

CANNOCK CHASE COUNCIL

LICENSING SUB COMMITTEE

9 JUNE, 2006

REPORT OF HEAD OF ENVIRONMENTAL HEALTH

LICENSING ACT, 2003

PREMISES LICENCE APPLICATION, PIED PIPER PUBLIC HOUSE,
114 PYE GREEN ROAD, CANNOCK

1. Purpose of Report

- 1.1 To approve the proposed amendment to the Premises Licence granted in respect of the Pied Piper Public House.

2. Background

- 2.1 An application for a Premises Licence for the Pied Piper Public House was considered by a meeting of this Sub-Committee on 12 October, 2005 following representations from residents in the vicinity of the premises and a Local Housing Association.
- 2.2 Members determined the application and the findings of fact are given as Annex 1 to this report.
- 2.3 The finish times applied for were reduced by one hour, across the board. However, it has come to light that one page of the application form was not included in the report, therefore Members did not have the opportunity to consider the matter relating to one licensable activity, namely the performance of dance.

3. Matters for Consideration

- 3.1 A full copy of the application for the Premises Licence is given as Annex 2 to this report. The page which was omitted from the report considered on 12 October, 2005 is Enclosure 5.17.
- 3.2 The solicitor (from Messrs Pickerings Solicitors) who advised Members in October has been contacted and agrees that the intention was to reduce by one hour all licensable activities but to increase those reduced hours by one hour for Bank Holidays, weekends, Christmas Eve and Boxing Day (so called 'non standard timings').
- 3.3 The solicitor acting for the applicant has changed since the October hearing. The current solicitor has been contacted and has verbally concurred with the view in 3.2 above. A letter has been requested to confirm this and will be circulated if received.

4. Legal Implications

- 4.1 The Council is charged under the Licensing Act 2003 to consider all licensing application under the Act.
- 4.2 The Council's Licensing Committees/Sub-Committee sits as quasi-judicial tribunal and accordingly the rules of natural justice apply in addition to any human rights implications/considerations.
- 4.3 The Committee must consider the entire application and have regard to all representations made (whether made orally or in writing) in determining the application and attach whatever weight it deems appropriate to the same. (Such representations of course being subject to the provisions of admissibility).
- 4.4 The Licensee must be provided with a Premises Licence and the extent of that licence made clear. The Licensee can be called upon at any time to provide the Premises Licence and accordingly, it is of paramount importance that a Licence setting out the full nature and detail of the same is provided urgently.
- 4.5 The application for a Premises Licence for the Pied Piper Public House has been considered by the Committee, however following an administrative oversight, the Premises Licence requires amendment to reflect the true and full nature of the application that was considered and determined.
- 4.6 The Committee has the power to make such an amendment given that it is clear from the documentary evidence provided in this Report that it was never intended that the Premises Licence should not include the provision for dancing. Page 5 of the application clearly shows that dancing is sought as one of the licensable activities.
- 4.7 Although this oversight appears to have been followed in the Findings of Fact, this does not undermine the true position that in all fairness and having regard to all the facts, the Premises Licence was to also include dancing.

5. Financial Implications

- 5.1 There are no financial implications arising from this report.

6. HRA Implications

- 6.1 There would appear, on the face of this Report, to be Human Rights implications. Both the applicant and objectors were entitled to a 'fair hearing' under Article 6 of the Human Rights Act in respect of the application for a Premises Licence. The applicant was entitled to the full consideration of the whole application and objectors entitled to make representations concerning the same. However, an element of that application was not fully disclosed, as a page 9 of the application copies was missing.
- 6.2 In such circumstances there is always the possibility for an argument to be advanced that there has been an infringement of both parties rights to a fair hearing.
- 6.3 However, this issue must be seen in the context of what the Licensing Sub-Committee considered on 12 October 2005 and the subsequent determination.

- 6.4 The omission of the licensable activity relating to the performance of dance is only one aspect of the application. Its impact needs to be considered against the background of what representations were made to the Licensing Sub-Committee and in turn what was subsequently granted. The consideration of any infringement of Article 6 rights must consider such factors.
- 6.5 Key factors that should also be considered include:
- i. The fact that no Responsible Authority had objected to the application.
 - ii. The main basis for the objections related to noise nuisance and disturbance.
 - iii. The objectors confirmed that their main (if not sole) objection related to the extended opening hours.
 - iv. There was no objection raised specifically to the licensable activities of playing recorded music, playing live music, exhibition of films, indoor sporting events and the provision of facilities for dancing.
- 6.6 The question that is central to any argument of Article 6 infringement is whether any party has been so prejudiced by the copied application having one page missing, that they have been denied the opportunity to make representations that would have or likely to have affected the outcome of the determination.
- 6.7 It should be noted that the application did on page 5 confirm that the licensable activity relating to the performance of dance was sought. It was page 9 (section G) of the application, which detailed this activity that was missing.
- 6.8 Moreover, despite the Premises being granted, no party (whether an objector or Responsible Authority) has raised any issue concerning this matter. This further demonstrates the consensus of all parties that the licensable activity relating to the performance of dance was considered and deemed to be part of the Premises Licence.
- 6.9 Neither the applicant nor the persons who made objection have been affected by the lack of decision on the matter of the performance of dance. Dancing would not take place at times when music is not permitted and cannot take place when the premises are closed.
- 6.10 In summary, whilst there is a potential issue arising under the Human Rights Act, there has been no prejudice to either party as it was in the contemplation of all parties involved that the licensable activity relating to the performance of dance should be included. There has been an administrative oversight but that has not resulted in any party's rights being infringed. Given the nature of the objections raised, it is very unlikely that there would have been any specific objection to dancing taking place at the premises. This being supported by the fact that no specific objections were raised concerning other licensable activities sought.
- 6.11 To refuse to allow the amendment would however result in the licence holder's rights being infringed. It would be wholly unjust to now require the licence holder to submit an application to vary the Premises Licence to include dancing, in view of the above points.
- 6.12 Accordingly, notwithstanding the possibility of an article 6 infringement being an issue, after careful consideration of this point, such infringement cannot be made out. The recommendation set out in this Report is both proportionate and consistent with the Human Rights Act.

7. **Determination Required**

- 7.1 To approve the recommendation that the Premises Licence granted in respect of the Pied Pier Public House be amended to include the performance of dance as a licensable activity subject to the same conditions as the other licensable activities previously granted by the Licensing Sub-Committee sitting on 12 October 2005.