

# **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 (LC 180)**

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MEETING: LICENSING COMMITTEE

DATE: 25<sup>th</sup> July 2018

REPORT BY: LICENSING OFFICER  
Steve Ashby

WARD BRIMINGTON

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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 the premises licence in respect of The Ark Tavern.

2.2 Relevant representations have been made and not withdrawn and thus the application cannot be granted or refused under officer delegated authority.

### 3.0 **CHANGES SOUGHT IN APPLICATION**

- 3.1 The premises are currently licensed for the sale by retail of alcohol, the playing of live and 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 & 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 live music (Indoors)**

- Monday to Sunday 11:00 - 00:00

With non-standard timings of

- 11.00 to 02.00 on 24th, 26th, 27th and 28th December.
- 11.00 on New Year's Eve to 01.00 on 2nd January

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

- Mon, Tues, Wed, & Thursday 11:00 - 00:00
- Friday, Saturday and 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 & 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 This variation application has been subject to amendment.

The initial application sought to

- Remove some conditions from the licence and add some stronger control measures in respect of the licensing objective of “protection of children from harm”.
- Extend the current late night refreshment provision permitted in the premises licence.
- Amend the non-standard timing for the premises opening hours.
- Make internal changes to the premises layout which consists primarily of the removal of two low walls to open up the performance area within the premises. The entrance and lobby and rear porch which are noise control measures remained unchanged. The changes were shown on a plan submitted with the application.
- A further impact of the plan was that if granted it would make changes to licensable activities at the premises. The plan showed an extension to the permitted area for the sale and supply of alcohol to include the rear porch and an area outside the rear doors of the premises, although this change to alcohol provision was not indicated at page 3 of the application form. That outside area has since been removed from the application by a later submission of an amended plan.

3.3 The proposed changes to the licence conditions are shown below.

Removal of the following conditions

- All members of staff concerned with sales of alcohol will be trained in relation to sales of alcohol to persons under the age of 18 years. (Mentioned twice).
- Pre-opening safety checks will be carried out at the premises before each trading session.
- Annual testing and inspection of the Gas installation at the premises by a qualified engineer.
- Annual testing and inspection of the Emergency Lighting at the premises by a qualified engineer.

- Annual testing and inspection of the Fire Alarm at the premises by a qualified engineer.
- All escape routes and exits maintained so as not to cause hindrance in the event of evacuation.
- No persons under the age of eighteen years shall be permitted to remain on the premises after 21.00.

Addition of the following conditions in the “protection of children from harm” section

- A “Challenge 25” policy shall be adopted and enforced at the premises whereby any person who appears to be under the age of 25 shall be required to provide identification to prove that they are over the age of 18 before they are permitted to purchase alcohol. The only forms of acceptable identification will be:
  - A passport;
  - A UK Photocard Driving Licence;
  - Official ID card issued by HM Forces or EU bearing a photograph and the date of birth of the holder;
  - Any other form of identification agreed with a representative of the Police Licensing Unit.
- All staff who are involved in the sale of alcohol will be trained in relation to the “Challenge 25” policy upon the commencement of their employment, following which they will undertake refresher training at suitable intervals.
- Said training will be documented and will be made available to an authorised officer upon request.
- No person under the age of eighteen years shall be permitted to remain on premises after 22.00.

3.4 The application seeks indoor late night refreshment to be added to the licence as below

- Mon, Tues, Wed, & Thursday      23:00 - 00:30
- Friday, Saturday and Sunday      23:00 - 02:30

With non-standard timings of

- 24th, 26th, 27th and 28th December from 23.00 until 02.30 the following day.
- New Year's Eve from 23.00 on 31st December until 02.30 on 2nd January.

- 3.5 An amendment to the non-standard timings for opening hours is sought as below
- 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 02.30 on 2nd January.
- 3.6 In relation to the extension of the permitted alcohol sale and supply area, it was not readily apparent from the application that this was being sought.
- The fact that a full variation application was submitted rather than a minor one led to further enquiry where it became apparent that the new premises plan had included the additional outside area for the sale and supply of alcohol.
- A conversation with the Designated Premises Supervisor Mr Walker confirmed that the intention of said extension was to enable a bar to be used in the beer garden.
- This would provide a better service to those customers using the beer garden, allowing not only the sale of alcohol but also light refreshment and confectionary.
- The intention was to use this facility primarily in the daytime and early evening of trading hours.

## **4 APPLICATION PROCESS**

- 4.1 A copy of the application form and associated plans can be seen at Appendix 1.
- The initial date of receipt was 1<sup>st</sup> June 2018 but the 28 day application consultation period did not actually commence until 5<sup>th</sup> June 2018 due to site notices not being available at the premises for display.
- 4.2 The current Premises Licence is attached as Appendix 2.
- 4.3 Applications for variation of Premises Licences 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.
- 4.4 A copy of the appropriate local press advert taken from the Derbyshire Times on Thursday 14<sup>th</sup> June 2018 is attached at Appendix 3.

- 4.5 The site notices displayed on the premises, advertising the application were viewed by licensing enforcement staff on 7<sup>th</sup> June 2018 and found to be displayed correctly and completed appropriately.
- 4.6 The application was submitted by e-mail. Consistent with current guidance, the Chesterfield Borough Council Licensing Authority circulated a copy of the application to the Responsible Authorities within the appropriate time limits.
- 4.7 The statutory deadline for representations in respect of the application was midnight on Monday 2<sup>nd</sup> July 2018.
- 4.8 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.
- 4.9 A number of representations have been received and accepted, 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
- 4.10 The representations come from local residents and two responsible authorities which are Chesterfield Borough Council's Environmental Health Department and Licensing Department.
- 4.11 After receipt of the first local resident representation, it became apparent that there were other residents who were dissatisfied with the application but had not submitted a representation. This was due to concerns that their input would not have any effect upon the representation process and was based upon their experiences of a previous hearing for a variation application at the same premises. The current application was drawn to their attention and a further 3 representations were submitted.
- 4.12 Redacted copies of the representations are shown at Appendices numbered 4 to 9.

- 4.13 As a result of the representations received, an amended premises plan was submitted by the applicant on 10<sup>th</sup> July 2018.
- 4.14 The new plan removed the outside area from the scope of the application. It resulted in a smaller extension to the area identified for the sale and supply of alcohol, now just adding on the porch at the rear doors of the property that gives access to the beer garden.
- 4.15 A copy of the new plan can be seen at Appendix 10.

## **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 address all four licensing objectives to varying degrees.
- 5.4 Upon receipt of the amended plan, the changes were brought to the attention of those making representations and it was found that none of the representations were withdrawn.
- 5.5 The Licensing Authority considered the application and representations in light of the amended plan that was submitted, determining that the representations remained relevant.

5.6 This determination was reached after taking account of section 8.57 of The Secretary of State's Revised Guidance issued under section 182 of the Licensing Act 2003.

8.57 The licensing authority must also consider any relevant representations received from other persons within the time limit referred to below. As stated earlier in this Guidance, **representations are only relevant if they clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives; representations must be confined to the subject matter of the variation.** In the case of minor variations, there is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision.

5.7 The intention of the changes at the venue appears to promote the live music aspect of the premises, making the main performance area within the premises more accessible.

5.8 The venue advertises itself as "The Home of Live Music" and has a number of enthusiastic followers. Appendix 11 shows a small selection of Facebook page screenshots which appear to support this.

5.9 As the representations made relate to the performance of live music at the venue they were deemed relevant.

5.10 Local residents

The representations that have been made by local residents identify the following issues:

- Live music played at exceptionally loud volumes, which leak straight out from the pub.
- Very loud music on bank holidays.
- Music going on until late at night, disturbing the sleep of residents.
- Shutters not used during live performances.
- Windows remain open during live performances.
- Doors open during live performances.
- Teenagers congregating in and around the Ark Tavern, exhibiting anti-social behaviour.



- Observation of teenagers present in the beer garden and leaving the premises after the 21.00 curfew stated for under 18 year olds. These often look to be in a state of inebriation and cause nuisance in and around the premises and road.
- Failure to adhere to current licence conditions, in particular the beer garden being used for consumption after the 2300 curfew for that area.
- Unruly behaviour of unsupervised children using the beer garden including footballs repeatedly kicked into neighbouring gardens.
- The children's climbing frame in the beer garden which is tall enough to allow users to look into neighbouring gardens and its unsupervised use (ostensibly a planning issue which cannot be addressed through planning legislation due to the length of time it has been in situ).
- Scuffles and fights outside the public house.
- Very late departure of customers from the public house with shouting, swearing and walking in the road, taxis pulling up outside sounding their horns.
- Failure to adhere to previously agreed conditions between residents and the premises which included
  - Music would be stopped at 23.00 on Tuesdays
  - Placing soundproof boards at windows
  - Keeping doors closed
- Inability of residents to enjoy their own homes and gardens as noise from the Ark Tavern intrudes.
- Disappointment at the way the last variation application for the premises was dealt with.

The representations need to be read to get a better appreciation of the impact of the premises upon the local residents.

#### 5.11 Licensing Authority

The Licensing Authority representation addresses a lack of adherence to current licence conditions, specifically the beer garden curfew.

It was disappointing to see a repetition of this failure after the issue had been previously discussed with the premises management.

#### 5.12 Environmental Health

The Environmental Health Department representation centres on the fact that there are ongoing investigations into noise complaints at this premises and similar historic complaints. The Senior Environmental Health Officer Mrs Thelwell asked the premises licence holder to complete a noise management plan but this has not been completed to date. Nor has the public nuisance section of the variation application form which would indicate what measures are being taken to address any noise issues.

#### 5.13 Video Footage

In addition to the written representations accompanying this report, there are a number of video clips compiled by one of the representors showing offending behaviour at the Ark Tavern. These are provided on two DVD discs.

There is a summary of the video content provided on the first disc which is included at Appendix 12. This disc has 29 video clips recorded between 1<sup>st</sup> April 2018 and 1<sup>st</sup> July 2018. There is some overlap in the described type of behaviour recorded. In summary, it states that the following can be seen

- 19 incidents of loud music
- 6 incidents of use of the beer garden after 2300, accompanied by alcohol consumption and loud music
- 3 incidents of nuisance behaviour of children
- 1 incident of the rear porch doors remaining open at the premises allowing music escape

Of these incidents, 8 are recorded after 2300.

#### 5.14 A supplementary disc has been produced with a further 10 video clips thereon.

Again, there is some overlap in the described type of behaviour recorded. In summary, the following can be seen

- 1 incident of loud music
- 4 incidents of use of the beer garden after 2300, accompanied by alcohol consumption and loud music
- 2 incidents of loud, unruly behaviour in the rear garden including one of nuisance behaviour of children
- 1 incident of the rear porch doors remaining open at the premises allowing music escape

Of these incidents, 9 are recorded after 2300.

- 5.15 Some of this video footage appears to show breaches of the conditions on the licence as below
- The beer garden will cease to be used by customers for the purposes of the consumption of alcohol at 23.00 each day.
  - The management will ensure that the grounds of the premises will be kept tidy and without nuisance to other neighbouring businesses or residents.

This video footage will be made available to the Licensing Committee to view.

- 5.16 Taking into account multiple recordings during single trading sessions the video content can be summarised as below.
- 39 separate recordings made between 1<sup>st</sup> April and 1<sup>st</sup> July 2018.
  - 20 separate trading sessions are subject of video recordings
  - Noise nuisance, late use of the beer garden, alcohol consumption in the beer garden after 23.00 and unruly, inconsiderate behaviour of patrons is common.

- 5.17 A further chronological summary has been produced combining the original document and the later disc content, to show all the incidents grouped by date and this is shown at appendix 13.

- 5.18 The below table shows a selection of those video clips representing different sorts of behaviours at the premises.

- 5.19 These video clips are available to be viewed now by the committee should they wish to see behaviour complained of.

#### 5.20 Video clip table

Reference	Time	Footage time of note	Activity
<b>Sunday 22<sup>nd</sup> April 2018</b>			
28	4:15pm	17s 30s 47 s	Loud audible music
<b>Sunday 6<sup>th</sup> May 2018</b>			
19	9:20 pm	all of it	Children in beer garden, shouting and screaming in daytime.
<b>Monday 7<sup>th</sup> May 2018</b>			
11	6pm	3s	Loud audible music

<b>Monday 28<sup>th</sup> May 2018</b>			
14	Bank Holiday 5pm	all of it	Bank holiday. Loud audible music. Rear porch doors open.
<b>Saturday 9<sup>th</sup> June 2018</b>			
20180609_234916	23.49		Alcohol consumption in rear garden.
<b>Friday 15<sup>th</sup> June 2018</b>			
20180615_233731	23.38		Loud audible music, loud customers and alcohol consumption in beer garden.
<b>Saturday 16<sup>th</sup> June 2018</b>			
4	11:44pm	2m11s	Loud audible music and alcohol consumption in beer garden.
25	11:50pm	35 s 49s 1min	Loud audible music ,singing and shouting in beer garden

5.21 The allegation of use of the beer garden after curfew is supported by an observation visit by the Licensing Department's enforcement patrol at 23.52 on Saturday 23<sup>rd</sup> June 2018 where some 8 or 9 patrons were seen in the beer garden of which 3 were drinking alcohol.

A further visit 10 minutes later found some of this group had left but that 2 were still drinking alcohol.

At this time 2 males were observed to urinate against an outhouse near to the car park.

5.22 This sort of activity had already been discussed previously with the premises management on 2<sup>nd</sup> June 2018. The issue of the breach of this condition had been raised on that enforcement visit as a result of a complaint that had been received in relation to Bank Holiday activity at the premises.

It was explained that the management had been let down by a staff member in relation to that complaint. He had been away from the premises on that occasion and the staff member had failed to monitor keeping doors closed or use of the beer garden later in the evening.

However between the content of the discs viewed to date and the enforcement visit findings, it appears to indicate there are a further

5 trading sessions after this issue was raised, when the same offending behaviour has been repeated.

- 5.23 It is fair to say that had this video evidence been presented in isolation and not in the context of this variation application, it would lead to separate proceedings against the premises.
- 5.24 In investigating this application the following information has also been gathered
- Neither Derbyshire Police nor the Chesterfield Borough Council Community Safety Department have any incidents of antisocial behaviour logged against the premises over the last 12 months.
  - Chesterfield Borough Council's Environmental Health Department has a number of ongoing and historical complaints lodged against the premises in relation to noise and nuisance.

## **6.0 ADDITIONAL INFORMATION**

- 6.1 The Ark Tavern has experienced some success with the introduction of live entertainment at the venue on weekend evenings and at a "jam night" on Tuesday evenings. Whilst increased footfall and patronage have been popular with the premises and staff, local residents are not so happy about the change in emphasis at the premises which they describe as "village public house to live rock music venue".
- 6.2 Clearly the issues of noise nuisance and disorderly conduct are ones that local residents associate with the premises and are contentious for those living nearer to the premises, as evidenced by the representations made.
- 6.3 The same premise was subject to a previous variation application in March 2017.  
This resulted in the application being heard before the Licensing Committee in May 2017.  
On that occasion permission for live music was granted to the premises to allow live music within the premises daily from 1100 to midnight.
- 6.4 That application was also opposed, with representations tendered by six local residences.

Ultimately, the application was granted and the decision letter for that Licensing Committee Hearing can be seen at Appendix 14.

- 6.5 The residents who attended the previous hearing state that on that occasion the Designated premises supervisor voluntarily agreed with them to employ the noise reduction tactics referenced in the representations i.e.
- Music would stop at 23.00 on Tuesdays
  - Placing soundproof boards at windows for live music performances
  - Keeping doors closed during live music performances.
- 6.6 There is reference in the current representations that as soon as the last variation was granted, these measures were no longer employed on a regular basis.
- 6.7 The representors feel that their representations were not given due weight on that last occasion and so felt let down by the result of that committee. They are understandably sceptical about the value of this hearing and some were reluctant contributors to the process.

## **7 OPTIONS**

- 7.1 Determination of application  
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.
- 7.4 Should the committee choose to grant the application with modified conditions then based on enquiries with those making representations, some of the following might be found to be acceptable
- Removal of live music as a permissible activity

- A reduction in the terminal permissible hour for live music performances at the venue
- The addition (as conditions to the licence) of the noise reduction measures mentioned as having been previously negotiated i.e.
  - Music would stop at 23.00 on Tuesday's jam night
  - Placing soundproof boards at windows for live music performances
  - Keeping doors closed during live music performances.
- A reduction in the terminal permitted hour for use of the beer garden, irrespective of whether consuming alcohol or not.
- The addition of a licence condition requiring the completion of a noise management plan which would need Environmental Health Department approval for implementation and subsequent amendment.

## **8 RECOMMENDATION**

### **8.1 That the Committee**

- consider the representations made by local residents and Responsible Authorities and
- Determine whether the application for a variation of a Premises Licence made by Daniel Thwaites PLC for The Ark Tavern be granted, granted with conditions, or refused.



LICENSING OFFICER

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