

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 Bull’s Head, 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 11th August 2005 Letters from Hinckley Magistrates’ Court dated 16th November

	and 20th December 2005
Recommendations	THAT THE REPORT BE NOTED.

1. BACKGROUND

1.1 On 11th August 2005 the Licensing Sub-Committee considered an application for the variation of the premises licence issued in respect of the Bulls Head, 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 Wednesday	9.00am to 11.00pm
Thursday	9.00am to 12.00 midnight
Friday and Saturday	9.00am to 1.00am the following morning
Sunday	9.00am to 12.00 midnight

1.3 The variation application requested:

- An extension of operating hours for the sale of alcohol, late night refreshment, regulated entertainment and to permit indoor sporting events up until 1.00am the following morning Monday to Wednesday and Sunday, 2.00am the following morning Thursday to Saturday and during other non standard timings as set out in the application.
- In the event of the transmission of any recognised international event which falls outside of the current permitted hours on the premises licence to permit the activity commencing one hour before the start of the event and ending one hour after the end of the event. Details of which to be notified in writing to the police 14 days beforehand. The event will not proceed if the police serve, 7 days prior to the event, written notice upon the designated premises supervisor.
- To remove any restrictions, which are placed on the licence by virtue of schedule 8, paragraph 6(8) of the Licensing Act 2003 (embedded restrictions).
- To remove the restrictions regarding drinking up times are also to be replaced with 30 minutes.
- To remove the conditions that are attached to the cinema licence and public entertainment licence.

1.4 Individuals from each of the organisations making representations attended the meeting and addressed the Sub-Committee verbally. The Sub-Committee was advised by a external legal advisor. No documentary or statistical evidence was provided.

1.5 The Sub-Committee determined to grant the application to vary the premises licence subject to mandatory conditions, any embedded restrictions, conditions consistent with the information in the operating schedule and the following additional condition

which the Sub-Committee considered necessary for the promotion of the licensing objectives:

“Appropriate notices to be displayed at exits from the premises to encourage patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.”

In announcing the decision the Chairman made reference to the Ashby de la Zouch Saturation Policy and guidance issued under Section 182 of the Licensing Act 2003, particularly with reference to special policies relating to cumulative impact. The Sub-Committee was aware that although a special policy may apply to an area, the licensing authority must still consider whether it would be justified in departing from its special policy in light of the individual circumstances of the case. In this instance, the Sub-Committee did not consider that representations and evidence received could justify any refusal of the application on the grounds that the granting of the application would undermine the promotion of the licensing objectives.

1.6 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

1.7 The appeal was brought before Coalville Magistrates on 15th and 16th November 2005 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 Feavoyour 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, 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 and for nightclubs at 2.00am.

- 2.3 Statistical evidence was produced showing the occurrence of violence against the person offences in Ashby Town Centre from July 2003 to June 2005, the same statistical information provided to the licensing authority on which it based its decision to form a saturation policy. Further documentary evidence was provided by Ashby de la Zouch Town Council in the form of a public consultation exercise involving town centre residents seeking views concerning alcohol licensing. A copy of the consultation documents and responses are attached as appendix 1.
- 2.4 The applicant's case made significant reference to the general spirit of the Act, statutory guidance, evidence provided and the 'problems in Ashby'. It was argued that artificial and fixed closing times promoted binge drinking and disorder and that the Bulls Head was a well managed premise, a fact with which the Police agreed. It was further argued that there were not necessarily problems in Ashby as suggested. The statistical evidence provided by the Police covered only 2 years and related to low level crime not public order or more serious offences. They also indicated that the situation between 1 and 2am was worse than between 2 and 3am which was what the applicant was asking for.
- 2.5 The Town Council's evidence was also scrutinised where the applicants Counsel pointed out that the consultation question was "loaded" in favour of supporting their policy of a 1.00am close. The reported responses also appeared to express general concern and did not link to the Bulls Head.

3.0 Decision

- 3.1 The Magistrates allowed the appeal which resulted in the Bulls Head hours being reduced to 1.00am and ordered each party to pay their own costs. A copy of the confirming letter from Hinckley Magistrates enclosing reasons for the decision is attached as appendix 2.
- 3.2 In reaching the decision, the Court took into consideration all relevant matters available to it at that time including statistical and other evidence produced by the Police which was not provided as part of the case made to the Licensing Sub-Committee. There was no question of the licensing authority acting improperly or reaching a decision that it was not entitled to. The original decision of the Licensing Sub-Committee was not called into question.