

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING COMMITTEE – 12th APRIL 2006

Title of report	LICENSING ACT 2003 OUTCOME OF LEGAL PROCEEDINGS
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Purpose of report	To inform Members of the outcome of an appeal against the Licensing Authorities variation of the Premises Licence issued in respect of the White Hart, Market Street, Ashby de la Zouch.
Strategic aims	Safer Communities.
Implications:	
Financial/Staff	None.
Health/Anti-Poverty	None.
Crime and Disorder	None.
Risk Management	None.
Human Rights	None.
E-Government	None.
Comments of Monitoring Officer	Report is satisfactory.
Comments of Section 151 Officer	Report is satisfactory.
Comments of Head of Paid Service	Report is satisfactory.
Consultees	None.
Background papers	Report to the Licensing Sub-Committee of 6th September 2005 Report of Derek M Wiseman on behalf of Wolverhampton and

	Dudley Breweries Plc
Recommendations	THAT THE REPORT BE NOTED.

1. BACKGROUND

1.1 On 6th September 2005 the Licensing Sub-Committee considered an application for the variation of the premises licence issued in respect of the White Hart, Market Street, Ashby de la Zouch having regard to representations from the Leicestershire Constabulary, Ashby de la Zouch Town Council and the District Council's Environmental Protection Section on the grounds of crime and disorder and public nuisance.

1.2 The permitted hours of operation in respect of the premises were as follows:

Monday to Thursday	9.00am to 12.00 midnight
Friday and Saturday	9.00am to 1.00am the following morning
Sunday	9.00am to 11.00pm

1.3 The variation application requested:

- An extension of operating hours for the sale of alcohol, late night refreshment and regulated entertainment up until 12.00 midnight Sunday to Thursday and 2.00am the following morning Thursday to Saturday and during other non standard timings as set out in the application.
- To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours such opening times for this purpose to be confirmed upon 7 days prior notice in writing to the police before the premises intend to open, such notification to include the opening times and the sporting event which is to be shown.
- To remove all embedded restrictions inherent in the Licensing Act 1964 and in the Special Hours certificate.
- To increase time permitted for drinking up from 20 to 30 minutes.

1.4 Individuals from each of the organisations making representations attended the meeting and addressed the Sub-Committee. Sergeant Sean Moore, on behalf of the Leicestershire Constabulary circulated statistics showing the occurrence of violence against the person offences in Ashby de la Zouch Town Centre from July 2003 to June 2005.

1.5 The Sub-Committee determined to grant the application to vary the premises licence subject to the amendment of the terminal hour for licensable activities on Thursdays being midnight, with the premises to close 30 minutes later and mandatory conditions, any embedded restrictions and conditions consistent with the information in the application.

1.6 The Sub-Committee did not consider that the representations and evidence submitted by the Police, Environmental Health Section and Ashby de la Zouch Town

Council justified the refusal of the application on the grounds that the granting of the application, as amended, would undermine the promotion of the licensing objectives.

1.7 The Leicestershire Constabulary subsequently lodged an appeal against this decision on the following grounds:

- that the decision of the licensing authority was wrong
- that the licensing authority failed to take into account all the relevant considerations
- that the licensing authority failed to attach the appropriate weight to submissions made on behalf of the appellant
- further grounds as may be advanced in evidence

1.8 The appeal was brought before Coalville Magistrates on 16th January 2006 and took the form of a hearing de novo. This means that Magistrates consider the evidence afresh together with any new evidence not previously presented, based upon the policy and the law at the date of the appeal hearing.

1.8 Members will recall that on 8th November 2005 the local licensing policy was amended in order to cure typographical errors and more closely reflect the wording of the statutory guidance. The amended version of the local policy was considered by Magistrates during the appeal.

2.0 Evidence

2.1 Evidence was given for the Leicestershire Constabulary by Chief Superintendent Feavour and Sergeant Sean Moore, Councillor Chris Smith of Ashby de la Zouch Town Council and Steve Leeland from the District Council's Environmental Protection Section.

2.2 The case was essentially that the application was for a material variation to which, in line with the District Councils policy and statutory guidance, there was a rebuttable presumption that the application would be refused. There was an existing problem in Ashby as evidenced by the need for a saturation policy, the applicant had not rebutted the presumption that the variation be refused as required by the saturation policy, and the variation would add to the existing problems in Ashby due to the "cumulative impact" of their customers all leaving at 2.00am. The Leicestershire Constabulary wished to preserve the status quo with closing time for most pubs at 1.00am at for nightclubs at 2.00am.

2.3 The Police questioned whether on review, cumulative impact could be argued without a link to particular premises, but this was not answered.

2.4 Documentary evidence was also provided by Ashby de la Zouch Town Council in the form of a public consultation exercise. This involved seeking resident's views on alcohol licensing. A copy of the consultation documents and responses are attached as appendix 1.

2.5 Under cross examination the Police conceded that their statistical evidence indicated a small drop in "offences against the person". The later opening hours of the White Hart (which was a well run premise) since 24th November 2005 had not resulted in more problems and there were no links with the customers of the premises and crime and disorder and public nuisance.

- 2.6 The Town Council's evidence was scrutinised by Counsel on the basis that it was "loaded" in favour of supporting the policy and out of 287 responses sent, only 160 replied and 7 did not support the policy. The reported responses also appeared to express general concern about anti-social behaviour, vandalism, street litter and crime etc and did not link these issues to particular licensed premises.
- 2.7 Evidence for the applicants (Wolverhampton and Dudley Breweries Plc) was given by licensing consultant, Mr David Wiseman. A copy of his report is attached as appendix 2. The Breweries case was that the premises were well run and the client base was more mature with different drinking patterns to most other pubs/clubs in Ashby. The evidence was that customers left in a steady drift after midnight. Since the Bulls Head appeal, the White Hart had operated for six weeks under the new regime and the evidence was that there was no impact at all on the existing problems in Ashby.

3.0 Decision

- 3.1 The Court recognised that the White Hart had had the benefit of operating until 2.00am since 24th November 2005 and this included over the three busiest weekends in the year. It confirmed the evidence of the premises log, the evidence from Mr Wiseman which showed a gradual dispersal from the premises, and the evidence from the Police that there was a problem with crime and disorder which peaked at 1.00am. There was no evidence that the variation of this licence had made the problems in Ashby worse. The evidence from the Police was that there was a slight drop in the number of certain types of offences in the year and in December 2005. The Breweries evidence had rebutted the presumption introduced by the saturation policies and accordingly the original decision of the Licensing Sub Committee was upheld. A copy of a letter from Hinckley Magistrates' Court enclosing reasons for their decision is attached as appendix 3.
- 3.2 In reaching its decision, the Court took into consideration all relevant matters available to it at that time and this included a significant amount of new evidence on behalf of the brewery.