



Please ask for Brian Offiler
Direct Line: 01246 345229
Fax: 01246 345252
Email: committee.services@chesterfield.gov.uk

The Chair and Members of Licensing
Committee - Group 2

Councillors Bellamy, Avis Murphy,
Brunt, Derbyshire, Peter Innes,
Redihough, Brown

Dear Councillor,

AGENDA SUPPLEMENT

Please see attached supplementary documents for the agenda item(s) listed below for the meeting of the LICENSING COMMITTEE - GROUP 2 to be held on THURSDAY, 18 MAY 2017, the agenda for which has already been published.

3. Application For A Variation Of A Premises Licence By Daniel Thwaites Plc In Respect Of The Ark Tavern, Chesterfield Road, Brimington, Chesterfield, S43 1AD (LC180) (Pages 3 - 72)

Yours sincerely,

A handwritten signature in black ink, appearing to be "Brian Offiler", written over a horizontal line.

Local Government and Regulatory Law Manager and Monitoring Officer

This page is intentionally left blank

THE ARK TAVERN, CHESTERFIELD ROAD BRIMINGTON

APPLICATION TO VARY PREMISES LICENCE

DOCUMENTS UPON WHICH THE APPLICANT INTENDS TO RELY

Nature of Document	Pages
Copy Invoices Evidencing Sound Attenuation Works...	1 - 2
Letters of Support from Local Residents / Business...	3 - 7
Copy Map Showing Vicinity of Premises...	8
E-mail from Andy Daley dated 27.03.2017...	9
Communications from Bands & Customers...	10 - 47
Copy Judgement [Daniel Thwaites vs Wirral Borough Magistrates' Court]...	48 - 64



J . M . B

Building & Maintenance



Ref: JB/HS

25 January 2017



001807

Daniel Thwaites PLC
Star Brewery
Penny Street
Blackburn
BB1 6HL

INVOICE NO: 13-297

RE: ARK TAVERN CHESTERFIELD ROAD BRIMMINGTON DERBYSHIRE S43 1AD
ORDER NO: SPO 0064883-3

On completion of works to acoustic glazing as per quote dated 29 December 2016 £1,630.00

Additional:

Extra for 35 decible reduction glass	£ 280.00
4 further panes as per site visit	£ 624.00

Capex 4345

JP

Plus V.A.T. @ 20%

8 - FEB 2017

£2,534.00

£ 506.80

£3,040.80

SLV-105819

DL

Jenkin Hill House, Horsley Gate Lane, Holmesfield, Sheffield S18 7WD
Telephone: 0114 2891248 Facsimile: 0114 2891140 Mobile: 0777 3333138 0777 3333164
Email: - building@jmblimited.co.uk

Vat Registration No: 789 8886 17 Company Registration No: 4404731
JMB Building (Holmesfield) Ltd -Trading as:- JMB Building & Maintenance



J . M . B

SPO-6482S

Building & Maintenance



Ref: JB/PLR

29 December 2016

Daniel Thwaites
Star Brewery
Penny Street
Blackburn
BB1 6HL



Carpenter 434S

JP

All to long life

INVOICE NO: 13- 244

RE: ARK TAVERN CHESTERFIELD ROAD BRIMINGTON DERBYSHIRE S43 1AD
ORDER NO:

Porch build as per attached bill of quants	£ 8,526.10
Transportation of smoking solution from the Lindley tap to the Ark PC SUM (If larger transporter required further costs will be incurred)	£ 1,000.00
Contingency 10%	£ 952.61

OMISSIONS:-

Transportation of smoking solution from the Lindley tap to the Ark PC SUM- see below small solution build cost in place of this. (If larger transporter required further costs will be incurred)	-£1,000.00
Contingency 10%	- £ 952.61

ADDITIONS:-

Change strip footing to a reinforced toe beam	No Extra Charge
Provide hook and eye to porch door	No Extra Charge
Create a 100mm hole for air con unit	No Extra Charge
Form a small smoke solution as per drawing to be supplied	£1,000.00
Install core matting to porch	£ 140.00
Electric works to smoke solution - £690.00 included in Quants. Additional works	
Exit sign & 1 no. broken gents light.	£ 190.00

5-11-102905
Plus V.A.T. @ 20%

£ 9,856.10

£ 1,971.22

£11,827.32

Jenkin Hill House, Horsley Gate Lane, Holmesfield, Sheffield S18 7WD
Telephone: 0114 2891248 Facsimile: 0114 2891140 Mobile: 0777 3333138 0777 3333164
Email: - building@jmblimited.co.uk

Vat Registration No: 789 8886 17 Company Registration No: 4404731
JMB Building (Holmesfield) Ltd -Trading as:- JMB Building & Maintenance

This page is intentionally left blank

Regarding the complaints
about the noise from the
Bando at the Ark Tavern

I live across road from the
Tavern Pub and I'm 68 and
don't hear anything.

My address is 16 Devonshire St
I can't look in the windows.

Vieda & Richard are doing
there best to stop the said
noise, Please come and listen
in my room

16 Devonshire Street
Birmingham

14 May 2017

To whom ever this may concern,

Regarding the 'so called' noise at the Ark Tavern. I live straight across the road at number 14 Devonshire cottages Br.ington and I can assure whom ever reads this letter that I have hardly no disturbances / noise from the Pub.

Further to this, should you feel the need to contact me. Feel free to do so.

Kind Regards

We do not have any problem with
the proposed extension to the live music
licence.

4 Devonshire Street.
843 158



To Whom it may concern,

I write in regards to the Ark Tavern public house licensing hearing. As a neighbouring business I have never had any issues from noise pollution or anti social behaviour connected with the Ark Tavern. I have also lived in this village for nearly thirty years and it has always had a good reputation. As far as I know, the landlord has adhered to every sound reducing regulation as ordered by the council. If you need to contact me in relation to this matter my number is

Owner of Pete Who's Tattoos

6

45 Ringwood Road

Birmingham

Chesterfield

S43 1 DF

15th May 2017

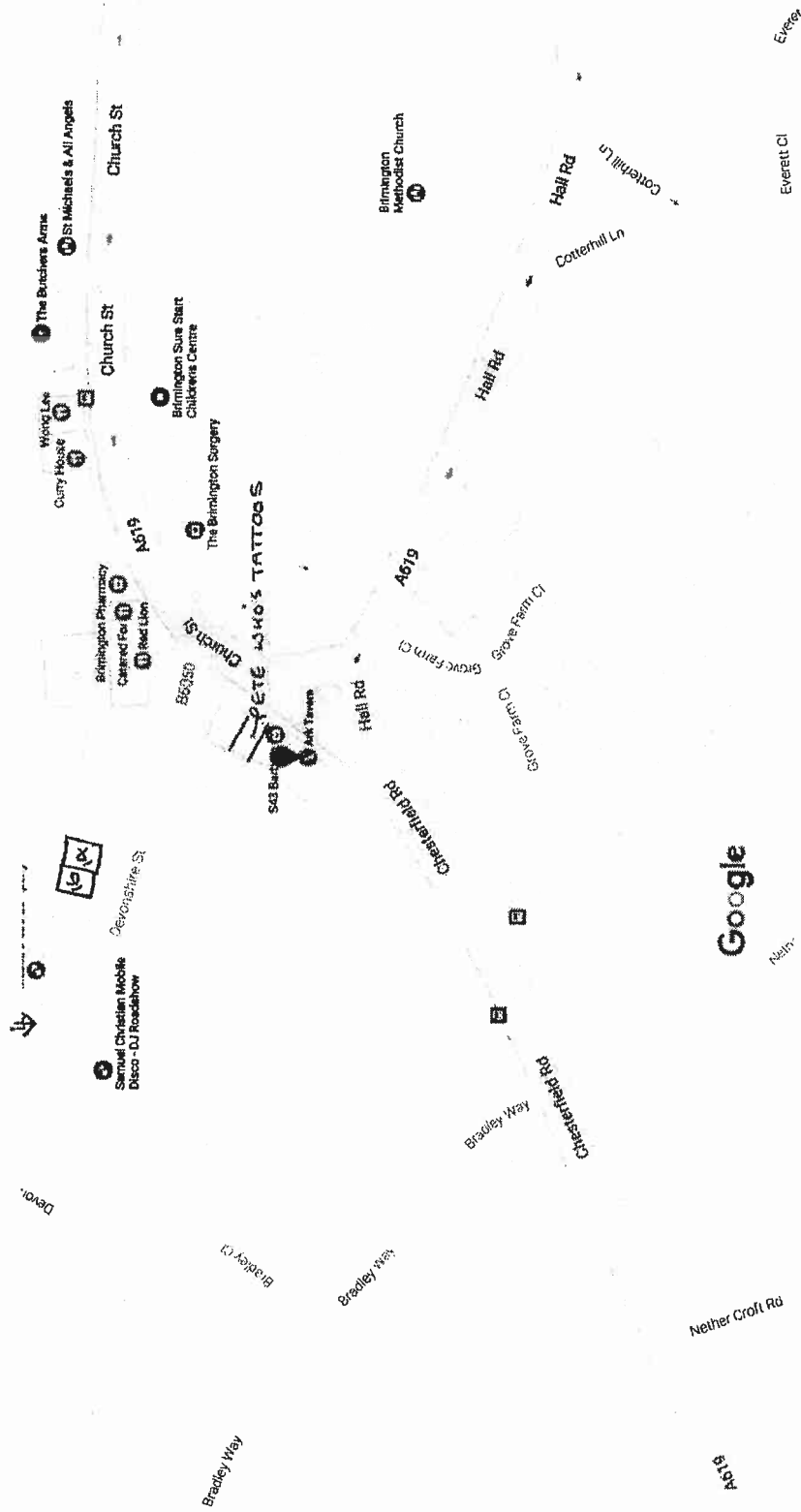
Dear Sir

I have just found out about the objection to the music licence at the Ark Tavern Birmingham, I hope I am not too late with this letter. I find this objection totally unfounded and unfair the traffic on the main road is far by the main noise in that area. I myself stood outside the house of the main objector last night, and all I heard was the traffic, this is without a 6ft wall a hedge and double glazing. If the noise is so loud as they claim why not get the council in to the house with a decibel meter, if it was so loud they would have come over to the pub that night and told them to shut down the band. This has never occurred, because it is well within accepted levels. This is a classic case of someone stirring up trouble as the pub was there before ever the house was. I have lived in this area for around eight years now and the pub has always had bands playing there. So why complain now? The present licensee has done everything possible to lessen the sound level outside the pub, more than any previous person running the pub. They have been far more reasonable about the situation than the few who are complaining constantly about it. I think the only thing that would please them is if the pub became a monastery with a silent order of monks living there.

What will they complain about next; perhaps the busses stopping the other side of the wall double decker busses are noisier than the pub and people might have the nerve to look inside the house from the top deck. And yes that is as stupid as this complaint now. They are just victimizing people who are running a very well run public house. If all pubs were run like this there would be no binge drinking or trouble with drunks. With the economic climate as it is it's a very hard business to be in, they should be applauded for running a great pub, investing money to keep the sound to a very acceptable level. And not throwing in the towel and walking away because of a very small amount of narrow minded people who nothing they do would be good enough, and ruin it for the many happy customers who enjoy a drink in moderation and music. It is a simple case yet again of not in my back yard. And I for one hope common sense is used and they get the licence or the people who drink there are worried they will say enough is enough what else can we do and walk away. And who knows then the next people running it might be far less reasonable and make life hell for the people complaining, as no one before has taken such measures to be reasonable.

7

Google Maps Ark Tavern



8

Steve Ashby

From: Andy Daley
Sent: 27 March 2017 14:55
To: Steve Ashby
Subject: Ark Tavern Full Variation Application

Hi Steve

I write on behalf of responsible authority Pollution Control in respect to this application.

I will not be raising any objections to this application for the following reasons.

1. The only complaints this section have received in recent years regarding noise from this premise is due to their outdoor TEN events, which are limited in occurrence and always within social hours. It is not unusual for pubs to hold such events in the warmer months, usually for charity, but one off like this, finishing at reasonable times are extremely unlikely to give rise to Statutory Nuisance.
2. Myself and yourself have spent a fair bit of time discussing the issues around extending the premises licence to allow Regulated Entertainment to be added to the Premises Licence to terminate at midnight. This has included monitoring visits to the area to assess the noise from the premise. I am aware that the applicant has had specialist triple glazing retro fitted to all windows of the pub fronting Chesterfield Road, and a lobby built to the rear of the premise. Air conditioning has also been installed in the premise. All these measures will help reduce noise breakout from the premise. Indeed monitoring carried out on a Saturday night following the retro fit of the specialist glazing did indicate a reduction of noise breakout from the premise.

Thanks

Andy

Malcolm Ireland

From:

Sent:

To:

Subject:

Richard Walker

Fwd: The Ark Tavern Curfew Extension

----- Forwarded message

From: William Bateman <ci

Date:

Subj:

To: I

Hi there,

I am a regular audience member as well as performer at the Ark Tavern pub in Brimington. From this I know for a long time now the Landlord and Landlady have been wanting to extend their license to play live music up until midnight. I have also heard that there have been complaints about how the Ark regularly allows music to 'blast' out at 'all hours', which is a huge lie.

Richard and Veida (Landlord/lady) have so far done all that is possible to firstly sound proof the pub- installed new windows, paid for sound proofing panels for the windows and made a porch style extension to the building which allows all the doors to be kept shut; limiting the amount of noise the neighbours may hear. Bands are regularly informed before their set about the curfew and that there are no exceptions- even all of the regulars in the pub know about the curfew therefore aren't pressuring for more music once time is up.

I am a regular player in the open mic night that they have as well as playing the venue with my band Metal Fatigue. Not once have I been in the situation where we have overrun past the curfew. There are clocks kept onstage so performers know when to stop so it would be highly unlikely for them to keep playing.

I cannot see a reason why the pub is not allowed to have their curfew extended. There are 4 pubs within the space of 200 meters, with everyone else's curfews being at 12. This is ridiculous and is stopping Richard and Veida's business from developing building the economy of that area. I have heard some rumours about the other pubs sending false complaints so that the Ark will not be as successful as their pubs which is totally wrong. I would love to see the evidence to show how the pub regularly goes past it's curfew- because their is none.

After hearing about these 'complaints' either from houses around the pub or other pubs in competition with the Ark, I was very disappointed. As a musician it is so frustrating having to stop because of an early curfew, not forgetting any audience members. Give the area a social and economical boost by allowing the Ark to play music until 12 like every other pub in the area.

Thank you for taking the time to read my letter,

William Bateman

Malcolm Ireland

From: PLAGUE VILLAGE PHOTOC
Sent: 15 May 2017 20:26
To: Richard Walker
Subject: Fwd: Ark Tavern Brimington - Licence

----- Forward

From: Joanne R
Date: 15 May 20
Subject: Ark Tavern Brim
To: PLAGUE VILLAGE

I have been a frequent visitor to the Ark Tavern on a Tuesday evening for the last year. As you are probably already aware on a Tuesday they operate an "open mic" night. It is a fantastic evening encouraging musicians of all ages to come along and perform. I regard it as a safe family environment and have been taking my teenage son to participate. In my experience they are very keen and always strictly adhere to the 11pm finish time. I also visit occasionally on a Saturday to see the bands, again I can definitely confirm the evening is arranged in such a way so they finish at the designated time.

I cannot understand why other pubs almost next door to the Ark Tavern and within the village are allowed to finish at a later time. This seems extremely unfair.

Please feel free to contact me on

if I can be of further help.

Regards Joanne Riley

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE PHOTOGRA
Sent: 15 May 2017 23:01
To: Richard Walker
Subject: Fwd: FW: The Ark Tavern

Date: Mon, 15 May 2017 at 22:59

Sent from my Windows 10 phone

Sent: 15 May 2017 22:18

To whom it may concern,

I'll try to keep this brief as I'm sure there will be MANY more similar messages to read through.

I am a resident of Brimington and am proud to call The Ark Tavern my 'local'. My main reasons for this are the friendly welcome and atmosphere and the live music.

I fully support the request for an extension to their music license. I feel I must stress that the current 11pm curfew has been strictly adhered to and that the current licensees have put various measures in place to reduce noise levels for neighbours, including fitting acoustic glass in all windows, soundproofing boards at windows and even adding a porch to the rear entrance.

They play an important role within our community and I wish them all the luck in the world.

Yours sincerely,

Miss A B Wilson.

ON BEHALF OF

1

12

Malcolm Ireland

From: PLAGUE VILLA
Sent: 15 May 2017
To: Richard Walker
Subject: Fwd: The Ark Tavern, Brimington

Fr

Date: 15 May 2017 at 15:41

Subject: The Ark Tavern, Brimington

To Whom This May Concern,

I regularly attend live music events at the above mentioned venue in Chesterfield. I have attended on Friday and Saturday nights and regularly enjoy the varied selection of live music acts.

However the events I have attended so far have always ceased at 23:00. Its a fantastic community pub, well managed and supported.

Kind regards

Sharron Shepherd

Sent from my iPhone

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



Malcolm Ireland

From: PLAGUE VILL
Sent: 15 May 2017, 10:42
To: Richard Walker
Subject: Fwd: Ark Tavern Music Nights

From: [om>](#)
Date: 15 May 2017 at 10:15
Subject: Ark Tavern Music Nights

I regularly attend the Ark Tavern on Music Nights. My son plays in 2 bands who regularly play there. I can categorically state that the music at the Ark Tavern never goes past 23:00.

Both of my son's bands have cut their sets short / started early to ensure that the 23:00 deadline is adhered to.

I have never been at the Ark when the music has played beyond 23:00.

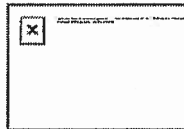
Amanda Huntingdon.

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VII
Sent: 15 May 201
To: Richard Walker
Subject: Fwd: Ark Tavern 12 o'clock license application

From:
Date: 15 May 2011, at 10:10
Subject: Ark Tavern 12 o'clock license application

To whom it may concern,

I am writing this statement to confirm that The Ark Tavern sticks very strictly to the 11pm music licence curfew. The staff are very serious about it. This actually makes life a little difficult as an entertainer - as music fans who have travelled to the venue especially to see the band, naturally expect the music to go on longer and pester for more. It's awkward, but we work with it.

I've been a professional musician for 25 years, and in that time have seen many live music venues disappear. Every time a venue vanishes, that's people out of work - the staff suffer and it gets more and more difficult to earn a living as a musician. All because a neighbour who moved into a house near a pub! Can hear a tiny bit of the sounds of people having a good time down the road if they switch off the TV and put a glass to the wall.

Veida and Richard are a very well thought of, delightful and responsible couple who run a clean and welcoming establishment. They've worked very hard at establishing The Ark as a venue and it really has a very promising future. Live music means so much to so many - it is not a public nuisance - it is entertainment that unites people, everyone is on the same side at a gig.

Best Regards,
Jamie Mallender

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

1

15

Malcolm Ireland

From: PLAGUE VILLA
Sent: 15 May 2017 :
To: Richard Walker
Subject: Fwd: Ark Tavern Licencing

Date: 15 May 2017 at 16:29
Subject: Ark Tavern Licencing

Hi Mark, as a regular in the Ark and a musician I can honestly say that the 11pm rule is strictly in force much to the annoyance of punters in the bar, in my two years of going in the pub I know of only one occasion when this rule was broken and that was when a temporary landlord was in charge. A live music venue needs to be able to entertain the same hours as surrounding pubs in order to survive. Also I sold note on approach to the pub when bands are playing you can never hear them until you are at the door, the busy traffic noise is far louder.

Regards

J R Lintin

7 Crofton Rise

S181RH

Sent from Windows Mail

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



Malcolm Ireland

From: PLAGUE VII
Sent: 15 May 2017
To: Richard Walker
Subject: Fwd:

From:
Date: 15 May 2017 at 10:43
Subject:

**mark,
on the occasions that i have been able to visit the ark
tavern this year, usually on tuesday evenings, the music
was concluded by 11pm.
regards,
jon.**

--

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



Malcolm Ireland

From: PLAGUE VILLAG
Sent: 15 May 2017 16
To: Richard Walker
Subject: Fwd: Ark Tav gi

Date: 15 May 2017 at 15:10
Subject: Ark Tav gig timings.

I play the Ark regularly with my bands and on tuesdays as host of the jam session. On my pedal board or mixing desk is a clock which is there just to be sure that the live music stops on time-which ,every time I have been at The Ark, is what happens.

Regards

Harris Nixon

Sent from my Samsung Galaxy smartphone.

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VIL
Sent: 15 May 201
To: Richard Wal
Subject: Fwd: Ark Ta

Date: 15 May 2017 at 16:41
Subject: Ark Tavern

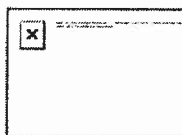
Just a quick note to say that as one of the bands that play at the ark tavern, we have had to alter our set list to make sure we do not past 11:00. We have even cut a song short to ensure we don't go over! Also, the jam nights are strictly monitored for the same reasons! If you need to speak to verify any of this, my number is Jayne wilkie on behalf of VAMP!

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILL
Sent: 15 May 2017
To: Richard Walk
Subject: Fwd: Ark Tav

----- Forwarded message -----

SUBJECT: Ark Tavern License

Hello there! As a regular customer to the Ark Tavern and involved with a regular band that plays there I can vouch for the pub finishing it's live music at 11pm every night. I know this is true as I always leave straight after it finishes as I work in school and live half n hour away from the Ark. I know that it is always finished by 11 pm as I am always home before 11:30.

This is a fantastic pub and the music scene there is one of the best I go to. The owners are nothing but respectful to the neighbours and even been to the extent of having the windows changed.

Thank you

Samantha Brown

Get [Outlook for Android](#)

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLA
Sent: 15 May 2017 :
To: Richard Walke
Subject: Fwd:

From
Date: 15 May 2017 at 16:12
Subject:

I am the lead singer with the zedz.a local band that plays regulary in the ark tavern.we have a strict finish time with the landlord and lanlady which is 11pm or before.i go in the ark tavern every weekend when not playing and every band adhers to this policy.

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE P
Sent: 15 May 2017 16:42
To: Richard Walker
Subject: Fwd: Ark Tavern Lic

From:
Date: 15 May 2017 at 16:08
Subject: Ark Tavern Licensing hearing

Dear Mark,

I am writing with regards the current issue of a late licence being granted to The Ark Tavern.

On the occasions we've appeared at The Ark Tavern we have always ended our performance promptly at the specified finish time. We always consider the general public and near neighbours of live music venues when we perform, and respect all requests to keep the volume at an acceptable level. This is our standard procedure for any venue we perform at.

To our knowledge, at no point has there been any performance of live music at The Ark Tavern beyond the current specified curfew time of 11pm.

I hope this information will be helpful in the matter.

Kind regards,
Amelia Carter
The Amelia Carter Band

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE

Malcolm Ireland

From: PLAGUE VILLAGE
Sent: 15 May 2017 14:00
To: Richard Walker
Subject: Fwd: Ark

Fro

Dat

Subject: Ark

To whom it may concern. I have played at the Ark Tavern and regularly attended gigs there and at no time has the 11 pm curfew been broken.

The staff, customers and musicians who frequent the Ark are very keen to keep the Ark as a music venue and as such abide by the rules.

Yours Sincerely

Steve Walker

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE
Sent: 15 May 2017 16:4
To: Richard Walker
Subject: Fwd: Licence Extension

From
Date: 15 May 2017 at 10:00
Subject: Fwd: Licence Extension

Dear Mark,

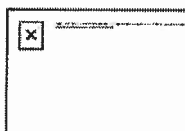
I have learned with dismay recently that residents around Brimington have taken to fabricating stories about The Ark Tavern playing loud music beyond the 11pm curfew.

May I add my absolute support in your endeavours to quell such ridiculous notions, and state for the record that both as a performer and patron of the pub, I have noted that the Licensee and all staff have stuck to the regulations diligently, and I would be willing to testify to this effect, should I be called upon.

Yours Faithfully,

Aaron Brown - BA(Hons)Music Industry Management
(The WonderWhys band)

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



Malcolm Ireland

From: PLAGUE VILLAGE PHO'
Sent: 15 May 2017 16:39
To: Richard Walker
Subject: Fwd: Ark Tavern Brimmington

Fr
Date: 15 May 2017 at 16:00
Subject: Ark Tavern Brimmington

A message concerning the 23:00 cessation of music at the Ark. As a regular to jam night and music nights, I've always known a strict adherence to stopping at 23:00.

Which is a shame for such a great pub which is putting on so much for local music lovers; great work from Veida, Richard and Staff.

Hope they get a fair extension soon.

Kind regards

Dominic Hodgson

Sent from Dom with a :-)

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE
Sent: 15 May 2017 16:3
To: Richard Walker
Subject: Fwd: Ark Tavern Curfew

From
Date: 15 May 2017 at 15:56
Subject: Ark Tavern Curfew

I have attended many gigs at the Ark Tavern in Brimington. They have never gone over the set curfew of 23.00 in regards to live music/entertainment. Every band that has played there knows the rules and have stuck by them.

Regards
Richard Jackson
(Drummer for Angry Jesters)

Sent from my iPhone

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE I
Sent: 15 May 2017 16:31
To: Richard Walker
Subject: Fwd: Late license

From:
Date: 15 May 2017 at 15:53
Subject: Late license

To whom it may concern,

I'm a regular in this pub every Friday and Saturday night watching the live music that Richard and veida put on, I'm also helping with this venue by going and vetting bands and gaining contact information so there's a variety of music played, and not once has the music gone over the current 11pm finish time, also the pub has complied with every recommendation from chesterfield borough licensing authority, I also attend the Butchers Arms in brimington too and there music plays till midnight on Saturday, I really can't see why this is an issue because both pubs are close to residential housing/property, it would be an injustice to not allow a license extension to The Ark Tavern when other drinking outlets nearby are allowed to play live music till midnight.

REGARDS
PAUL BARKER

Sent from Samsung Mobile on O2

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



Malcolm Ireland

From: PLAGUE VILLAGE PHOTO
Sent: 15 May 2017 16:38
To: Richard Walker
Subject: Fwd: Ark licencing.

Fr
Date: 15 May 2017 at 15:50
Subject: Ark licencing

To whom it may concern.

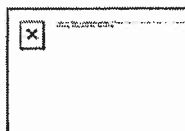
I can confirm that The Ark Tavern never goes over the 11pm curfew when playing live music. This can be confirmed by a number of people both that are acts who perform and people who spectate.

Regards

Baz Rayner.
Drummer - Sound Thieves (band)

Sent from my Samsung Galaxy smartphone.

--
ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE PHC
Sent: 15 May 2017 16:37
To: Richard Walker
Subject: Fwd: Ark Tavern Curfew

From
Date: 15 May 2017 at 15:46
Subject: Ark Tavern Curfew

I can confirm that the Ark Tavern curfew for live music of 23.00pm is strictly adhered to.

Regards
Darren Maynard

Sent from my iPhone

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE I
Sent: 15 May 2017 16:37
To: Richard Walker
Subject: Fwd:

From:
Date: 15 May 2017 at 15:45
Subject:
To: I

The Ark Tavern never go over there 11 o clock curfew time with loud music.

--

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE PHOTOGRA
Sent: 15 May 2017 16:37
To: Richard Walker
Subject: Fwd: Curfew

-----]
From: Sh
Date: 15 May 2017 at 15:43
Subject: C
7

Hi

I am sending this email as a big thank you to the Ark Tavern Brimington for consistently adheering to their strict curfew time of No Live Music after 11.00pm.

Regards
Shane Robinson
Lead Guitarist with Metropolis

Sent from my Samsung device

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VIL
Sent: 15 May 2017, 15:41
To: Richard Walker
Subject: Fwd: The Ark Tavern

Fr
Date: 15 May 2017 at 15:41
Subject: The Ark Tavern

To whom it may concern.

I am a regular performer at The Ark Tavern, on all the occasions that I have performed at this venue the music/entertainment has always been completed by the allotted deadline time of 23.00 hrs.

Regards

Julian Widdop

Sent from my Sony Xperia™ smartphone

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE
Sent: 15 May 2017 16:00
To: Richard Walker
Subject: Fwd: Music cut off

Fr
Date: 15 May 2017 at 15:40
Subject: Music cut off
To:

Have played the ark a couple of times and although people have been shouting for more at 11pm unfortunately we haven't been able to carry on due to the curfew . Other live music venues do allow you to play until later and it Would be great to play for longer and later at the ark but on the flip side it's good to sometimes have an early finish 🍷

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com
Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE
Sent: 16 May 2017 0
To: Richard Walker
Subject: Fwd: Ark tavern

From:

Date: Tue, 16 May 2017 at 00:13

Sub:

To:

raphy@gmail.com>

Dear sir

I would like to confirm that my band metropolis have played the ark tavern and were infirmed it was a strick 11pm cut off. This was adhered to.

BW

Alfonzo

Get [Outlook for Android](#)

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE PHO
Sent: 15 May 2017 21:58
To: Richard Walker
Subject: Fwd: Regards to curfews

From: I
Date: Mon, 15 May 2017 at 21:50
Subject: Regards to curfews

I have played many of times at the Ark Tavern over a long period of time, and have always understood from bar staff that the curfew is 11:00pm and no later. Not once have I attended the pub as a customer or entertainer where this rule has been broken. The rule of being off for 11pm has always been stuck too.

Sent from my iPhone

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

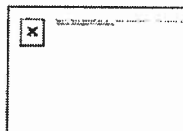
From: PLAGUE VILLAGE PHOTO
Sent: 15 May 2017 21:58
To: Richard Walker
Subject: Fwd: The ark

Date: Mon, 15 May 2017 at 21:46
Subject: The ark

Concerning the times, the pub and the curfew, my band have played many times at that venue and have always stopped performing at 11pm on the dot. I have been to see other bands there and I can assure you that they have always played up to 11pm and not past that time, any music played after that time through the jukebox is at a reasonable level and cannot be heard outside. I also like to say that it is run well and have seen no trouble in or outside which not many places can boast about .

Regards Ian

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE PI
Sent: 15 May 2017 21:28
To: Richard Walker
Subject: Fwd: Ark Tavern

From:
Date: Mon, 15 May 2017 at 21:21
Subject: Ark Tavern

To who it may concern,
As a musician who regularly attends live music events at the Ark Tavern, may i confirm that all of the events I have attended, which is very many, they have never gone beyond the 23.00 licence time and the staff do their utmost to ensure consideration is given to the neighbourhood and local residents
Regards
Russell Carslake.

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLA
Sent: 15 May 2017
To: Richard Walker
Subject: Fwd: Do not exceed curfew

Date: 15 May 2017 at 19:14
Subject: Do not exceed curfew

My name is Jenna and I have played as a musician at the Ark Tavern in Brimington and I can confirm that we were advised not to play past 11pm.

We followed these rules and stopped just before 11pm.

Regards

Jenna Hooson Maguire

From Jenna's iPhone

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



Malcolm Ireland

From: PLAGUE VILLAG
Sent: 15 May 2017 21:
To: Richard Walker
Subject: Fwd: Re Ark Brimington

Date: 15 May 2017 at 17:56
Subject: Re Ark Brimington

To whom it may concern,

R'n'FR play at The Ark Tavern Brimington on a regular basis, we are a band who like to keep playing and playing, most places we play one an hour and 20 second spot, but we always abide by rules set by the venue, The Ark is extremely strict on finish time being before 11pm, that even includes backing music over a certain volume, in addition to this they also use special acoustic dampening on the already acoustic glass to prevent noise leakage.

Please feel free to contact me if you require further assistance.

Kind regards

Tim

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



Malcolm Ireland

From: PLAGUE VILL/
Sent: 15 May 2017
To: Richard Walk
Subject: Fwd: 23:00

F1

Date: 15 May 2017 at 17:23
Subject: 23:00

Hi I play guitar for the band After Hours and have never played later than 23:00. I also watch other bands who also finish at 23:00.

Regards
Mark

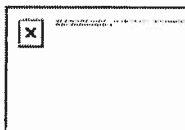
Sent from my iPhone

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILL
Sent: 15 May 2017
To: Richard Walker
Subject: Fwd: The Ark Tavern

Date: 15 May 2017 at 20:15

Hello Mark,

Just a quick message wishing all at The Ark the best during the upcoming case regarding licensing. In my own personal experience, as a regular customer and supporter of local live music, I have never witnessed live music exceeding the 11pm curfew at The Ark Tavern. Many bands have generously cut their sets short in order to meet this curfew out of consideration for local residents and for the good of the venue long term. It's a shame that things have had to come this far as the management have took many measures to try and keep residents satisfied such as fitting soundproofed glass in every window on the front face of the building as well as using soundproofing boards to reduce any additional noise

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE PHO
Sent: 15 May 2017 17:10
To: Richard Walker
Subject: Fwd: The Ark Tavern

-
F

Date: 15 May 2017 at 16:59
Subject: The Ark Tavern

Hi Mark.

I have visited The Ark Tavern at Brimington, on a few occasions now - always when live music was being played and I have always been aware of the management's insistence of enforcing the 23.00 curfew. Indeed, I have accompanied my son's bands - Parasight / Siren - when they have played at The Ark and the band were clearly instructed to be finished by 23.00, to comply with the establishment's licence.

Regards,
Mark Platts

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE PHC
Sent: 15 May 2017 17:09
To: Richard Walker
Subject: noise levels

To whom it may concern

I am writing this email to just state that i have been attending the live music nights held at the Ark Tavern in Brimington for over 18 months.

Richard & Veida run a very good venue and have the up most respect from their customers.

I have visited this pub on average 4-5 nights per week to video the bands for the pubs you-tube channel and not once have i witnessed any trouble of any sort.

The videos i film are all stored on my hard drive at home dated and timed if you wish to view these that is not a problem at all.

I live 18 miles from the pub taking a route through the town center and i am always home by 23:45.

All the bar staff and myself make sure the sound boards are in place before a single song is played and all the doors are closed and monitored all night to ensure that any noise created by the band is kept within the pub walls.

--
ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE F
Sent: 15 May 2017 20:25
To: Richard Walker
Subject: Fwd: Music

Fr
Date: 15 May 2017 at 18:47
Subject: Music

I have been to this venue numerous times and the music as always finished by 23.00hrs. Never known it to run over.

Sent from my Samsung Galaxy smartphone.

ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLAGE PHOTO
Sent: 15 May 2017 20:25
To: Richard Walker
Subject: Fwd: Ark Tavern music hours

Date: 15 May 2017 at 18:09

S
T

Hi Mark

As a musician who has performed at the Ark tavern on several occasions and who regularly attends the Tuesday night jam session, I would like to confirm that I have never seen anyone perform past the current 11pm licensing curfew.

Kind regards

Nigel Watt

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

Malcolm Ireland

From: PLAGUE VILLA
Sent: 15 May 2017 :
To: Richard Walker
Subject: Fwd: Curfew 11pm

Date: 15 May 2017 at 18:48
Subject: Curfew 11pm

Hi Mark

Just to confirm that not once have I known the Ark Tavern go over the 11pm curfew.

Over the last year or so that my son has been playing in the Ark and from watching other bands play in the Ark I can honestly say it's the most pleasant and professionally run venue that we play.

I wish you luck in getting an extension to play time.

Regards

Daz Masko

Deb Masko

Lewis Masko

See you soon

Sent from my iPhone

ON BEHALF OF

PLAGUE VILLAGE PHOTOGRAPHY

THANK-YOU

MARK LOWE



No virus found in this message.

Malcolm Ireland

From: PLAGUE VILLAGE PHO
Sent: 15 May 2017 20:25
To: Richard Walker
Subject: Fwd: Ark tavern

Date: 15 May 2017 at 18:20
Subject: Ark tavern

I would like to confirm that in all my regular visits to the ark tavern I have never known music to go beyond 11pm
Peter morgan

Pete Morgan Sent from my iPhone

--
ON BEHALF OF
PLAGUE VILLAGE PHOTOGRAPHY
THANK-YOU
MARK LOWE



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6201 / Virus Database: 4776/14471 - Release Date: 05/14/17

This page is intentionally left blank





Neutral Citation Number: [2008] EWHC 838 (Admin)

Case No: CO/5533/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2008

Before:

THE HONOURABLE MRS JUSTICE BLACK

Between:

Daniel Thwaites Plc	<u>Claimant</u>
- and -	
Wirral Borough Magistrates' Court	<u>Defendant</u>
- and -	
The Saughall Massie Conservation Society	1st Interested Party
- and -	
Wirral Metropolitan Borough Council	2nd Interested Party

David MW Pickup (instructed by Naphens plc) for the Claimant
The Defendant did not appear and was not represented
David Flood (instructed by Messrs Kirwans) for the 1st Interested Party
Matthew Copeland (instructed by Wirral MBC) for the 2nd Interested Party

Hearing date: 10th March 2008

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

48

Black J :

1. This is an application by Daniel Thwaites Plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Mr Justice Pitchford on 2 November 2006.

The factual background

2. The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral ("the licensing authority") for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.
3. In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 p.m. and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 p.m., with the doors closing one hour after the last alcohol sale every night.
4. The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society ("the First Interested Party") and other Saughall Massie residents.
5. The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later "on special occasions" This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.
6. The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 p.m., that the premises must promote the use of taxi firms which use a call-

back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

7. The Saughall Massie Conservation Society and "others" appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision "was not made with a view to promotion of and in accordance with the licensing objectives pursuant to Section 4, Part 2 of the Licensing Act 2003".
8. The appeal occupied the Magistrates' Court from 3 – 5 April 2006. The respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.
9. The justices granted the appeal. Their Reasons run to 3 pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 p.m. and alcohol sales until 11.30 p.m. on all nights except Friday and Saturday when entertainment would be permitted until 11.30 p.m. and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 a.m.. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.
10. The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the "Witnesses of the Appellant", they say simply that they have read and considered them but attached little or no weight to them.
11. The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such

as R v Westminster City Council ex p Ermakov [1996] 2 All ER 302 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

The broad nature of the claim in relation to the licensing decision

12. The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

The legal background

13. The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.
14. Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

"12. In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

15. Section 1 of the Act provides:

"S1(1) For the purposes of this Act the following are licensable activities—

- (a) the sale by retail of alcohol,
- (b) [clubs]
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment."

16. To carry on a licensable activity, a premises licence granted under Part 3 of the Act is generally required, section 2. Application for a premises licence must be made to the relevant licensing authority, section 17(1).
17. By virtue of section 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the "licensing objectives". These are set out in section 4 as follows:
- "S 4(2) The licensing objectives are—
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm."
18. In carrying out its licensing functions, by virtue of section 4(3) the licensing authority must also have regard to its licensing statement published under section 5 and any guidance issued by the Secretary of State under section 182.
19. Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 ("the Guidance"). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.
20. The Foreword says that the Guidance
- "is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice."
21. As the Guidance says in paragraph 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:
- "Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the 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."
22. An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in section 17(4) which are as follows:
- "(a) the relevant licensable activities,

- (b) the times during which it is proposed that the relevant licensable activities are to take place,
 - (c) any other times during which it is proposed that the premises are to be open to the public,
 - (d) where the applicant wishes the licence to have effect for a limited period, that period,
 - (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
 - (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
 - (g) the steps which it is proposed to take to promote the licensing objectives,
 - (h) such other matters as may be prescribed."
23. Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.
24. Section 18(2) provides that, subject to subsection (3), the authority must grant the licence in accordance with the application subject only to:
- "(a) such conditions as are consistent with the operating schedule accompanying the application, and
 - (b) any conditions which must under section 19, 20 or 21 be included in the licence."
25. Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.
26. Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal "relevant representations" are defined in section 18(6) as follows:
- "(6) For the purposes of this section, "relevant representations" means representations which—
 - (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,
 - (b) meet the requirements of subsection (7),
 - (c)"
27. Subsection (7) provides:
- (7) The requirements of this subsection are—
 - (a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),
 - (b) that they have not been withdrawn, and
 - (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

28. Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of section 18(3)(b), the authority must also:
- “(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.”
29. Section 18(4) provides:
- “(4) The steps are—
- (a) to grant the licence subject to—
- (i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
- (ii) any condition which must under section 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the premises supervisor;
- (d) to reject the application.”
30. Conditions are modified for the purposes of subsection (4)(a)(i) if any of them is altered or omitted or any new condition is added.
31. During the currency of a premises licence, by virtue of section 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc.) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of section 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.
32. The Act makes provision in Part 5 for “permitted temporary activity” which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.
33. Section 181 provides for appeals to be made against decisions of the licensing authority to a magistrates’ court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

The detail of the claim

34. The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates’ Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the

approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

35. There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, section 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

"10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

36. Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.
37. Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in J. D. Weatherspoon plc v Guildford Borough Council [2006] EWHC 815 (Admin), he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".
38. There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As paragraph 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

"When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the 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."

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a magistrates' court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

39. In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.
40. The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in section 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, section 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives" (the steps in subsection (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:
- "Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose."
41. The Guidance also refers a number of times to the need for regulation to be "proportionate". This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being "necessary", it must in my view be confined to that which is "proportionate" and one can understand why the Guidance spells this out.
42. Mr Pickup submits, and I accept, that the Act anticipates that a "light touch bureaucracy" (a phrase used in paragraph 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as

the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

"7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives."

43. The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with paragraph 6.1 which reads:

"This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply."

44. It continues:

"6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions."

45. The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.
46. The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated

without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

"I reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises."

47. To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to "make hay while the sun shines" and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of "little evidential value" in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.
48. It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

"The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

"We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

49. They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

50. The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.
51. Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.
52. Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said,

"We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00 a.m. to 1.00 a.m. 1.00 a.m. closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue.*" [my italics]

53. I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting:

"We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms."

In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

54. It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the

magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

55. It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.
56. The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.
57. Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at paragraph 6.8:
- "The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."
- It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.
58. I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.
59. What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours

sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading "Flexibility" under which the magistrates say simply:

"We have considered the concept of Flexibility."

In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in paragraph 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

60. The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, "the application for extended hours was to allow *flexibility* to open later on certain occasions". As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.
61. The magistrates' comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.
62. There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

My overall conclusions

63. It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was “necessary” to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be “an inevitable consequence” of leaving the hours as granted by the Local Authority. However, in my view their approach to what was “necessary” was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. 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 appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.
64. I have said little so far about what appears in the magistrates’ response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates’ decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, “....there is also the question of Police resources

and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake”.

65. Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is “a village pub and not a night spot in the centre of town”. For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.
66. Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, “I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises.”. Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.
67. I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in section 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also “any other times during which it is proposed that the premises are to be open to the public”. On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of

closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

The costs argument

68. In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.

This page is intentionally left blank