

**Licensing Sub-Committee 3 – 20<sup>th</sup> November 2007**

**Report of the Director of Law and Property**

**Application to Vary a Premises Licence**

**Purpose of Report**

1. To consider representations made by the applicant following the initial hearing of the Sub-Committee on the 3rd July 2007, in relation to the application for variation of premises licence in respect of The Arizona Crossing (formerly The Cross), High Street, Kingswinford, West Midlands

**Background**

2. On the 5<sup>th</sup> August 2005, an application was made for conversion of the licence, which was granted on the 26th September 2005.
3. On the 15th September 2005, an application was received from Spirit Group Limited in respect of The Cross, High Street, Kingswinford, West Midlands, to vary the premises licence.
4. The matter was considered by the Sub-Committee on the 31st October 2005, when it was resolved that the application be granted with the following hours and conditions:-

	<u>Sale of Alcohol</u>	<u>Regulated Entertainment</u>	<u>Late Night Refreshments</u>
Monday	10:00 – 00:00	10:00 – 00:00	23:00 – 01:00
Tuesday	10:00 – 00:00	10:00 – 00:00	23:00 – 01:00
Wednesday	10:00 – 00:00	10:00 – 00:00	23:00 – 01:00
Thursday	10:00 – 01:00	10:00 – 01:00	23:00 – 01:30
Friday	10:00 – 01:00	10:00 – 01:00	23:00 – 01:30
Saturday	10:00 – 01:00	10:00 – 01:00	23:00 – 01:30
Sunday	10:00 – 23:30	10:00 – 23:30	23:00 – 00:30

Bank Holidays, Fridays, Saturdays, Sundays and Mondays – and Thursday before Good Friday and Christmas Eve – extend by one hour.

**Conditions**

All conditions set out as in the Operating Schedule.

- (1) All doors and windows shall be kept closed during regulated entertainments and in any event from 11.00 pm.
  - (2) Suggested that secondary glazing be considered.
  - (3) All exit doors within the premises to have signs asking customers to leave the premises quietly and respect local residents and their premises.
  - (4) Signs in the car park to state:  
No ball games, no sounding of horns, no playing of music and to leave the car park quietly”.
  - (5) The Licensee shall only contact taxi operators who agree not to sound horns after 11.00 pm.
  - (6) The condition attached to the Public Entertainments Licence requiring that no members of the public be admitted after 10.30 pm shall be extended to 11.00 pm on Thursdays, Fridays and Saturdays.
  - (7) An additional CCTV camera shall be installed to scan the car park at the rear.
5. The premises licence was transferred on the 1st February 2007 to Punch Taverns plc.
  6. On the 17th May 2007, an application was received from TLT solicitors in respect of The Cross, High Street, Kingswinford, West Midlands to vary the premises licence.
  7. The application had the following documents enclosed:-
    - Correct fee (£190.00);
    - Plan of the premises.
  8. The application to vary the licence was as follows:-

To allow sale of alcohol	Thursday to Saturday, 10:00 – 01:30
To allow regulated entertainment/recorded music/live music/dancing/entertainment of a similar description.	Thursday to Saturday, 10:00 – 01:45

For the above a further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend.

A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend.

A further additional hour every Christmas Eve and Boxing Day.

From the start of permitted hours New Years Eve to the close of permitted hours New Years Day.

Removal of Condition 41 “the Licensee shall give at least two clear days prior written notice to the Council, Chief Fire Officer of the West Midlands Fire Service and the Chief Officer of Police for the area in which the licensed premises are situated of any entertainment intended to be held on the licensed premises which involves public dancing”.

Removal of the condition “when children are allowed upon the premises, any entertainment offered within the premises will be suitable to young persons”.

Any part of the variation application that changes the plan/layout at the premises to be of no effect until the work has been completed.

9. Punch Taverns plc is the current premises licence holder and Mr Christopher Silcox is the current Designated Premises Supervisor.
10. Confirmation was received that copies of the application form and supporting documentation had been served on the relevant authorities.
11. Representations were received from local residents and were circulated to Sub-Committee Members, the applicant and interested parties.
12. Representations were received from the West Midlands Police in the form of a Memorandum of Understanding circulated to Sub-Committee Members, the applicant and interested parties. A copy of the Memorandum of Understanding is attached at Appendix I.
13. This matter was considered by the Licensing Sub-Committee on the 3rd July 2007 and following representations made by local residents and Ward Councillors, the applicant and his representatives, it was resolved that the variation of licence be granted as follows:-

Sale of Alcohol	Monday – Wednesday	10:00 – 00:00
	Thursday – Saturday	10:00 – 01:30
	Sunday	10:00 – 23:30
	Bank Holiday ) Christmas Day ) Boxing Day) )	Withdrawn

Regulated Entertainment	Monday – Wednesday	10:00 – 00:00
	Thursday – Saturday	10:00 – 01:45
	Sunday	10:00 – 23:30
	Bank Holiday ) Christmas Day ) Boxing Day) )	Withdrawn

Late Night Refreshment	Existing hours to continue	
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## Conditions

All conditions of licence in accordance with Operating Schedule and application.

- (1) Designated Smoking Area approved as marked on the plan, subject to Environmental Health ratification.
- (2) The outside area to be cleared of customers and glasses by 11.00 pm. No consumption of drinks or alcohol beyond 11.00 pm. Customers permitted to use the designated smoking area for smoking beyond 11.00 pm.
- (3) No children to be permitted in the bar area beyond 9.00 pm and the dining area beyond 10.30 pm, and at all times to be accompanied by an adult (persons under the age of 18 years are children for this purpose).
- (4) SIA door staff will be on duty Thursday, Friday and Saturday and Bank Holiday evenings when live music or disco is being provided.
- (5) No alcohol promotions to be permitted on these premises.
- (6) Licensee to have dedicated taxi arrangements with local firm(s) to minimise nuisance to neighbours.
- (7) Two CCTV cameras monitoring the area of the car park to be retained.
- (8) The Licensee to provide a contactable telephone number to local residents (Mr Cole and Mr Brierley) and the local Councillors. This number to be displayed on the licence.

We recommend that local residents who are concerned about the operation of these premises, report these concerns to their local councillors and PACT meetings.

- (9) Any noise from regulated entertainment must not be audible to the nearest residential property (Mr Cole of number 6 Moss Grove, Kingswinford).
  - (10) A membership scheme will operate at the venue and only members of this scheme will be allowed entry after 11.00 pm on Friday and Saturday evenings.
14. Solicitors for the applicant subsequently appealed the Sub-Committee decision to the Magistrates Court on the grounds that Condition (10), in its present form, does not allow the Licensee or his management team any discretion to permit “non-members” to the premises after 11.00 pm on Friday and Saturday evenings. This was specifically provided for in the Memorandum of Understanding referred to in paragraph 12.
  15. The Sub-Committee were of the opinion that there was little point in operating a membership scheme at the venue if the Licensee and his staff had discretion to allow members of the public into the premises who were not members.
  16. Following the Sub-Committee hearing on the 3rd July 2007 and in light of the applicant’s appeal, the police were consulted in respect of the Memorandum of Understanding originally agreed between themselves and Mr Silcox. The detail of the membership scheme and the matter of discretion have still to be agreed.

However, the police view is that the discretion element would have limited use and they foresee that it would only be used in circumstances where family members or business associates of Mr Silcox attend the venue unannounced and without membership. This could be further re-enforced by a written record of non-members admissions. Circulated with this report to Sub-Committee Members, the applicant and interested parties, is an e-mail sent to the Licensing Officer by PC Scott Turley in relation to the proposed membership scheme.

17. Following discussions with the Legal Division, TLT solicitors have obtained an adjournment of their appeal to the 20th September 2007 to enable the Sub-Committee to consider further representations in respect of Condition 10 of the Premises Licence in respect of Arizona Crossing.
18. This application falls within the Council's recent responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.

### **Finance**

19. There are no financial implications.

### **Law**

20. The law relating to the granting of applications to vary premises licences is governed by the Licensing Act 2002, Section 11, Part 3 and Schedule 8, Part 1.
21. Pursuant to Section 35(3)(a) of the Licensing Act 2003, where a relevant authority has made representations, the Licensing Authority must:-
  - Hold a hearing to consider item, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
  - Having regard to the representations, take steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the Licensing objectives.

The steps are:-

- to modify the conditions of licence;
- to reject the whole or part of the application.

22. Pursuant to Section 36(1) and (4) of the Licensing Act 2003 where an application (or any part of an application is granted or rejected under Section 35 of the Licensing Act 2003, the Licensing Authority must immediately give notice to that effect to:-
- the applicant;
  - any person who made relevant representations in respect of the application; and,
  - the Chief Officer of Police for the police area in which the premises are situated.
23. In pursuance of Regulation 26(1) of the Licensing Act 2003 (Hearing Regulations 2005), the Licensing Authority must make its determination at the conclusion of the hearing.
24. If the Licensing Authority refuses to grant the application to vary the premises licence, there is a right of appeal to the Magistrates' Court pursuant to Schedule 5, Part 1(b).
25. Pursuant to Section 4(1), (2) and (3), Schedule 5 of the Licensing Act 2003, where the Licensing Authority grants an application to vary a premises licence in whole or in part. The applicant may appeal against any decision to modify the conditions of the licence under subsection 4(a) of Section 35 of the Licensing Act 2003.

Where a person who made relevant representations to the application desires to contend:-

- that any variation made ought not to have been made; or
- that, when varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified item in a different way, under subsection 4(a) of Section 35 of the Licensing Act.

They have right of appeal to the Magistrates' Court.

### **Equality Impact**

26. This report complies with the Council's policy on equal opportunities.
27. The licensing of premises and individuals will impact on children and young people, through their attendance at licensed premises.
28. There has been no consultation or involvement of children and young people in developing these proposals.

## **Recommendation**

29. That the Sub-Committee consider further representations made by TLT solicitors in respect of the application to vary the Premises Licence in respect of The Arizona Crossing.

*John Poyellis*

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DIRECTOR OF LAW AND PROPERTY

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## **List of Background Papers**

None