04.00. The drinks menu for this does not include 'open' drinks, jugs, shots or cocktail promotions, which are a bedrock of the venue. And there is no drinking in the street between hours of 22.00 to 04.00 because 'open' drinks are not permitted outside. This naturally limits the duration and level of nuisance and the number of people on breaks outside.

There appears to be two emerging scenarios:

1) During pandemic restrictions, using the venue as a daily coffee shop and 'Covid Secure' cocktail bar, with potential to serve 'open' off-sales with/without outside seating or controls between 11.00 and 22.00, as proposed. With inside arrangements for the rest of the licensing hours.

2) After the pandemic, without nightclub restrictions, serving 'open' off-sales as proposed, with drinking enabled outside between 22.00 and 04.00, especially in the summer months.

The existing public nuisance outside the venue is unresolved. Residents are already suffering with things as they are. Most noise nuisance has gone unreported up to June 2019 for various reasons, see GROUND TRUTH below. It's not clear how door supervision or other control measures will support the new, wider scope of the proposal.

If people are able to drift away from controlled areas with 'open' drinks and glass into adjacent streets, between bars and into residential areas, within the CIA and the PSPO area, it is foreseeable that this will bring new problems.

Granting a permanent 'open' off-sales variation will set a precedent for other bars in the CIA. And some have licenses to 06.00. They also have unresolved complaints about public nuisance. So, it is very foreseeable that other bars and nightclubs could follow suit, bringing more alcohol to the streets, without sitting out arrangements, and more related impacts to the CIA.

Emerging legislation will temporarily override the council's Licensing Policy for the CIA and, in particular, the rebuttable presumption of refusal for proposed variations that are **likely** to make things worse by adding to the cumulative impact.

It is not clear if or how the venue will use music to support the variation. At the moment, this is restricted under 'Covid Secure' measures to prevent people raising their voices. It already has a Stage 2 Notice for statutory nuisance from Environmental Health and, although some remedial work has been done for noise bursts, the issue of pulsating, low frequency bass is unresolved. It is noted that there are conditions to prevent music in the street from external speakers. And it is noted that a venue door is open for exit and off-sales now. If internal music is used to encourage off-sales or entertain those congregating outside, now or after the pandemic, this could lead to a Stage 3 Notice and legal action.

It is understood that the council has already considered consultant proposals to develop this part of the CIA for more 'alfresco' entertainment. ⁴ But the guiding report ignores Licensing Objective impacts, PSPO principles, CIA limitations and the common law rights of local residents. The cornerstone of the study was also based on the burned out church conversion to a large hospitality premises with a rooftop bar. But this building is now being developed into apartments and other residential developments are in progress. It is hoped this outdated report does not influence the application.

³ The Business and Planning Bill 2020

⁴ <http://www.feria-urbanism.eu/weymouth-master-plan/4589715160>

5. THE GROUND TRUTH

This variation has the potential to further affect what was once a respectable, balanced and family centred neighbourhood in a small conservation area. In the last ten years, the delicate balance here has been almost desimated. Some homes have been turned into holiday lets and are struggling. Some have been let out to rent and have a constant turnover of suffering tenants. Houses are difficult to sell. Guest houses deal with complaints. And those who are left fear what's to become. Especially given the potential for introducing Houses in Multiple Occupation. And this is mostly because of irresponsible licensees and a lack of proactive enforcement. In the last 12 months, 6 families have found it too stressful and moved out. At least 2 homes are for sale now. And 1 guest house is for sale. It's a very real and worrying situation and the balance needs to be redressed.

The approach to licensing enforcement is predominantly reactive. Because of this and a lack of local reporting, the applicant and other licensees have been left alone when conditions have been breached. There is no out of hours enforcement from Licensing or Environmental Health either. And most residents have lost faith in the system and stopped reporting all but serious crime. This impacts the council's and the police's ability to secure ground truth with formal statistics, especially for public nuisance and noise, because people have either kept quiet or moved on. Ultimately, police crime and disorder statistics do not reflect the ground truth for public nuisance here. There is no CCTV to support enforcement either. And this clearly has a significant impact on patron behaviour in the area.

The chair of RESPECT WEYMOUTH has been working with Environmental Health to address nuisance issues since June 2019. And because of this, it was agreed that no further complaints were needed from others. This reduced the impacts on very limited resources of environmental health, and focussed the issues in one investigation which had shared impacts elsewhere. But there has been a significant drawback to this. Enforcing bodies have not acknowledged or appreciated the public nuisance impacts on other residents or businesses, because they haven't complained, as asked, believing the impacts were a sole issue for the group's chair.

To help demonstrate the GROUND TRUTH, RESPECT WEYMOUTH initiated a qualitative survey on 15 June. So far:

- 17 residents and hospitality support residents/businesses have completed the questionnaire⁵
- 11 respondents have lived here more than 5 years (some over 25), 3 between 3-5 years, and 3 between 1-2 years
- 14 have sited Somewhere Else a venue responsible for excessive noise outside
- 11 have regular disturbed sleep through noise from people congregating outside
- 9 have been anxious about retaliation as a complainant
- 9 have been unable to enjoy friends or family for sleep overs, because of the excessive noise from outside
- 10 have been unable to enjoy home entertainment without having to raise sound levels, to help cancel out the noise
- 8 have been unable to enjoy normal conversation, without having to raise voices
- 12 have had their well-being affected by anxiety, tiredness and feelings of helplessness, frustration, etc.
- 5 families with children have noticed them suffering from tiredness and loss of concentration
- 16 respondents have been regularly forced to close windows and suffer hot, stale air in bedrooms
- 11 have suffered loss of sleep and disturbance 3 or more times a week, and 4 have suffered 2 times a week
- 16 were affected between 11pm and 1am, and 17 were affected between 1am and 3am
- 17 have stated that disorderly and noisy behaviour was not limited to holiday periods
- 7 have stated that overall, the problems have got worse, and 8 feel they have got much worse
- 16 have stated that dealing with excessive noise outside of venues is a priority (not transient crowds)
- 17 believe the existing balance between licensed venues and the residential community is unfair and not acceptable

⁵ This is now 20, the report will be updated for the hearing if necessary

- 5 always report crime, 6 report it sometimes, and 6 don't report it at all
- 11 current residents have been forced to think about moving out of the area
- 11 respondents don't understand their role in the licensing review process
- 14 respondents want to support collective action to restore the balance with a community review

Here are some quotes from the survey:

If you said things have got worse, what's changed?

"Originally a reasonably quiet street at night but things started to get worse with the introduction of smoking regulations and extended licensing hours. On warm dry summer evenings crowds sit in the street. Girls/women scream, boys/men fight and some distance themselves from the crowd and sit on window sills and doorsteps holding loud conversations. I have witnessed a stabbing on the corner with East Street. Heard cars zooming around. Taxi doors banging and bottles being loaded in to bins. I have had a wing mirror kicked off my car and a neighbors bottle recycling box hurled up the street. A doorman did sweep that up. The drug dealing was happening during the day time. I did inform the police and the usual suspects did eventually move on elsewhere. Music is now more invasive."

"Louder and later music and more people outside at all hours making lots of noise urinating and drug taking throughout the night week and weekends. Horrific at times."

"When we moved to Helen Lane in 1996, the balance between the effects from licensed venues and residents was fair and acceptable, and the area was a lively, but very pleasant place to live. The balance has changed dramatically. The disruption has included anti-social behaviour of the most extreme kind: violent behaviour, including fights, intimidation of residents and damage to property, public drug taking including discarded hypodermic needles, public sex acts, public urination and defecation, extremely loud music from venues, shouting and swearing from clientele."

"Later drinking hours have led to more drunkenness and associated rowdy and anti-social behaviour. Visitors to my house frequently report being unable to sleep at night."

"Damage to property. Years ago when somewhere else was Celevinoes and the closet was Verdis, there were loud rock bands yet you never heard the noise. The licensees and door staff kept the noise under control and had much more respect for local residents. Queuing and noise after hours was better controlled and regulated."

"The drug usage, toilet habits in the street and noise. People have become indifferent to the rules and do what they want."

If you reported crime or nuisance, were you satisfied with the action and outcomes?

"No point, I just moved."

If you've been forced to think about moving out of the area, why?

"I would not choose to live here if it wasn't to run <a hospitality support business> and it is only running this that keeps me here because of the noise and unsocial behaviour I have witnessed, including drug dealing, lewd acts in the street, foul language fighting urinating and defecating on my doorstep vomiting over my railings onto the property to name a few. If I was a resident only I would have moved years ago."

"We bought the property as a holiday home to relax and unwind from our busy lives and spend quality time with our children. We were left sleep deprived stressed and anxious. My children have seen, heard and been subjected to behaviour that is completely unacceptable! We now rent our property out on a long term let."

"Because of the noise every single night of the week i get no sleep, this in turn is starting to effect my work and personal life. The level of fighting and shouting is also becoming unbearable."

"Because I'm sick of my daughter having to be subjected to seeing the way people treat the street and outside of our home. We don't feel safe there anymore, or like we are being listened to."

"Affecting my two children. Feeling unsafe. Exposed."

"I have had to accommodate my 91-year-old mother who has dementia, and the area was no longer safe or conducive to her wellbeing. The severity, nature and persistence of noise and anti-social behaviour through the night and early morning would have made it impossible for her to live with us there. The shouting and fights were so frightening for her, that we have had to move away from our much-loved home."

The licensing policy and Licensing Act state the need to uphold the licensing objectives, and that each objective has an equal weighting. This Public Nuisance survey is a true reflection of what is actually happening here, to who, when and how, and as such needs to carry the same weight as reported statistics for more serious Crime and Disorder.

Somewhere Else has been a significant contributor to this problem. It is the busiest venue in the street. And the noise produced by existing patrons in managed areas has been significant. Followed closely by those from the adjacent

partner premises, The Closet. Because of different opening hours, social groups, people numbers and music styles, it is usually very simple to attribute nuisance to this venue.

Some public nuisance, statutory nuisance, and license condition issues at Somewhere Else are still unresolved. There is an unresolved complaint about an unenforceable, 'preventative' noise condition. This has left the applicant ignoring the condition, the council unable to enforce it, and local residents in a worse place than the spirit of the license intended.

6. PREVENTING CRIME AND DISORDER

It is very foreseeable that granting permanent 'open' off-sales could increase the number of people drinking outside, who will be controlled and uncontrolled, mobile, intoxicated, and congregating for longer, potentially up to 04.00 and beyond. The impact of this on Crime and Disorder is:

The existing council's licensing policy states that it has *"a duty to do all that it reasonably can to prevent crime and disorder in the area, under Section 17 of the Crime and Disorder Act 1998. The Council has paid special attention to this in formulating its policies."* Granting a permanent variation across all licensing hours with foreseeable impacts could challenge this position.

Drinking in public spaces with disorder or nuisance behaviour is enforceable by the PSPO. So, permitting the supply of new, additional alcohol into the street with 'open' off-sales is likely to make the impacts for this worse. At any time. Council PSPO enforcing officers do not work late hours. Police are thin on the ground dealing with more serious crime. Licensing also has very limited resources and is unable to enforce street drinking. So, it is foreseeable that granting a permanent variation across all licensing hours is likely to make things worse for residents and enforcement bodies. It is also very likely that increased impacts will get worse without CCTV support.

Serious crime may not increase, but there is potential for worse outcomes of intoxicated conflict with more drinks and glass outside. Especially if drinking areas are not supervised, cannot be controlled and containers aren't collected.

There is potential for other variations to follow suit in this CIA, with even more drinking in the street and people mixing across different venues. These have very unique and different social groups. It is foreseeable that uncontrolled drinking could increase the risk of disorder, street skirmishes and violent crime.

When busy, and without a sitting out area, Somewhere Else patrons cannot be contained on the narrow pathways outside the venue, even with door supervision. They spill onto the road and side streets, leaving residents feeling vulnerable and unsafe. As things stand, they openly deal and use recreational drugs in the street and under windows of residents, then re-enter the premises. They do the same after urinating, vomiting and defecating against resident's homes and cars. More people in the street, drinking alcohol, with less control will make this much worse, for longer, especially if toilet facilities are unavailable.

It appears that the 'Off-sales and compliance with the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 (as amended)' can't be met. See Appendix 3

7. ASSURING PUBLIC SAFETY

It is very foreseeable that granting permanent 'open' off-sales across all licensing hours could increase the number of people drinking outside, who will be controlled and uncontrolled, mobile, intoxicated, and congregating for longer, potentially up to 04.00 and beyond. The impact of this on Assuring Public Safety is:

As we emerge from the pandemic, it is understood that the Town Council and Dorset Highways are not planning to close Maiden Street in the 'opening up' plan. All temporary road closures that do take place will be limited to 10.30 - 21.00.

It is noted that Somewhere Else has applied for a 'cafe license'. Without a permanent or temporary road closure, it seems very unlikely that this could be permitted given the narrow pavement widths, the status and business of the road, the need for loading bays, and ability to meet Covid Secure arrangements. Granting a permanent variation with no sitting-out arrangements is very likely to increase risks to patrons, passers by and road users. It is accepted that the emerging Bill could enable this in any event, but it would have protection measures for the CIA.

Somewhere Else has a very young visitor profile. With drink promotions, this encourages binge drinking. The public nuisance associated with this has been excessive. In the early hours, traffic can be erratic and fast moving. Patrons have been seen falling into the road and lying on pathways, presenting risk to themselves and others from passing vehicles. Granting a permanent variation across all licensing hours could increase this risk.

Given the above, and the historic use of residential areas to congregate and take recreational drugs, the use of 'open' off-sales will encourage more patrons to temporarily leave the venue and do this for longer, with drinks. Note that police are unable to respond quickly enough to deal with this. It is foreseeable that granting a permanent variation across all licensing hours could increase this risk.

The use of glass could cause serious problems with broken debris or worse, malicious wounding if fighting occurs outside. Glass use won't be managed or controlled if patrons leave the area. And it's likely that it would 'travel' to be disposed of outside resident's homes. This doesn't happen now, so granting a permanent variation across all licensing hours could make this worse.

There is a risk that increased numbers of patrons congregating outside the venue will not socially distance from each other. And that the 'Off-sales and compliance with the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 (as amended)' will not be met. See Appendix 3.

There is a risk that increased numbers of patrons from open off-sales could influence the ability of passers by to be socially distanced, forcing them onto a busy highway and adjacent pathways. This has made residents feel intimidated.

8. PREVENTING PUBLIC NUISANCE

It is very foreseeable that granting permanent 'open' off-sales across all licensing hours could increase the number of people drinking outside, who will be controlled and uncontrolled, mobile, intoxicated, and congregating for longer, potentially up to 04.00 and beyond. The impact of this on Preventing Public Nuisance is:

The Council's licensing policy states that it *"is under a duty to protect the rights of residents to privacy and family life under Article 8 of the European Convention of Human Rights. At the same time, the Council respects the interests of commercial landowners to operate their premises without unnecessary restraint. This Statement of Licensing Policy is intended to reflect a balance between those rights."* Granting a permanent variation across all licensing hours with foreseeable impacts could challenge this position.

"In its role of implementing local authority cultural strategies, the Council policy recognises the need to encourage and promote live music, dance and theatre for the wider cultural benefit of the community. A natural concern to prevent disturbance in neighbourhoods will always be carefully balanced with these wider cultural benefits, particularly those for children." There appears to be few cultural benefits to permanently introducing drinking to the busy streets of a historic conservation area. Moving street drinking closer to the town in controlled and uncontrolled areas, with potential to creep into early mornings, every day, with new impacts for the CIA and PSPO could have an adverse impact on the cultural feel and experiences for visiting families. It is foreseeable that granting a permanent variation across all licensing hours could increase, not prevent, disturbances.

It is foreseeable that more street drinking in this sensitive location could create a more intimidating atmosphere for visitors and residents. The residential and hospitality support includes holiday lets and guest houses, some of which suffer poor reviews as things are now.

The council's licensing policy position states that *"the role of the Council as licensing authority is to hold a balance between the needs of the licensing, entertainment and food industry and the needs of residents and other users of the Borough including businesses, workers, shoppers and visitors."* It is foreseeable that granting a variation across all licensing hours with foreseeable impacts would swing the balance even further away from the needs of adjacent residents and business.

This CIA is has suffered excessive nuisance. So far, 3 venues have been served with Stage 2 Statutory Nuisance Notices. Somewhere Else is one of these. It is foreseeable that this could end in legal action.

The chair of RESPECT WEYMOUTH has worked closely with the applicant to try and resolve noise outside and signs were jointly designed and made. But they haven't been actively managed in controlled areas. Door supervisors stand by.

9. PROTECTING CHILDREN

It is very foreseeable that granting permanent 'open' off-sales across all licensing hours could increase the number of people drinking outside, who will be controlled and uncontrolled, mobile, intoxicated, and congregating for longer, potentially up to 04.00 and beyond. The impact of this on Protecting Children is:

Safety of children with 'open' off-sales is a concern. Given the age profile of visitors frequenting Somewhere Else, it is foreseeable that under age drinking could be increased by the handing over of permitted 'open' off-sales in the street.

There is likely to be more shouting, swearing, and foul language exposure for resident's children of impressionable age. The World Health Organisation makes it very clear that children are an 'at risk' group from the impacts of sleep loss.

10. SUMMARY POSITION

This representation is based on advice from licensing lawyers, Poppleston Allen.

RESPECT WEYMOUTH believes that granting permanent 'open container' off-sales across all hours of the license would make things worse for the future of this CIA.

RESPECT WEYMOUTH sympathises with the financial hardships being suffered by the applicant, but seeking a permanent license variation for a finite crisis that is being supported by new Government legislation and financial help seems very unnecessary. The Bill will bring problems of its own. But they are temporary. The applicant appears to be using the pandemic to remove conditions and lever-in permanent change, with risks to the CIA and local community.

The council's new, draft licensing policy promotes overarching priorities of strong healthy communities, and staying safe and well. Granting a permanent variation across all licensing hours could challenge these priorities.

The tailored conditions of this variation were offered and agreed by the licensing authority as proportionate, necessary and appropriate for the specific risks and circumstances of this venue and the CIA. Not that long ago. The conditions are still available in the current Licensing proforma risk assessment at:

CD44 - Glass and Bottles. Drinks, open bottles and glasses will not be taken from the premises at any time. Empty bottles and glasses will be collected regularly and promptly. Glass and other sharp objects will be stored and disposed of using tamper proof receptacles. Receptacles will be secured and not accessible to the customers.

CD45 - The PLH/DPS will prominently display notices which inform customers that open bottles or glasses may not be taken off the premises.

CD46 - Plastic/toughened polycarbonate (or similar) glasses/bottles will be used in all outdoor areas.

Nothing has changed. The venue is still next to an expanding residential area (over 35 new homes are planned to be built in the next 12 months). The license is in a CIA. The CIA has been challenged and maintained in the latest licensing policy review and has been added to a revised policy that is now on consultation. Street drinking with public nuisance and disorder is enforceable by the PSPO. This will bring new challenges. And the disturbance from existing public nuisance, crime and disorder without street drinking is still unresolved.

Permanent removal of the conditions could only add to the problems being faced for now and the future. They are still necessary and appropriate for this license and the CIA. It is foreseeable that granting this application could eventually mean more people using unsuitable outside space with less supervisor control and more people 'drifting' into residential areas. There could be more people at risk on the highway, more noise and disorder, for longer, with more recreational drug use, vomiting, urinating and defecating in hidden pockets of residential side streets. And there is more likelihood of ASB and glass related violence between different bar patrons that follow suit. And this would be exacerbated by limited out of hours enforcement resources and no CCTV.

Annexe 3 of the License demonstrates that further conditions were required following a hearing for the venue. It is understood these were provided to reduce public nuisance and disorder. However, this is still an unresolved issue.

It is foreseeable that permanently removing these conditions could bring new impacts for:

'Best Bar None', "An accreditation scheme supported by the Home Office and drinks industry that aims to improve standards in the evening and night time economy through a combination of responsible management and operation of licensed premises, ongoing improvements, and social responsibility. Best Bar None's goal is to help provide a safer night out to all. The scheme intends to:

1. Reduce alcohol related crime and disorder

It is foreseeable that more nuisance, crime and disorder could take place with this variation.

2. Build a positive relationship between licensed trade, police and local authorities and the private sector

Granting this variation is likely to impact local hospitality support in guest houses and holiday lets, and private long term letting businesses. It won't create positive relationships.

3. Improve knowledge and skills of enforcement and regulation agencies, licensees, and bar staff to help them responsibly manage licensed premises

4. Make sure that accredited venues meet the minimum standards and champion ongoing improvements

It is foreseeable that granting this variation could champion how to make a CIA worse, and other venues in the CIA could follow suit. Bringing more drink to the streets and more challenges to enforcement.

5. Recognise responsible premises and share good practices with others

As above, with good practice of permanent street drinking with adverse impacts for a CIA and conservation area.

6. Highlight how operating more responsibly can improve the profitability of an individual business and attractiveness of a general area

It is foreseeable that granting a permanent variation could make the area more intimidating and less attractive to visitors with families. And less attractive to those wishing to move into emerging residential developments.

Granting this variation appears to be at odds with the council's enforcement policy position of "A Balanced Approach. In assessing enforcement action, the Council will aim to adopt a proportionate approach to the problem." Especially with the new Bill emerging.

Granting this variation appears to be at odds with the council's enforcement policy position of "Helpfulness. The Council believes that prevention is better than cure and will often work to advise and assist on compliance with the law.

It seems likely that the emerging Business and Planning Bill will temporarily relax all off-sale conditions. As the applicant is seeking. So this variation will mirror that but could trigger long term damage to the CIA. Granting this variation will prevent the swift, 48 hour protection measures of the Bill too, because there will be no 'relaxed conditions' to reverse. They will be permanently removed. It seems the only way to deal with a problem after this would be through the Licensing Act, and it's likely this would take much longer and be far more problematic.

The existing and new draft council licensing policy has a CIA policy position that:

"creates a rebuttable presumption that applications for new premises licences, club premises certificates, or variation applications that are likely to add to the existing cumulative impact will normally be refused, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact or otherwise impact adversely on the promotion of the licensing objectives.

The effect of adopting a special policy of this kind is to create a rebuttable presumption that where representations are received applications will normally be refused unless the applicant can demonstrate, in their operating schedule, that there will be no adverse cumulative impact on the licensing objectives."

For the reasons outlined in this summary and preceding sections, RESPECT WEYMOUTH believes it is very foreseeable that granting this permanent variation will add to the existing cumulative impact, without the support needed to mitigate it, for now and the future. The rebuttable presumption of refusal should be upheld.

For the reasons outlined in this summary and preceding sections, RESPECT WEYMOUTH strongly objects to the permanent removal of license conditions 40, 41 and 42 for this CIA. They are still needed beyond the life of the emerging pandemic legislation. The risks in this CIA have not changed.

For the reasons outlined in this summary and preceding sections, RESPECT WEYMOUTH strongly supports the emerging Business and Planning Bill. This will enable the applicant to achieve what he's proposing without permanently adding to the long term impacts of the CIA. And if things don't work out, there will be swift enforcement measures to satisfy the needs of the local community.

RESPECT WEYMOUTH remains willing to work with the applicant to explore issues and improvements around respect and balance for the night time economy in this neighbourhood.

Appendix 1 - Representation, Mediation and Protection Register (For Redaction as necessary)

Name	Address	Survey	Contributed to Representation	Mediate in 'Respect Weymouth'	Fear of Retaliation	Requires Anonymity
1.N. Shearing	Chair of RESPECT WEYMOUTH	Yes	Yes	Yes	Yes	Yes (address)
2		Yes	Yes	Yes	Yes	Yes
2.1		Yes	Yes	Yes	Yes	Yes
3		-	Yes	Yes	Yes	Yes
3.1		-	Yes	Yes	Yes	Yes
4		-	-	-	-	-
5		-	-	-	-	-
6		-	-	-	-	-
7		-	-	-	-	-
8		Yes	Yes	Yes	Yes	Yes
9		Yes	Yes	Yes	Yes	Yes
10		Yes	Yes	Yes	Yes	Yes
11		Yes	Yes	Yes	Yes	Yes
11.1		Yes	Yes	Yes	Yes	Yes
12		Yes	Yes	Yes	Yes	Yes
13		Yes	Yes	Yes	Yes	Yes
13.1		-	Yes	Yes	Yes	Yes
14		Yes	Yes	Yes	Yes	Yes
15		Yes	Yes	Yes	Yes	Yes
16		-	-	-	-	-
17		Yes	Yes	Yes	Yes	Yes
17.1		Yes	Yes	Yes	Yes	Yes
18		Yes	Yes	Yes	Yes	Yes
Moved out						
A		Yes	Yes	Yes	Yes	Yes
B		Yes	-	-	-	-
C		Yes	-	-	-	-
D		Yes	-	-	-	-
E		Yes	-	-	-	-

Note: The survey is ongoing and more residents and businesses will be canvassed to support future action.

Appendix 2 – Location and Character of Neighbourhood



1.



2.



3.



4.



5.



6.



Appendix 3 - Guidance for Off-sales and compliance with the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 (as amended) and the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (as amended)

<https://www.popall.co.uk/>

<https://www.popall.co.uk/docs/Applications/OFFSALESADVICE.pdf>

This information and following questions and answers has been developed by a cross sector group looking to reduce risk for licensed premises operating during the current pandemic and so ensure the safety of the public, premises staff and officers and provide clarity for all involved.

Jim Cathcart (UK Hospitality)
Ian Graham (National Police Chiefs Council, Licensing Advisory Group)
Rebecca Johnson (Local Government Association)
John Miley (National Association of Licensing Enforcement Officers)
Clare Eames (Poppleston Allen)
Leo Charalambides (Kings Chambers)
David Lucas (Institute of Licensing)

Introduction

The recent fine weather and relaxation in some lockdown measures has seen the public understandably seek to regain a degree of the life that existed before lockdown and this includes consumption of alcohol with friends and family. Licensed premises have seen their businesses severely impacted and are having to adapt quickly to this new world to ensure the reactivation of their businesses can meet the new challenges and laws. The Police and Local Authority are responsible for ensuring compliance and likewise face new challenges and as lockdown is further relaxed no doubt more questions will arise.

One particular concern over the past few weeks has been groups gathering outside or close to premises that are offering off sales and, in some cases ignoring social distancing guidelines or engaging in anti-social behaviour requiring police involvement.

This is challenging for both the Premises and the Police and Local Authorities. The regulations are new, untested and have caused confusion for many. Partnership has never been so important to enable problems to be identified and resolved swiftly. Premises will need to ensure their risk assessment and methods of operation have considered these new risks and where relevant there should be engagement with local police and licensing authorities and we are seeing some Authorities helpfully provide guidance to premises to support them.

Whilst premises licences may allow off sales of alcohol for collection and takeaway, if problems are identified, premises could still face potential enforcement under Coronavirus regulations and the Licensing Act 2003. Given that social distancing is a public health issue, breaches of these rules is not an offence and would not appear to engage the licensing objective of public safety which section 182 Guidance (para 2.7) defines this as “ safety of persons using the relevant premises rather than public health which is addressed in other legislation”.

Whilst police can and will deal with those persons committing offences, they will also take a holistic view and where alcohol is thought to have played a part in the cause of the problem, they may seek to mitigate further risk by taking action against a premises.

Regulations and laws are always open to interpretation and challenge but in these challenging times with new social risks and rules it is hoped pragmatic partnership working will avoid many issues and resolve the few that might arise quickly as there is a shared common aim to have safe and compliant premises.

Legislative overview

The practical effect of Regulation 41 is that pubs and restaurants are required to stop selling food and/or drink for consumption on the premises unless exempt under Regulation 4(2).

Regulation 4(3) states that: "An area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business".

The practical effect of Regulation 4(3) is that the prohibition includes places where seating is available that are next to or adjoining premises that sell food or drink, and prevents people from sitting or congregating in those areas.

This is to prevent consumption taking place in beer gardens, outside seating and other "adjacent" areas. Although they are not subject to the closure provisions, supermarkets and off licences would be expected to prevent the consumption of alcohol in areas adjacent to their premises.

These Q and A's have been prepared to assist all involved in how to navigate the issues identified:

Q: Can I legally provide off-sales in sealed or open containers from my premises – for example a pint of draught beer to take away and consume elsewhere?

A: Yes, if you have the necessary off-sales permission on your licence with no further restrictions. This will be stated on your premises licence and you should check the times and days permitted and review any conditions that might be relevant. Note: Any off-sales authorised by a Club Premises Certificate MUST be sold in sealed containers.

Q: Can I provide seating for customers of the business, for the purposes of consumption?

A: No. Seating cannot be made available (and this can include areas not under the control of the premises) and this is not restricted to seating within the premises such as beer gardens and adjoining smoking areas, but would include areas adjacent to the premises which also might include public benches.

Q: If I knowingly allow customers to take alcohol away in open or sealed containers for consumption in a seated area as outlined above, is there an offence committed?

A: Yes, this would be a breach of Regulation 4, which is a criminal offence and a Prohibition Notice could be served, or it could be felt that this is undermining the licensing objectives and a licence review could be instigated.

Q: What if customers take away alcohol and are congregating in the immediate vicinity, and consuming their alcohol?

A: It is clear that the intention of the regulations was to discourage any sort of congregation on or near licensed premises. If there are breaches of the regulations or ASB then as above, the premises could be subject to enforcement.

Q: What social distancing measures need to be in place?

A: Adequate social distancing measures should be put in place to protect staff and customers wishing to purchase or collect food or drink from your premises. Consider accepting only contactless payments and consider relevant government guidance.

Q: To what extent am I responsible for behaviour of customers who lawfully purchase drinks to take away, but then congregate elsewhere in such a fashion to be breaching regulations or social distancing guidelines in an area away from the premises?

A: It would be hoped that premises will take a common sense approach and would promote and encourage social responsibility of customers (as within the existing Licensing Act responsibilities), and it would not be expected that customers are asked to confirm where they intend to take the alcohol to. If however off sales are made in open containers it might be reasonable to consider where the customer is going to consume the alcohol. Enforcement could be both under LA 2003 and the Coronavirus Regulations.

Q: What about customers who take their drinks whether in sealed or open containers and consume them in an area that is caught by a Public Space Protection Order (PSPO) also known as controlled drinking zones?

A: If persons are consuming alcohol in a controlled area or PSPO, their alcohol can be seized or the person can be asked to dispose of the alcohol (check your local authority controlled zones). Consider posters to advise your customers.

Q: What about individual responsibility? – is it right that the premises can be responsible for the behaviour of individuals or groups beyond the premises or adjacent to them?

A: Yes they can be – it will depend on the specific circumstances at the time. While individuals have responsibility for their actions depending on the facts their behaviour could be linked to the premises.

Q: What advice should I give to customers and should I be warning them about social distancing?

A: While customers are attending to collect or order food or drinks best practice would suggest you have undertaken a risk assessment to consider the issues and in the same way you advertise under age sales policies you may wish to consider customer messaging as their behaviour could have a direct impact on the premises. You may wish to contact your local authority for advice and guidance. Please note that this document does not constitute legal advice but is the group's considered opinion of the matters contained within.

Appendix 4 – Hearing Evidence to Support this Representation

Video

To be confirmed as needed

Photographic

To be confirmed as needed

Other

To be confirmed as needed