

NOTTINGHAM CITY COUNCIL

LICENSING PANEL C

RECORD OF PROCEEDINGS

1. **Date of hearing** - 2 October 2014
2. **Panel** - Councillor Brian Grocock (Chair)
- Councillor Bill Ottewell
- Councillor Mick Wildgust
3. **Legal advisor & Note taker** - Sarah Mills
- Mark Leavesley
4. **Applicant and application premises**

J D Wetherspoon PLC *in respect of*
Company Inn
Castle Wharf
Canal Street
Nottingham
NG1 7EH

5. **Nature of application** - Variation of premises license

Summary of proposals

To include the following condition on the premises licence in accordance with the Late Night Levy:

‘This premises licence will not authorise the supply at any time during the late night supply period of any Late Night Levy which may apply in the Nottingham City Council Licensing Authority area where the late night supply period includes any time for which the premises would, save for this condition, authorise such supply.’

6. **Parties present**

(1) For the Applicant

Nigel Conner	-	Solicitor
Katie Doyle	-	Legal trainee
Paul Draper	-	Wetherspoons

(2) Nottinghamshire Police

Michael Griffiths	-	Counsel
Inspector Ellis)	
Sergeant Shaw)	City Licensing
Helen Guest)	

Persons present refused permission to speak and reason why – None.

7. **Parties not present and reason why** – None.
8. **Applications and Decisions on ancillary issues eg requests for adjournments, determinations whether to proceed in absence, directions etc**

None

9. **Supplementary material taken into consideration other than that which was contained within the agenda**

The Police submitted a bundle which contained:

- Copy of Police Representation
- Copy of Application
- Statement of Inspector Ellis
- Statement of Sergeant Shaw
- Statement of Temporary Sergeant Hardwick
- Copy of Contact Sheet
- Copy of City Centre Saturation Zone
- Copy of Premises Licence
- Copy of Nottingham City Centre Time and Place Plan

10. **Facts/Issues in dispute**

Issue 1: Whether the applicant can show exceptional circumstances why the application should not be refused under policy 3 of the authority's Statement of Licensing Policy;

Whether the application promotes the following licensing objectives:

Issue 2: Prevention of Crime and Disorder.

Issue 3: Prevention of Public Nuisance.

Issue 4: Public Safety.

11. **Decision**

The Panel listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. So far as the matters in dispute were concerned, namely whether the inclusion of the proposed condition on the licence would promote the Prevention of Crime and Disorder, Public Nuisance and Public Safety licensing objectives; the Panel found as follows:

- The Panel was mindful that the current legislation allowed such a variation and that the Applicant had made the same variation application for other premises within Nottingham City which had been granted as no representations had been made. It was also mindful that the reasoning behind the application and whether it was morally right or wrong to seek to avoid paying the Late Night Levy was not a relevant consideration for them in determining the application.
- The Panel heard that that the Applicant was a responsible operator with a good track record and that there was no pre-existing problems with the premises. The Panel was also told that the Applicant did not currently operate for the full amount of the licensing hours permitted by the licence in that it currently operated until 23.00 hours Sunday-Thursdays and until Midnight Friday-Saturday. The Applicant submitted that the proposed condition would provide certainty as for the period of

time that the Late Night Levy was applied that the premises would close at Midnight.

- The Police submitted that the proposed condition was unclear and was conditional on an unspecified time in the future, which would create uncertainty. To alleviate these concerns the Applicant offered to amend the condition to ensure that the Police would be given 28 days notice of the intention to revert back to the hours permitted by the Premises Licence.
- The Panel fully considered the relevant Policy and Guidance referred to in the Report and by the Applicant and Police at the hearing and also took into account the decision of *Daniel Thwaites v Wirral Borough Magistrates Court* [2008] EWHC 838 and that their decision should be based on real evidence and not speculation.
- Whilst the Panel appreciated the concerns raised by the Police, they believed that these concerns were based on what may or may not happen in the future as no real evidence had been submitted to show that the insertion of the proposed condition on the licence would have a negative impact on either the Cumulative Impact Policy or any of the licensing objectives. Therefore the Panel determined that policy 3 of the Authority's Statement of Licensing Policy did not apply to this application and that the inclusion of the proposed condition would promote Prevention of Crime and Disorder Public Nuisance and Public Safety licensing objectives.

The application is therefore granted as follows:

- The application to add the following condition on the premises licence in accordance with the Late Night Levy was granted subject to additional wording in respect of a notice period of 28 days to the police on the Applicant resuming to operate the full extent of the hours permitted by the licence:

'This premises licence will not authorise the supply at any time during the late night supply period of any Late Night Levy which may apply in the Nottingham City Council Licensing Authority area where the late night supply period includes any time for which the premises would, save for this condition, authorise such supply. If the Late Night Levy ceases to apply a notice period of 28 days must be given to the Police prior to the resuming to supply in accordance with the times permitted by the premises licence.'

Conditions to be added to the licence

Mandatory conditions: S19(4) of the Licensing Act 2003

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price;
2. For the purposes of the condition set out in paragraph 1:
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(6);
 - (b) "permitted price" is the price found by applying the formula $P = D + (D \times V)$ where:
 - (i) P is the permitted price;
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol;

- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence:
 - (i) the holder of the premises licence;
 - (j) (ii) the designated premises supervisor (if any) in respect of such a licence;
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question;
 - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(7);
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny;
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax;
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Where new conditions were added the Panel was satisfied that they were appropriate.

The modifications shall have immediate effect.

Signed: Councillor Brian Grocock (Chair)

Dated: 2 October 2014