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19 May 2017

**Licensing Act 2003 – section 34**

**Application by Daniel Thwaites Plc**

**Variation of a Premises Licence – The Ark Tavern, Chesterfield Road, Brimington,  
Chesterfield S43 1AD**

**Decision Notice**

The Council's Licensing Committee met on 18 May 2017 to consider the application made by Daniel Thwaites Plc for a variation of a premises licence in respect of The Ark Tavern Chesterfield Road, Brimington, Chesterfield.

1. Representations against the application (and which had not been withdrawn) had been made by interested parties.
2. No representations had been made by any of the Responsible Authorities against the application.
3. The Applicant was represented by Mr M Ireland, Solicitor. Mr R Walker (Designated Premises Supervisor at The Ark Tavern) and his partner also attended the hearing.
4. Mr Akhtar and Mr Fisher, two of the interested parties, attended the hearing.
5. The Licensing Committee considered the report which was before them and the representations which had been received (and not withdrawn) and the submissions made by Mr Ireland, Mr Akhtar and Mr Fisher at the hearing.

6. The application had been submitted for a variation of a premises licence to (1) authorise the activity of live music at the premises from 11:00 hours to midnight from Monday to Sunday; and (2) to remove three conditions from the licence.

## **7. Decision**

(a) That the application for a variation of a premises licence be granted as per the application submitted.

(b) That an additional condition be added to the licence as volunteered by the Applicant in order to promote the licensing objective relating to the protection of children from harm –

*“No person under the age of 18 years shall be permitted to remain on the premises after 21:00 hours.”*

## **8. Reasons for the Decision**

The Licensing Committee carefully considered the report which was before them and the representations which had been received (and not withdrawn) and the submissions made.

The Licensing Committee decided not to attach any weight to the written representations from members of the public and patrons of the premises that had been made in support of the application which had been submitted by the Applicant a few days prior to the hearing as those representations had not been made within the prescribed period.

The Licensing Committee decided that the proposed variations in respect of the removal of the three conditions set out in the application were non-contentious and could be granted without undermining any of the licensing objectives.

The representations that had been made by the interested parties related to noise nuisance, parking issues and disorder.

The Committee did not consider that the representations relating to parking issues were a matter that could be considered in the context of the Licensing Act 2003. The Committee accepted the Applicant’s submission that, on the facts of this particular case, parking and highways issues were matters that could be considered under planning law but not licensing law. The public safety licensing objective related to the safety of people using the premises rather than the risk to safety that may arise as a consequence of vehicles parking in the locality of the premises. The public nuisance licensing objective related to the effect of licensable activities at the premises on people who live and work in the area around the premises and this, in the Committee’s view, may include noise nuisance but not parking issues.

With regard to the representations relating to disorder, the Applicant had denied that there had been any but in any event its submissions were that (a) the police had not objected to the application and (b) the addition of live music as a licensable activity was not relevant to the licensing objective of preventing crime and disorder. The Licensing Committee decided that there was no persuasive evidence before it that the premises had been

responsible for undermining the licensing objective relating to the prevention of crime and disorder. The Committee also decided it was significant that the police had not made any objection to the application and, in all the circumstances, the objections made by interested parties relating to disorder were not sufficient to refuse the application or to add any extra conditions to the licence.

The Committee considered that, in the main, the objections that had been made related to noise nuisance which, in turn, concerned the licensing objective of preventing public nuisance.

The interested parties' case was, in summary, that the premises are in close proximity to residential premises and the noise caused by bands and other performers playing music had (and is) a nuisance and the nuisance would be worse if the application was granted to allow the premises to have live music until midnight seven days a week.

The Applicant's case was, in summary, that apart from a music festival that had been held at the premises 18 months ago, which had resulted in complaints being made, there had been no issues relating to noise nuisance and live music going beyond 23:00 hours. The Applicant submitted that the works it had recently carried out at the premises had minimised noise escaping. The Applicant referred to the fact that the Environmental Protection Service had not objected to the application and to the written observations that had been made by the Environmental Health Officer. The Applicant also made reference to the judgment made by the Administrative Court in the case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court and others* [2008] EWHC 838 (Admin).

The Committee was informed that there were other licensed premises in the locality that were authorised to have live music performed at their premises and some of those authorisations extended until midnight and 01:00 hours and 02:00 hours.

The Applicant submitted that its intention was, if the application was granted, to use the extended hours on Friday and Saturday nights and to continue with the "jamming" events on Thursday nights; however, the Applicant still wanted the flexibility of a licence that permitted the performance of live music until midnight on Monday to Sunday.

The report that the Licensing Officer had presented made reference to the fact that the Live Music Act 2012 automatically allowed the premises to provide live music, without requiring a licence to do so, between the hours of 08:00 and 23:00, provided that the audience did not exceed 500.

The Committee considered that whilst the interested parties had mainly based their representations on noise nuisance and it was important for licensed premises to control the levels of noise emanating from the premises there was not sufficient evidence to refuse to grant the application or to impose additional conditions. The Committee decided that the Applicant had taken reasonable steps to minimise noise escaping from the premises by carrying out the recent works. The Committee also decided it was significant that the Environmental Protection Service had not objected to the application and had carried out monitoring after the works had been carried out which had indicated a reduction of noise escaping and, in all the circumstances, the objections made by interested parties relating to noise nuisance were not sufficient to refuse the application or to add any extra conditions to the licence.

## **9. Rights of Appeal**

The interested parties who made representations against the application may appeal against the decision to grant the application, or that on granting the application, the Licensing Authority should have imposed different or additional conditions on the licence.

Appeals must be made in writing to Northern Derbyshire Magistrates' Court, Justice Centre, Tapton Lane, Chesterfield S41 7TW, within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.

## **10. Operative date**

The grant of the application takes effect on 18 May 2017.

## **11. Distribution of Decision Letter**

This letter has been sent to the Applicant's solicitors, The Designated Premises Supervisor at the premises, Derbyshire Constabulary and to the interested parties who made representations against the application.

Yours sincerely

Stephen Oliver  
Solicitor