Market Street, Ashby de la Zouch

CONTENTS

INDEX OF DOCUMENTS

Nick Walton

Subject: RE: ENH030-Y7Q3 - Freedom of Information Response - Information Requested

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From: SUE WRIGHT [mailto:SUE.WRIGHT@NWLeicestershire.gov.uk] **On Behalf Of** FOI
Sent: 23 December 2011 10:15
To: Vicky Mead
Subject: ENH030-Y7Q3 - Freedom of Information Response - Information Requested

North West LEICESTERSHIRE DISTRICT COUNCIL

Corporate Directorate
Freedom of Information
Please ask for : Information Management Officer
Telephone: 01530 454721
Our Ref: ENH030-Y7Q3
Your Ref:
Date:23 December 2011

Dear Ms Mead

FREEDOM OF INFORMATION REQUEST

Further to your request under the Freedom Of Information Act 2000 (FOIA) for information relating to Complaints Regarding Noise at Queens Head Hotel, 79 Market Street, Ashby de la Zouch and VIP Rooms, North Street, Ashby de la Zouch Since December 2009 I respond as follows.

Under the FOIA any person making a request for information is entitled to receive confirmation as to whether such information exists and is held by the Council, and is entitled to have that information communicated to them except where the requested information falls under one of the relevant exemptions. In such a case the information is deemed to be exempt from the Council's duty to disclose it.

Following the Council's assessment of the information and the relevant exemptions, the Council also has a duty to determine whether the release of the information is in the public interest, despite the exemption applied to it.

All FOIA requests are therefore dealt with on a threefold analysis.

1) Whether the Authority can identify the information requested
2) Whether there is an exemption within the FOIA which prevents the information from being released
3) Whether, despite the exemption, it is in the public interest to release the information requested.

Taking this analysis into account I now deal with your request for information.

You have requested information relating to Complaints Regarding Noise at Queens Head Hotel, 79 Market Street, Ashby de la Zouch and VIP Rooms, North Street, Ashby de la Zouch Since December 2009 and taking the above threefold test into account the Authority can confirm that it holds the information you have requested. In applying the second test, the Authority concedes that there is no relevant exemption to this request and as such have enclosed the information requested, please see below. As there is no relevant exemption, there is no need to apply the third stage public interest assessment.

Noise Complaints in relation to the Queens Head Hotel since December 2009:

Date received: 10/05/2010
Outcome: Unsubstantiated

Date received: 20/12/2011
Outcome: Ongoing

The Authority have not received any complaints in relation to the VIP rooms since December 2009.

I hope the information supplied is to your satisfaction however, if it is not please feel free to contact me on the number below should you have any queries in relation to this response. Please note that in responding to further enquiries I can only comment on the information contained within this correspondence and cannot provide any further information that may pertain to an additional FOIA request.

Yours sincerely,

Sue Wright
Information Management Officer
Corporate, Legal & Democratic Services
Freedom of Information
Email: foi@nwleicestershire.gov.uk
Tel: 01530 454721

Save a tree...please don't print this e-mail unless you really need to

Analysis of the Crime Summary Report of Leicestershire Constabulary in respect of

Ciro's Nightclub, Market Street, Ashby de Licensing Authority Zouch)

Crime Incident No.	Offence Details	Details of incident	Time/Day/Date	State of Crime
NW/01027/11-2	Assault and harassment	What appears to be an unprovoked attack by one girl on another. Girl shaken up.	00;15 Sunday 20/02/2011 01:00 Sunday 20/02/2011	Undetected
NW/00416/11-7	Assault and harassment	Unprovoked Assault	23:44 Saturday 22/01/2011	Restorative Justice
NW00678/11-1	Assault and harassment	Doorman assisted with youths who were escorted off the premises.	02:00 Saturday 05/02/2011	Undetected complaint withdrawn
NW/01138./11-6	Assault and harassment	Doorman punched in face by unknown	01:00 Saturday 26/02/2011	Undetected
NW/01588/10-3	Assault and harassment	Men asked to leave. Came back and refused entry door staff from Arties which is now called "Continental". Ciro's management called Police.	01:30 Saturday 27/03/2010	Undetected complaint
NW/04946/10-7	Assault and harassment	Gas heater fell on to young lady following two youths sparing with each other.	02:00 Saturday 14/08/2010	Summons
LN/04521/11-5	Assault and harassment	Outside Ciro's Nightclub, Market Street, Ashby de la Zouch.	01:30 Sunday 30/10/2011	Charged
LN/05289/11-8	Assault and harassment	No information	23:35 Friday 09/12/2011	Charged
NW/00153/11-3	Assault and harassment	No information	02:00 24/01/2010	Undetected
NW/02432/10-4	Assault and harassment	Unprovoked assault in Ciro's	00:36 Sunday 09/05/2010 01:30 Thursday 13/05/2010	Undetected
NW00390/10-3	Assault and harassment	No information	02:00 Sunday 24/01/2010	Undetected
NW/00733/10-6	Assault and harassment	No information	01:30 Saturday 13/03/2011	Restorative Justice
NW/00849/11-6	Public Order	No information	01:40 Sunday 13/02/2011	No crime – no offence disclose
NW/00403/11-4	Assault and harassment	Incident actually took place in main bar of the Queen's Head Hotel.	00:30 Saturday 22/01/2011	Someone was charged

TENS Analysis (Ex Crime Summary) Market Street

REFVAL	CPOCCUP	ADDRESS	STARTDT	ENDDT	Time of incident (Ex Crime Summary) Market Street
11/00016/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	29/01/2011 00:01	29/01/2011 03:00	01:45
11/00084/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	12/03/2011 00:01	12/03/2011 03:00	03:10
11/00086/TEN	Queens Head - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	12/03/2011 00:01	12/03/2011 03:00	
11/00085/TEN	Queens Head - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	19/03/2011 00:01	19/03/2011 04:00	00:00
11/00074/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	19/03/2011 00:01	19/03/2011 04:00	
11/00086/TEN	Queens Head - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	23/04/2011 00:01	23/04/2011 03:00	
11/00482/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	03/07/2011 00:01	03/07/2011 05:00	01:42
11/00483/TEN	Queens Head - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	03/07/2011 00:01	03/07/2011 05:00	
11/00605/TEN	Queens Head - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	29/08/2011 00:01	29/08/2011 02:00	
11/00885/TEN	Queens Head - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	12/11/2011 02:00	12/11/2011 03:00	None
11/00883/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	12/11/2011 02:00	12/11/2011 03:00	
11/00995/TEN	Queens Head Hotel - Ciro's	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	04/12/2011 00:01	04/12/2011 03:00	None
11/00996/TEN	Queens Head Hotel -(VIP Rooms)	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	04/12/2011 00:01	04/12/2011 03:00	
11/01082/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	10/12/2011 00:01	10/12/2011 03:00	23:35

REFVAL	CPOCCUP	ADDRESS	STARTDT	ENDDT	Time of incident (Ex Crime Summary) Market Street
11/01083/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	10/12/2011 00:01	11/12/2011 03:00	
11/01080/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	11/12/2011 00:00	11/12/2011 03:00	None
11/01097/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	17/12/2011 00:00	18/12/2011 03:00	03:14
11/01099/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	17/12/2011 00:00	18/12/2011 03:00	00:01 – 00:45
11/01103/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	24/12/2011 00:00	24/12/2011 03:00	01:00
11/01100/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	24/12/2011 00:00	25/12/2011 03:00	
11/01086/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	25/12/2011 00:00	25/12/2011 03:00	02:50 – 03:00
11/01101/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	27/12/2011 00:00	27/12/2011 03:00	None
11/01098/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	27/12/2011 00:00	27/12/2011 03:00	
12/00269/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	10/03/2012 00:00	10/03/2012 03:00	
12/00271/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	10/03/2012 00:00	10/03/2012 03:00	
12/00292/TEN	Queens Head - VIP Rooms	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	07/04/2012 00:00	07/04/2012 03:00	
12/00291/TEN	Queens Head - Ciros	Queens Head Hotel79 Market StreetAshby De La ZouchLeicestershireLE65 1AH	07/04/2012 00:00	07/04/2012 03:00	

Fwd: Late music

From: **Lee Firetto**
Sent: 25 September 2011 11:45:55
To: nick.garbo lisette bell-simmonds
queensheadhotel

---------- Forwarded message ----------
From: **Lee Firetto**
Date: Sun, Sep 25, 2011 at 12:44 PM
Subject: Re: Late music
To: Mike Smith

Dear Mike,

The music in Ciro's finishes at 2 o'clock promptly, we have never run over that time. There is a problem with rats in the electrical shop next door to us and apparently he has been playing music to keep them away. It may possible have been that you have heard but as I was not there I cannot ascertain that. Either way I will call Steve Leyland, the local enviromental health officer, who I work incredible closely with, first thing Monday morning and discuss this matter with him. Random inaccurate accusations adversely effect both our ability to gain temporary events notices and our reputation. Should you wish to discuss the matter further please call me directly on 07791546106.

Kind Regards

Lee Firetto

On Sun, Sep 25, 2011 at 3:11 AM, Mike Smith · wrote:

> Why at 0309 is the music still playing. If this happened again and the local residents are not informed I will call the police and have the local council informed.
> Regards.

6

Ashby social club/ Ciro's Nightclub.

79 Market Street, Ashby de la Zouch, Leicestershire. LE65 1AH

Dispersal Procedure for Ashby social club, (incorporating Ciro's nightclub).

Introduction

It is acknowledged by Lisette Bell-Simmonmds (the proprietor) that there may be a conflict between the legitimate right of Ashby social club to provide alcohol and other licensable acitvities and the equally legitimate right of neighbours to enjoy their homes and businesses without disturbance.

Ashby social club also acknowledges that popular venues are potential sources of nuisance, antisocial behaviour and crime which may create concern for the immediate neighbourhood, its residents and the relevant authorities.

Definition

The Dispersal Procedure is not to be confused with The Evacuation Procedure, any design standard, any other operational policies or any agreed/enforced rules or guidelines.

The Dispersal Procedure (around the terminal hour) is dedicated to make the maximum contribution by exercising pro-active measures, towards and at the end of trading, to move customers from the venue and its immediate area in such a way as to cause minimum disturbance or nuisance to neighbours, both residential and business, and to make the minimum impact upon the neighbourhood in relation to potential nuisance, antisocial behaviour and crime.

The relevance of the time of closure is recognised as meriting this special attention and concern.

This procedure document is specific to Ashby social club & Ciros nightclub and its locality,

The Dispersal Procedure has been formulated by Lisette Bell-Simmonds in conjunction with police, senior representatives and security of the venue. It will be discussed with the licensing officers of the local council and police.

The Dispersal Procedure is subject to review and will address problems and concerns as they are identified in order to establish a permanent reduction or elimination.

Neighbours Charter

As there are residential neighbours in the local area they will be given a copy of the venue's 'Neighbours Charter'.

This charter explains the existence and aims of The Dispersal Procedure and gives clear communication lines so any neighbour can draw attention to a matter which causes concern (these may relate to customers departing or any other issue).

Should there be a need, a committee which comprises representatives of the venue and residential neighbours, along with other persons as appropriate, will be established to create good and close relations.

Dispersal Procedure Document

1. Relevance of Licensing Conditions:

We will ensure that the conditions of the Premises Licence, around the terminal hour, are strictly adhered to. This will be operated to encourage the dispersal of patrons gradually, both during the last part of trading and following the end of bar service.

During the last 30 minutes of bar service the points in each bar will be reduced and certain staff re-allocated to collecting glasses or offer customer service in the cloakroom to assist customer departure. A series of measures will be implemented to assist dispersal throughout this period and the 'drinking-up' time.

2. End of Evening Operational Policies:

We will use reduction of volume levels, type of music played and variation of increased lighting levels to encourage the gradual dispersal of patrons during the last part of trading and during the drinking-up period.

DJ announcements may be used to both encourage a gradual dispersal and to remind customers of consideration for neighbours.

3. Cloakroom:

The cloakroom is situated in order to assist the swift return of coats. Management and operation of the cloakroom plays an important part in the dispersal process. (Staffing and control systems are increased in the period prior to bar closure.)

4. Notices at Exit:

In line with Ashby social club/ Ciros policies, highly visible notices are placed in the foyer requesting exiting customers to leave quietly and to respect neighbours and their property.

5. Door Supervisors:

will encourage customers to drink-up and progress to the exit within the venue throughout the latter part of drinking-up time;

will draw the attention of exiting customers to the notices in the foyer and ask them to be considerate;

will ensure the removal of all bottles and glasses from any customer who attempts to leave the venue carrying one. A table and bottle skip will be positioned just inside the venue by the door to the foyer to collect glasses/bottles.

will actively encourage customers not to assemble outside the venue;

will direct♣ customers to the nearest taxi ranks or other transportation away from the area.

will wear high♣visibility Jackets from 9pm on the door on all trading nights.

6. Food is available at discounted rates from the venue until the last guest exits Ashby social club/ Ciros, either in the form of the late night snack menu or Hot Dogs and Large Burgers from the Food area, this is provided to relieve the pressure on the fast food outlets on the street and allow people to head straight to the taxi ranks.

7. Marshalls:

Ashby social club/Ciros will contribute to the funding of the Town Centre Taxi Marshal Service, should this become relevant.

8. Rubbish Patrol:

The area patrolled would be from Ciros to the right of The Chip shop and to The left of the Co-op.

The venue will send out a 'Rubbish Patrol' following closure. They pick up bottles and food wrappings in a designated area. (These are likely to be from sources other than our venue – but will be collected and disposed of.)

On rare occasions this patrol may be faced with the result of antisocial behaviour such as vomiting and urination. This will be cleared by use with a mop and bucket containing a disinfectant solution.

9. Staff:

Consideration will be given to procedures for staff departures.

10. Training:

Training at all levels will be conducted to ensure understanding and implementation of the venue specific Dispersal Procedure.

Hours: Sunday – Thursday 9 am till 12 Midnight

Friday – Saturday 9am till 2:00am

Ashby social club/Ciros operates an established policy to ensure due consideration is given to neighbours by customers dispersing from our premises.

Neighbours Charter

Opening hours;

Sunday – Thursday Functions only 9am – 12 Midnight

Friday – Saturday 9pm - 2am

If you have any concerns in connection with Ciros, please do not hesitate to contact us.

Contact Numbers:

General Manager Ciros Lena Horbovtsova 01530 412780

Operations Manager Ciros Lee Firetto 07791 546106

Operations Director Lisette Bell-Simmonds 07973 451304

Head Office Customer Relations 01530 560622

Office; Queens Head Hotel: 79 Market Street, Ashby de la Zouch, Leicestershire. LE65 1AH

Neutral Citation Number: [2008] EWHC 838 (Admin)

Case No: CO/5533/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2008

Before:

THE HONOURABLE MRS JUSTICE BLACK

Between:

Daniel Thwaites Plc	**Claimant**
– and –	
Wirral Borough Magistrates' Court	**Defendant**
– and -	
The Saughall Massie Conservation Society	**1st Interested Party**
– and -	
Wirral Metropolitan Borough Council	**2nd Interested Party**

David MW Pickup (instructed by **Naphens plc**) for the **Claimant**
The Defendant did not appear and was not represented
David Flood (instructed by **Messrs Kirwans**) for the **1st Interested Party**
Matthew Copeland (instructed by **Wirral MBC**) for the **2nd Interested Party**

Hearing date: 10th March 2008

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Black J :

11

1. This is an application by Daniel Thwaites Plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Mr Justice Pitchford on 2 November 2006.

The factual background

2. The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub–Committee of the Metropolitan Borough of Wirral ("the licensing authority") for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.

3. In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 p.m. and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 p.m., with the doors closing one hour after the last alcohol sale every night.

4. The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society ("the First Interested Party") and other Saughall Massie residents.

5. The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later "on special occasions" This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

6. The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 p.m.,

that the premises must promote the use of taxi firms which use a call–back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

7. The Saughall Massie Conservation Society and "others" appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision "was not made with a view to promotion of and in accordance with the licensing objectives pursuant to Section 4, Part 2 of the Licensing Act 2003".

8. The appeal occupied the Magistrates' Court from 3 - 5 April 2006. The respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

9. The justices granted the appeal. Their Reasons run to 3 pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 p.m. and alcohol sales until 11.30 p.m. on all nights except Friday and Saturday when entertainment would be permitted until 11.30 p.m. and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 a.m.. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.

10. The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the "Witnesses of the Appellant", they say simply that they have read and considered them but attached little or no weight to them.

11. The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was

not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such as R v Westminster City Council ex p Ermakov [1996] 2 All ER 302 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

The broad nature of the claim in relation to the licensing decision

12. The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

The legal background

13. The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

14. Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

> "12. In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

15. Section 1 of the Act provides:

"S1(1) For the purposes of this Act the following are licensable activities-

(a) the sale by retail of alcohol,

(b) [clubs]

(c) the provision of regulated entertainment, and

(d) the provision of late night refreshment."

16. To carry on a licensable activity, a premises licence granted under Part 3 of the Act is generally required, section 2. Application for a premises licence must be made to the relevant licensing authority, section 17(1).

17. By virtue of section 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the "licensing objectives". These are set out in section 4 as follows:

"S 4(2) The licensing objectives are-

(a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm."

18. In carrying out its licensing functions, by virtue of section 4(3) the licensing authority must also have regard to its licensing statement published under section 5 and any guidance issued by the Secretary of State under section 182.

19. Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 ("the Guidance"). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

20. The Foreword says that the Guidance

> "is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice."

21. As the Guidance says in paragraph 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

"Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

22. An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in section 17(4) which are as follows:

"(a) the relevant licensable activities,

(b) the times during which it is proposed that the relevant licensable activities are to take place,

(c) any other times during which it is proposed that the premises are to be open to the public,

(d) where the applicant wishes the licence to have effect for a limited period, that period,

(e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,

(f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,

(g) the steps which it is proposed to take to promote the licensing objectives,

(h) such other matters as may be prescribed."

23. Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.

24. Section 18(2) provides that, subject to subsection (3), the authority must grant the licence in accordance with the application subject only to:

"(a) such conditions as are consistent with the operating schedule accompanying the application,

and

(b) any conditions which must under section 19, 20 or 21 be included in the licence."

25. Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.

26. Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal "relevant representations" are defined in section 18(6) as follows:

"(6) For the purposes of this section, "relevant representations" means representations which-

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) ×."

27. Subsection (7) provides:

(7) The requirements of this subsection are-

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

28. Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of section 18(3)(b), the authority must also:

"(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives."

29. Section 18(4) provides:

"(4) The steps are-

(a) to grant the licence subject to-

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application."

30. Conditions are modified for the purposes of subsection (4)(a)(i) if any of them is altered or omitted or any new condition is added.

31. During the currency of a premises licence, by virtue of section 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc.) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of section 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

32. The Act makes provision in Part 5 for "permitted temporary activity" which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

33. Section 181 provides for appeals to be made against decisions of the licensing authority to a magistrates' court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

The detail of the claim

34. The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates' Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

35. There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, section 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

> "10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

36. Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

37. Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in J. D. Weatherspoon plc v Guildford Borough Council [2006] EWHC 815 (Admin), he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making

matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".

38. There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As paragraph 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

> "When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a magistrates' court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

39. In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

40. The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in section 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, section 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion

of the licensing objectives" (the steps in subsection (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:

> "Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose."

41. The Guidance also refers a number of times to the need for regulation to be "proportionate". This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being "necessary", it must in my view be confined to that which is "proportionate" and one can understand why the Guidance spells this out.

42. Mr Pickup submits, and I accept, that the Act anticipates that a "light touch bureaucracy" (a phrase used in paragraph 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

> "7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives."

43. The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with paragraph 6.1 which reads:

> "This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply."

44. It continues:

> "6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.
>
> 6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions."

45. The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.

46. The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

> "1 reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises."

47. To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to "make hay while the sun shines" and submits, correctly in my view, that the magistrates were entitled to take

this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of "little evidential value" in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

48. It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

> "The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

> "We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

49. They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

50. The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.

51. Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

52. Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being

cross–examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said,

> "We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00 a.m. to 1.00 a.m.. 1.00 a.m. closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue* ." [my italics]

53. I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting:

> "We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms."

In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

54. It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

55. It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which

caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.

56. The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

57. Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at paragraph 6.8:

> "The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

58. I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

59. What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading "Flexibility" under which the magistrates say simply:

> "We have considered the concept of Flexibility."

In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in paragraph 6.6 of the Guidance (see above) but their

shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

60. The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, "the application for extended hours was to allow *flexibility* to open later on certain occasions". As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

61. The magistrates' comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

62. There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

My overall conclusions

63. It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was "necessary" to promote those objectives, it is implied in their decision that they did take this view

and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be "an inevitable consequence" of leaving the hours as granted by the Local Authority. However, in my view their approach to what was "necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

64. I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, "×.there is also the question of Police resources and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake".

65. Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is "a village pub and not a night spot in the centre of town". For

the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

66. Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, "I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises.". Given that problems with or in the vicinity of the premises had been almost non–existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

67. I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in section 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also "any other times during which it is proposed that the premises are to be open to the public". On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

The costs argument

68. In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.

REFVAL	CPOCCUP	ADDRESS	STARTDT	ENDDT	
11/00016/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	29/01/2011 00:01	29/01/2011 03:00	
11/00084/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	12/03/2011 00:01	12/03/2011 03:00	1
11/00086/TEN	Queens Head - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	12/03/2011 00:01	12/03/2011 03:00	1
11/00085/TEN	Queens Head - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	19/03/2011 00:01	19/03/2011 04:00	1
11/00074/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	19/03/2011 00:01	19/03/2011 04:00	1
11/00086/TEN	Queens Head - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	23/04/2011 00:01	23/04/2011 03:00	1
11/00482/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	03/07/2011 00:01	03/07/2011 05:00	1
11/00483/TEN	Queens Head - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	03/07/2011 00:01	03/07/2011 05:00	1
11/00605/TEN	Queens Head - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	29/08/2011 00:01	29/08/2011 02:00	
11/00885/TEN	Queens Head - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	12/11/2011 02:00	12/11/2011 03:00	1
11/00883/TEN	Queens Head Hotel - (V.I.P) Rooms)	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	12/11/2011 02:00	12/11/2011 03:00	1
11/00995/TEN	Queens Head Hotel - Ciro's	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	04/12/2011 00:01	04/12/2011 03:00	1

11/00996/TEN	Queens Head Hotel -(VIP Rooms)	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	04/12/2011 00:01	04/12/2011 03:00	1
11/01082/TEN	Queens Head - VIP Rooms	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	10/12/2011 00:01	10/12/2011 03:00	1
11/01083/TEN	Queens Head - Ciros	Queens Head Hotel1 79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	10/12/2011 00:01	11/12/2011 03:00	2
11/01080/TEN	Queens Head - VIP Rooms	Queens Head Hotel1 79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	11/12/2011 00:00	11/12/2011 03:00	1
11/01097/TEN	Queens Head - Ciros	Queens Head Hotel1 79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	17/12/2011 00:00	18/12/2011 03:00	2
11/01099/TEN	Queens Head - VIP Rooms	Queens Head Hotel |79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	17/12/2011 00:00	18/12/2011 03:00	2
11/01103/TEN	Queens Head - Ciros	Queens Head Hotel |79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	24/12/2011 00:00	24/12/2011 03:00	1
11/01100/TEN	Queens Head - VIP Rooms	Queens Head Hotel |79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	24/12/2011 00:00	25/12/2011 03:00	1
11/01086/TEN	Queens Head - Ciros	Queens Head Hotel |79 Market Street1 Ashby De La Zouch |Leicestershire |LE65 1AH |	25/12/2011 00:00	25/12/2011 03:00	1
11/01101/TEN	Queens Head - VIP Rooms	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	27/12/2011 00:00	27/12/2011 03:00	1
11/01098/TEN	Queens Head - Ciros	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	27/12/2011 00:00	27/12/2011 03:00	1
12/00269/TEN	Queens Head - Ciros	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	10/03/2012 00:00	10/03/2012 03:00	1

12/00271/TEN	Queens Head - VIP Rooms	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	10/03/2012 00:00	10/03/2012 03:00	1
12/00292/TEN	Queens Head - VIP Rooms	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	07/04/2012 00:00	07/04/2012 03:00	1
12/00291/TEN	Queens Head - Ciros	Queens Head Hotel |79 Market Street |Ashby De La Zouch |Leicestershire |LE65 1AH |	07/04/2012 00:00	07/04/2012 03:00	1

Form No. BC4

LEICESTERSHIRE CONSTABULARY

FROM: PC 1667 MARK ARJOO

TO: ANDY COOPER
NWLDC. LICENSING DEPARTMENT

AREA/LPU/DEPT.: NORTH WEST LEICS LPU

REF:

DATE: 16/2/12

SUBJECT: THE QUEENS HEAD HOTEL / VIP ROOMS / THE QUEENS HEAD HOTEL – REPRESENTATION TO VARIATION OF LICENSING HOURS.

Andy.

I submit this report. further to the one I made on 23/12/11.

I have completed a search of the Leicestershire Police Crime and Intelligence System for recorded incidents of Assaults and Public Order, between 1/1/10 and 1/1/12, the location being Ashby town centre, week ends between the hours of 11pm and 8am, and have found the following statistics:

Total for Ashby town centre = 105.
Total for all incidents within licensed premises in Ashby town centre, other than Ciro's/VIP Rooms/The Queens Head = 14
Total for within Ciro's/VIP Rooms/The Queens Head = 14

I would like to clarify that my search covers all three licensed premises, owned by the applicant which are situated in the same building.
Any recorded incidents which took place at the VIP Rooms or The Queens Head, will be shown under the name of Ciro's, as we deem them to fall under both the same licence and premises.

I would like to bring to the attention of the Licensing Committee, that Ciro's/VIP Rooms/The Queens Head, is one of three licensed premises who are open until 2am at week ends.
The total amount incidents shown for the town centre is no doubt as a result of highly intoxicated people who have consumed a large quantity of alcohol in their premises, and then spill out onto the street.
I request that the committee carefully consider these figures, and what implications the selling of alcohol for a further hour will have on Crime and Disorder, Public Safety, and Public Nuisance in Ashby.

I have provided hard copies of the data, and would be grateful if you would circulate them to members of the Licensing Committee.

Regards.

Mark Arjoo
PC 1667.