

WIRRAL COUNCIL

LICENSING ACT 2003 COMMITTEE

29 SEPTEMBER 2008

REPORT OF THE DIRECTOR OF REGENERATION

JUDICIAL REVIEW - SAUGHALL HOTEL

1.0 EXECUTIVE SUMMARY

1.1 The purpose of this report is to inform Members of the outcome of a Judicial Review of a decision made by Wirral Magistrates' Court under the Licensing Act 2003 concerning a Premises Licence for the premises known as The Saughall Hotel, Saughall Massie.

2.0 BACKGROUND

2.3 In June 2005 Daniel Thwaites Plc applied to 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.

2.4 The premises sought to extend the hours for licensable activities beyond those of the existing licence. The Police did not support the hours initially proposed and subsequently Daniel Thwaites Plc agreed to restrict the hours to those that were acceptable to the Police. In summary the application was amended as follows:

Supply of Alcohol

Sunday to Thursday	10.00am to 12.00midnight
Friday and Saturday	10.00am to 1.00am

Regulated Entertainment

Sunday to Thursday	11.00am to 11.00pm
Friday and Saturday	11.00am to 12.00midnight

Hours Open to the Public

Sunday to Thursday	10.00am to 1.00am
Friday and Saturday	10.00am to 2.00am

2.5 There were also additional non standard timings.

2.6 The Police withdrew their representations against the modified proposal and did not appear before the Licensing Authority when the application was considered on 23 August 2005. No representations were made by any other Responsible Authorities. However, representations were made by the Saughall Massie Conservation Society and other Saughall Massie residents. A Ward Councillor had also been asked to support the representations made by local residents.

- 2.7 The applicant 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.
- 2.8 The application was granted in the modified terms requested and conditions were imposed on the licence to prevent public nuisance. These included: the area outside the premises must be cleared by 11.00pm, 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.
- 2.9 The Saughall Massie Conservation Society along with other residents appealed against this decision to the Magistrates Court. This appeal was granted with the following hours of operations:

Supply of Alcohol

Sunday to Thursday	10.00am to 11.30pm
Friday and Saturday	10.00am to 12.00midnight

Regulated Entertainment

Sunday to Thursday	11.00am to 11.00pm
Friday and Saturday	11.00am to 11.30pm

Hours Open to the Public

Sunday to Thursday	10.00am to 12.00midnight
Friday and Saturday	10.00am to 1.00am

- 2.10 There were also additional non standard timings.
- 2.11 There had been no complaints recorded against the premises under the old licensing regime nor since the new licence came into effect on 24 November 2005.
- 2.12 Daniel Thwates Plc considered that the Magistrates' Court decision was unlawful for the following reasons:
- The decision was not in line with the philosophy of the Licensing Act 2003.
 - The Decision was based on speculation rather than evidence.
 - The decision took into account irrelevant considerations and failed to take into account proper considerations.
 - The restrictions imposed on the licence were not necessary for the promotion of the Licensing Objectives.
 - It was a decision to which no properly directed Magistrates' Court could have come to on the evidence that was presented.
 - The conditions imposed regarding the time at which the premises must close was not a matter regulated under the Licensing Act 2003.
 - The Magistrates failed to give adequate reasons for their decision.

- The Magistrates failed properly to consider and take into account the Guidance issued under Section 182 of the Licensing Act 2003.

2.13 Daniel Thwaites Plc subsequently applied for, and were granted, permission for a Judicial Review of this decision and sought an order quashing the decision and the costs awarded against them.

2.14 The matter was considered in the High Court on 10 March 2008 by the Honourable Mrs Justice Black who then delivered her decision on 6 May 2008.

2.15 Mrs Justice Black concluded that the Magistrates' decision was unlawful and therefore must be quashed and that the Magistrates' order in relation to costs would not stand as the Magistrates' would have had no reason to grant costs against Daniel Thwaites Plc if the appeal had been dismissed.

2.16 In reaching her conclusion Mrs Justice Black acknowledged that the Magistrates' did take account of the Licensing Objectives, correctly identifying those that were relevant but failed to take proper account of the changed approach to licensing introduced by the Licensing Act 2003. The judgement states that:

'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 was required in the circumstances of the case....The fact that the Police did not oppose the hours sought on this basis (issue of migration) 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.'

2.17 Mrs Justice Black goes on to state that they should have also given consideration to precisely how frequently the premises would be likely to be open late and made findings about it. In conclusion Mrs Justice Black states that the Magistrates':

'...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.'

2.18 Mrs Justice Black considered separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as apposed to the hours during which licensable activities take place. In consideration of this matter Mrs Justice Black states that in her view a requirement that the premises close at a particular time is a condition and therefore there should be no reason why the closing up of the premises at a particular time cannot be imposed where necessary to promote the licensing objectives.

2.19 The effect of this judgement has been to clarify the importance of evidence as apposed to speculation presented in hearings under the Licensing Act 2003 and in respect of opening and closing times, these are conditions that can be imposed by the Licensing Authority.

3.0 FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising out of this report.

4.0 STAFFING IMPLICATIONS

4.1 There are no staffing implications arising out of this report.

4.0 EQUAL OPPORTUNITIES IMPLICATIONS

4.1 There are no equal opportunities implications arising out of this report.

5.0 COMMUNITY SAFETY IMPLICATIONS

5.1 Effective control of Licensing Legislation can assist in raising standards and improve the perception of community safety.

6.0 LOCAL AGENDA 21 IMPLICATIONS

6.1 There are none arising directly from this report.

7.0 PLANNING IMPLICATIONS

7.1 There are no planning implications arising out of this report.

8.0 ANTI-POVERTY IMPLICATIONS

8.1 There are no anti poverty implications arising from this report.

9.0 SOCIAL INCLUSION IMPLICATIONS

9.1 There are no social inclusion implications associated with this report.

10.0 LOCAL MEMBER SUPPORT IMPLICATIONS

10.1 This report affects the entire Borough

11.0 BACKGROUND PAPERS

11.1 None.

12.0 RECOMMENDATION

12.1 That Members note the report and recognise the implication of the judgement confirming the basis for Licensing decisions.

Alan Stennard
Director of Regeneration

This report has been written by Margaret O'Donnell who can be contacted on 691 8606