

# **FOR PUBLICATION**

## **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)**

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MEETING: LICENSING COMMITTEE

DATE: 18<sup>th</sup> MAY 2017

REPORT BY: LICENSING OFFICER

WARD BRIMINGTON SOUTH

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### **1.0 APPLICATION**

1.1 The Applicant is Daniel Thwaites PLC.

1.2 The premise is  
The Ark Tavern  
Chesterfield Road  
Brimington  
Chesterfield  
S43 1AD

### **2.0 PURPOSE OF REPORT**

2.1 For Members to determine an application for a variation of a premises licence in respect of The Ark Tavern.

2.2 Because relevant representations have been made and not withdrawn, the application cannot be granted or refused under officer delegated authority.

### 3.0 **BACKGROUND**

- 3.1 The premises are currently licensed for the sale by retail of alcohol, the playing of recorded music and the provision of late night refreshment as below.

#### **The sale by retail of alcohol for consumption ON and OFF the premises**

- Mon, Tues, Wed, & Thursday 11:00 - 00:00
- Friday & Saturday 11:00 - 02:00
- Sunday 11:00 - 02:00

With non-standard timings of

- 24th, 26th, 27th and 28th December from 11.00 until 02.00 the following day.
- New Year's Eve from 11.00 on 31st December until 01.00 on 2nd January.

#### **Late Night Refreshment**

- Monday to Saturday, other than Christmas Day, Good Friday or New Year's Eve, 23.00 to 23.30
- On New Year's Eve, from 23.00 to 05.00 the following day.

#### **Playing of recorded music (Indoors)**

- Mon, Tues, Wed, & Thursday 11:00 - 00:00
- Friday & Saturday 11:00 - 02:00
- Sunday 11:00 - 02:00

With non-standard timings of

- 24th, 26th, 27th and 28th December from 11.00 until 02.00 the following day.
- New Year's Eve from 11.00 on 31st December until 01.00 on 2nd January.

These timings are reflected in the premises opening hours.

- Mon, Tues, Wed, & Thursday 11:00 - 00:30
- Friday & Saturday 11:00 - 02:30
- Sunday 11:00 - 02:30

With the same non-standard timings of

- 24th, 26th, 27th and 28th December from 11.00 until 02.30 the following day.

- New Year's Eve from 11.00 on 31st December until 01.30 on 2nd January.

3.2 The variation seeks to

- Add the activity of live music to the licence from 2300 hours to Midnight each day.
- Remove outdated conditions from the licence as below:
  - Annual testing and inspection of the Electrical Installation at the premises by a qualified engineer.(Public Safety)
  - Please note that the permitted hours for all of the licensable activities and the opening times of the premises are to remain as per the existing licence.(Prevention of Public Nuisance)
  - No person under the age of 18 years allowed access to any part of the premises (except the beer garden) on any day.(Protection of Children from harm)

3.3 The Premises Licence Holder and DPS wish to extend their capacity to provide live music at the premises, having experienced some success with the provision of live entertainment at the venue on weekend evenings and at a “jam night” on Tuesday evenings.

3.4 The provision of live music on the premises is currently permitted without a specific licence under the deregulation granted by the Live Music Act of 2012. This allows the provision of regulated entertainment provided that

- It takes place between 0800 hours and 2300 hours
- The audience for the performance does not exceed 500.

3.5 The premises licence holder and designated premises supervisor seek this variation to give the flexibility to continue passed that 2300 hour exemption until midnight.

## 4 **APPLICATION**

4.1 A copy of the application form is attached as Appendix 1. The current Premises Licence is attached as Appendix 2.

4.2 Applications for a variation of a Premises Licence are required to be advertised by way of site notice displayed at the premises, an advert in the local press, and copies of the application submitted to all Responsible Authorities.

- 4.3 A copy of the appropriate local press advert taken from the Derbyshire Times on Thursday 30<sup>th</sup> March 2017 is attached at appendix 3.
- 4.4 The site notices displayed on the premises, advertising the application were viewed by licensing enforcement staff on 1st April 2017 and found to be displayed correctly and completed appropriately.
- 4.5 The application was submitted on line through the internet and as such, the Chesterfield Borough Council Licensing Authority circulated a copy of the application to the responsible Authorities.
- 4.6 The statutory deadline for representation was 19<sup>th</sup> April 2017.
- 4.7 Responsible Authorities and Interested Parties (persons/bodies representative of businesses or residents in the vicinity of the premises) are entitled to make representations to the Licensing Authority provided they are relevant representations.
- 4.8 A number of representations have been received and accepted from local residents, in relation to one or more of the licensing objectives which are:-
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - protection of children from harm
- 4.9 Redacted copies of the representations are shown at Appendices numbered 4 to 9.

## **5 REPRESENTATIONS**

- 5.1 Any representation received must be relevant to the likely effect of the proposed variation on the promotion of at least one of the 4 licensing objectives which are: (1) the prevention of crime and disorder; (2) public safety; (3) prevention of public nuisance and (4) the protection of children from harm. Representations which are not relevant must be rejected.
- 5.2 If a representation has been made but is subsequently withdrawn it is no longer a relevant representation and provided there are no

other relevant representations the application can be dealt with under officer delegated authority.

5.3 The representations that have been made come from local residents and address the prevention of crime and disorder, public safety and prevention of public nuisance licensing objectives. They state there are problems with the following issues:

- The music from the premises is so loud as to intrude into private homes, disturbing residents.
- Music going on until late at night, disturbing the sleep of residents.
- Customer parking intruding onto nearby residential streets, causing congestion and obstruction.
- Noisy breaking down of band equipment at the end of the performance.
- The lack of suitability of the venue for live music performances due to a lack of sound proofing, air conditioning, parking space and the fact that the premises is sited in a conservation area surrounded by residential properties.
- Disorderly behaviour of patrons as they leave the premises after the live music ceases at 2300 hours.
- A fear that the scuffles, drunken behaviour and disorder that currently take place outside the venue will be worsened if customers are leaving at a later time.
- Very loud music on bank holidays.
- Windows and doors left open allowing noise to be transmitted more easily.

The representation at appendix 4 also includes a qualifying letter at appendix 4a.

The representation at appendix 5 includes two aerial photographs listed as appendix 5a and 5b.

## **6.0 ADDITIONAL INFORMATION**

6.1 As part of the application process the applicant is required to describe in the operating schedule the additional steps that are intended to be taken in order to promote the licensing objectives for the variation of the licence that has been requested.

- 6.2 The applicant has volunteered the following step in relation to the protection of children from harm objective.
- No person under the age of eighteen years shall be permitted to remain on the premises after 21.00.
- 6.3 The applicant has volunteered no further conditions although it should be noted that the licence holder and the designated premises Supervisor, Mr Walker have taken several steps to address the issue of noise since his tenure at the venue began. These include:
- The placing of sound boards at the premises windows to reduce the transmission of noise through the windows to outside.
  - The use of heavy drape curtains
  - The building of a porch over the back door of the premises (thus reducing noise escaping from the premises when patrons move from within to the beer garden).
  - The planned installation of an air conditioning system to reduce the need to open windows in summer.
  - The installation of triple glazed windows to the property with sound insulation properties.
- 6.4 Some residents have commented that these measures have reduced the noise from the premises somewhat but qualify that statement with a request that no later hours be granted.
- 6.5 The premise has been subject to noise complaints previously and has received attention from Environmental Health noise pollution officers. Evening site visits have been conducted and the noise levels experienced have not led to any enforcement action.
- 6.6 An e-mail from Mr Daley, a technical officer from Pollution Control is attached at appendix 10. He describes his work at the venue and states he would not make any representation in respect of this application.
- 6.7 There had been an instance of the premises playing live music until too late into the evening in the summer of 2016. This had resulted from a mistake. The premises licence authorises recorded music until 0200 hours and the applicant had mistakenly thought this applied to live music. Once the error was identified and suitable advice given, there have been no further similar complaints.

- 6.8 In February 2017, a leaflet was circulated to local residents asking them to contact the Chesterfield Borough Council Licensing Authority if they had issues with the noise caused by the Ark Tavern. 8 individuals contacted the department and of these, 6 had no complaint to make about the property and 2 were concerned at the noise levels caused by the venue.

## **7 OPTIONS**

- 7.1 When carrying out its licensing functions, the Licensing Authority must do so with a view to promoting the 4 licensing objectives and also with regard to its Statement of Licensing Policy and the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003.
- 7.2 The Licensing Committee may grant the application as requested, grant it subject to conditions, or refuse the application.
- 7.3 Where either the applicant or a person who made relevant representations is aggrieved by the decision of the Licensing Authority, appeal is to the Magistrates' Court.

## **8 RECOMMENDATION**

- 8.1 That the Committee
- consider the representations made by local residents and the remedial activities that have taken place at the Ark Tavern
  - and determine whether the application for a variation of a Premises Licence made by Daniel Thwaites PLC, for the premises at The Ark Tavern be granted, granted with conditions, or refused.

LICENSING OFFICER

For more information on this report please contact the author,  
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