Wiltshire Council
Where everybody matters

AGENDA SUPPLEMENT (1)

Meeting:	Southern Area Licensing Sub Committee
Place:	Meeting Room - City Hall, Malthouse Lane, Salisbury, SP2 7TU
Date:	Monday 16 May 2011
Time:	**10.00 am**
Matter:	To consider and determine an Application for a Variation of a Premises Licence by Greene King Retailing Limited in respect of Kings Arms and Chapter House, 9 – 13 St John Street, Salisbury

The Agenda for the above meeting was published on *04.05.2011.*

The late submissions attached have been submitted by solicitors Poppleston Allen on behalf of the applicant Greene King Retailing Limited

Please direct any enquiries on this Agenda supplement to Liam Paul, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718376 or email liam.paul@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

b) **Appendix 1 - Application to vary a premises license** *(Pages 1 - 28)*

- Front of house information
- Staff Training
- Incident Reporting
- Due diligence
- Due diligence log
- Daniel Thwaites vs Wirral Borough Magistrates Court

DATE OF PUBLICATION: 13 May 2011

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"My dad was the town drunk. Most of the time that's not so bad; but New York City?"
HENNY YOUNGMAN

"Wine makes daily living easier, less hurried, with fewer tensions and more tolerance."
BENJAMIN FRANKLIN

"Wine is the most civilized thing in the world."
ERNEST HEMINGWAY

WINE LIST

We have spent the last 6 months travelling far and wide, tasting wines, visiting vineyards and building relationships with wine makers and owners alike to ensure we offer you, our customers and friends a truly unique experience while you wander around our wine list searching for your own favourite tipple!

We hope you enjoy the efforts we have put in and please do ask us if you want to know anymore about any of our wines.

WHERE GRACE KELLY MEETS LADY GAGA...
WELCOME TO OUR HOME.

THE LAZY COW
10 THEATRE STREET, WARWICK, WARWICKSHIRE CV34 4DP
Telephone: 08451 200 666 • email: info@thelazycowwarwick.co.uk
www.thelazycowwarwick.co.uk

WHITE WINE

	125ml	175ml	Bottle
FRESH & CRISP WHITES			
Thoroughly modern & mineral			
1. **Blanco** Rey Viejo NV SPAIN	2.60	3.45	13.00
2. **Pinot Grigio** Conto Vecchio ITALY	3.30	4.25	16.50
3. **Picpoul de Pinet** La Cote Flamenc Coteaux du Languedoc S FRANCE			20.00
4. **Muscadet sur Lie** Domaine du Bois Bruley Chereau Carre LOIRE			21.50
DRY & ELEGANT WHITES			
Delicacy & Finesse			
5. **Chablis** Terriors de Chablis Patrick Piuze BURGUENDY			34.00
6. **Rioja Blanco** Castillo Viento SPAIN	3.30	4.25	16.50
7. **Gruner Veltliner** Silver Bullet 50cl AUSTRIA			31.00
8. **Albarino** A2O Rias-Baixas SPAIN			30.00
SAUVIGNON BLANC SAVIOURS			
Savoury delights			
9. **Sauvignon Blanc** Tarquino ARGENTINA	3.20	4.15	16.00
10. **Sauvignon Blanc** Wither Hills Marlborough NEW ZEALAND	5.00	6.25	25.00
11. **Sancerre Blanc** Le Manoir Andre Neveu LOIRE			35.00
12. **Sauvignon Blanc** Wither Hills Rarangi Vineyard NEW ZEALAND			32.00
FLORAL & SPICY WHITES			
Incurably aromatic			
13. **Riesling** Peter Merles GERMANY	3.00	3.95	15.00
14. **Riesling/Sauvignon Blanc/Marsanne** The Stump Jump AUSTRALIA			23.00
15. **Pinot Gris** Wither Hills NEW ZEALAND			26.00
16. **Viognier** Valdivieso Reserva Sagrada Familia CHILE			24.00
SOFT & FRUITY WHITES			
Ripe for the picking			
17. **Chardonnay/Viognier** Argento ARGENTINA	3.30	4.25	16.50
18. **Chardonnay** Old Press AUSTRALIA			18.00
19. **Chassagne-Montrachet** Les Chaumes Domaine Roux BURGUNDY			70.00
RICH & LUXURIOUS WHITES			
Tropical delights			
20. **Chenin Blanc** Saam Mountain Paarl S.AFRICA	3.70	4.75	18.50
21. **Chardonnay** Marmesa Hollister Peak USA			25.00
22. **Condrieu** Les Ravines Robert Niero RHONE			70.00

ROSE WINE

La Vie en Rose - pink wines to have with everything or nothing

DRY & DELICATE ROSE			
23. **Sancerre Rose** La Cote Blanche Eric Louis LOIRE			37.00
24. **Rose** Domaine d'Astros Vin de Pays des Maures FRANCE	3.80	4.90	19.00
DEEP & FRUITY ROSE			
25. **Rose** Argento ARGENTINA	3.30	4.25	16.50
26. **Rosado** Altas de Ruesca Calatayud SPAIN			21.00
ROSE WITH A HINT OF SWEETNESS			
27. **Pinot Grigio** delle Venezie Blush Conto Vecchio ITALY	3.30	4.25	16.50

RED WINE

	125ml	175ml	Bottle
SOFT & SMOOTH REDS			
The comfort zone			
28. **Merlot** Alto Bajo CHILE	3.10	4.00	15.50
29. **Tinto** Rey Viejo NV SPAIN	2.60	3.45	13.00
30. **Ceppaiano** Alle Viole ITALY			26.00
31. **Merlot** Journeys End Single Vineyard S.AFRICA			33.00
CABERNET CORNER			
Carnivorea compliment			
32. **Cabernet Sauvignon** La Serre S FRANCE	3.20	4.15	16.00
33. **Cabernet Tempranillo** Artisan's Blend AUSTRALIA			19.00
34. **Cabernet Sauvignon** Angus The Bull AUSTRALIA			37.00
35. **Pauillac** Les Tourelles de Longueville BORDEAUX			70.00
THE MALBEC ZONE			
Made for meat			
36. **Shiraz Malbec** Tarquino ARGENTINA	3.40	4.40	17.00
37. **Malbec** Argento Seleccion ARGENTINA	3.70	4.75	18.50
38. **Cahors** Chateau du Caillau S FRANCE	4.30	5.55	21.50
39. **Malbec** Catena Alta ARGENTINA			60.00
PINOT NOIR POINT			
Perfect with pork or lamb			
40. **Pinot Noir** Madfish AUSTRALIA	5.00	6.25	25.00
41. **Pinot Noir** A to Z Oregon USA			37.00
42. **Pinot Noir** Hawksburn Terrace Bannockburn Central Otago NEW ZEALAND			45.00
43. **Gevrey-Chambertin** Domaine Roux BURGUENDY			60.00
BRIGHT & JUICY REDS			
Expressive & Vibrant			
44. **Rioja Tinto** Castillo Viento Joven SPAIN	3.30	4.25	16.50
45. **Montepulciano** d'Abruzzo Villa dei Fiori ITALY			16.50
46. **Ripe Red** Springfield Estate Firefinch S AFRICA			22.00
47. **Mourvedre/Carignan/Syrah** Valdivieso Eclat CHILE			30.00
48. **Tempranillo/Grenache/Shiraz** d'Arenberg The Sticks & Stones AUSTRALIA			33.00
SPICY & EARTHY REDS			
Bold wines with layered complexity			
49. **Shiraz** Old Press AUSTRALIA	3.60	4.65	18.00
50. **Chateauneuf du Pape** Domaine Paul Autard RHONE			65.00
51. **Grenache/Syrah** Morgan Cotes du Crow's USA			33.00
52. **Rioja Reserva** Dinastia Vivanco SPAIN			35.00
53. **Brunello di Montalcino** Castello Banfi ITALY			60.00
54. **Pinotage Viognier** Saam Mountain Helderisig S.AFRICA			25.00
DEEP & RICH REDS			
Keen as mustard			
55. **Shiraz** d'Arenberg The Love Grass AUSTRALIA	5.40	6.75	27.00
56. **Ribera del Duero** Bodegas Tabula Damana 5 SPAIN			29.50
57. **Zinfandel** Gnarly Head Old Vine Lodi USA			30.00
58. **Syrah/Cabernet/Petit Verdot** Dominio de Valdepusa Summa Varietalis SPAIN			40.00

CHAMPGNES & PROSECCO

All of a bubble - unadulterated pleasure whatever the occasion

	125ml	Bottle
59. **Prosecco Bel Star** NV ITALY	5.00	25.00
60. **Bisol Jeio** Cuvee Rosé NV ITALY		28.00
61. **Perrier Jouet** Grand Brut NV 37.5cl CHAMPAGNE		28.00
62. **Laurent-Perrier** Brut NV CHAMPAGNE		52.00
63. **Perrier Jouet** Grand Brut NV CHAMPAGNE		49.50
64. **De Castellane** Brut NV CHAMPAGNE	6.95	40.00
65. **Laurent-Perrier** Ultra Brut NV CHAMPAGNE		70.00
66. **Laurent-Perrier** Cuvee Rose Brut NV CHAMPAGNE		75.00
67. **Bruno Paillard** Brut Assemblage 1999 CHAMPAGNE		70.00
68. **Perrier Jouet** Belle Epoque 2002 CHAMPAGNE		115.00
69. **Dom Perignon** 2002 CHAMPAGNE		150.00

LARGE BOTTLES

	150cl
WHITE WINE	
70. **Sauvignon Blanc** Wither Hills Marlborough NEW ZEALAND	50.00
RED WINE	
71. **Rioja Reserva** Dinastia Vivanco SPAIN	70.00
72. **Cabernet Sauvignon** Angus The Bull AUSTRALIA	75.00
73. **Pauillac** Les Tourelles de Longueville BORDEAUX	140.00
CHAMPAGNE	
74. **Laurent-Perrier** Brut NV CHAMPAGNE	100.00
75. **Laurent-Perrier** Cuvee Rose Brut NV CHAMPAGNE	150.00

DESSERT WINES

One light and aromatic, the other sticky and unctious

	125ml	Bottle
76. **Muscat de Beaumes de Venise** Domaine de Fenouillet 50cl RHONE	7.80	29.50
77. **Chardonnay/Semillon** d'Arenberg The Noble 37.5cl AUSTRALIA	7.80	22.00

THE LAZY COW • ALES • STEAKHOUSE • ROOMS

As featured in the Sunday Times Hot List 2011

STARTERS

Soup of the Day, rustic bread 5.50

Home Cured Gravalax, thinly sliced cured salmon with pickled ribbons of cucumber and a dill mustard sauce 6.95

Crab Cake, radish salad, lemon aioli 5.75/11.00

Roasted Beetroot, goats cheese crostini, caramelised walnuts 5.95

The Lazy Cow House Salad, vinaigrette 4.75/9.25

Pork Rillette, bread crisps and apple chutney 5.75

Spice-Crusted Scallops, curry lemon relish 8.75/16.50

Baby Gem Lettuce, smoked bacon, strathdon blue 5.50/10.75

Atlantic Prawns ½ pint or pint - marie rose sauce 7.50/14.00

Oysters – please see blackboard menu

Why not add a glass of De Castellane Brut NV, Champagne for 7.10

Did you know we do...

Breakfast

7am - 12noon, 7 days a week

Set Menu

Monday - Friday, 12noon - 3pm

2 Courses for 10.50

3 Courses for 13.50

or steak, frites and a glass of wine for 9.95

...and have you heard about our opulent private dining room for up to 30, ask for a tour.

THE LAZY COW • ALES • STEAKHOUSE • ROOMS

GRILL

All steaks come with chips

Allens of Mayfair*

The oldest butcher in the UK, butchering some of the finest steaks you'll ever eat.

Rib Eye, 8oz 19.00

Sirloin, 8oz 17.00 / 10oz 21.00

Angus Fillet, 8oz 25.00

Jack O'Shea*

Dry-aged on the bone for a minimum of 28 days for extra flavour & marbling.

(***ouch***, but well worth the price!)

Bavette, 8oz 11.00

Sirloin, 10oz 30.00 / 14oz 33.00

Porterhouse, 28oz 50.00 – to share

Flat Iron Steak, 14.50

New York Strip, usda prime 10oz 30.00

SAUCES

£1 a portion

Green peppercorn • Béarnaise

Lazy Cow gravy • Garlic-confit butter

THE WAY WE SERVE

BLUE VERY RED, COLD CENTRE

RARE RED, COOL CENTRE

MEDIUM RARE RED, WARM CENTRE

MEDIUM PINK, HOT CENTRE

MEDIUM WELL DULL PINK CENTRE

WELL DONE DULL GREY

MAIN COURSES

Slow Braised Beef Short Ribs, lazy cow gravy 15.00

Roast Poussin, puy lentils and smoked bacon jus 15.50

Beef, Stout & Mushroom Stew, dumplings 12.50

Smoked Haddock Hash, fried hens egg & sauce diable 10.50

The Lazy Cow Irish Steak Burger, brioche bun, beef tomato, red onion and chips 10.00
add cheddar 50p

Saffron & Tomato Risotto Cake, olives, slow baked tomato, salad and balsamic 13.00

Ale Battered Fish, chips, minted mushy peas (see blackboard menu)

Salmon, with saffron roasted kipler potato, Capsicum salsa and crisp pancetta £16.00

Pasta from the blackboard

SIDE ORDERS

Green beans, garlic butter 2.50

Battered onion rings 2.50

Spinach, steamed/creamed 2.75

Curried Aubergine 2.75

Portobello mushrooms persillade 2.75

Chilled baby gem lettuce with blue cheese 2.75

POTATOES

Potato skins, bacon, cheese and truffle oil 2.50

Chips 1.50 • Parmesan & rosemary chips 2.50

Dauphinoise potato 3.00 • Jalapeno mash 2.75

DESSERTS

Chilled Vanilla Cheesecake, poached rhubarb and ginger cracker 6.00

Chocolate Pot, with espresso cream 6.00

Knickerbocker Glory 5.25

Lemon Meringue Tart, with chantilly cream 6.00

Selection of Cheese, (on the blackboard menu) and accompaniments 7.50

Coffees, served with cantuccini

(V) DENOTES VEGETARIAN DISHES • ALL DISHES MAY CONTAIN TRACES OF NUTS • ALL FISH DISHES MAY CONTAIN BONES • DESSERTS MAY CONTAIN CALORIES
ANY TIPS YOU CHOOSE TO LEAVE WILL GO DIRECTLY TO THE TEAM THAT LOOKED AFTER YOU • PARTIES OF 8 OR MORE WILL BE SUBJECT TO AN AUTOMATIC 10% SERVICE CHARGE ADDED ON TO THEIR BILL

www.thelazycowwarwick.co.uk

BAR MENU

Choose a selection to share
3 on a board 12.00
5 on a board 18.50
Each 4.25

Beef sliders, mini burger and gruyere cheese

Pulled pork, brioche, coleslaw

Caramelized onion hummus, flat bread

Hot chicken wings, blue cheese dip

Roasted chorizo, new potatoes, coriander

Prawn lollipops, lemongrass & dipping sauce

Marinated mixed olives

Croque monsieur, truffle oil

Chipolata sausages, tomato chutney

SANDWICHES WITH CHIPS

Handmade pork pie with red onion chutney 5.25

American hot dog, caramelized onion, french's mustard, ketchup 5.50
add chilli 1.00

Smoked salmon, chive cream cheese, rocket 6.50

The Lazy Cow Irish Steak Burger, brioche bun, beef tomato, red onion and chips 10.00
add cheddar 50p

Toasted steak ciabatta, onion marmalade, and cos lettuce 7.75

Chicken Ceasar wrap 5.50

Tuna, served with pitta and Greek salad 6.00

SALADS

Roasted beetroot, goats cheese crostini, caramelized walnuts S/L 5.75/11.00

Baby gem, smoked bacon, strathdon blue S/L 5.50/10.75

Sticky peppered beef salad, beetroot and feta 10.75

COCKTAILS

Classics are a given to us so we don't list them, but feel free to test the liquid chef standing in front of you...be warned if they know the classic your asking for, and make it to perfection...you might have to buy the teacher one!

"There are millions of students but very few teachers"

What's in a Mai Tai? How do you fix a real Martini? And what's the best way to get your tongue round a Caipirinha? "**Just ask us**" The Lazy Cow has consulted the movers and the shakers of the bartending world to create a unique and thought provoking cocktail list, feel free to steal any ideas or cocktail recipes, BUT just remember where you stole them from "TLC"

Washington dream 6.00
This all-American creation comes from America's love of their own products, Southern Comfort started its simple life as a peach and honey cocktail invented in America during prohibition days, Jack Daniels isn't a bourbon (being made in Tennessee rather than Kentucky) and by law Bourbons have to be made from at least 51% corn, but this is a bourbon-style drink all the same.
- *Jack Daniels • Southern Comfort • Lime juice*
- *Splash Cranberry juice/Pomegranate*
- *Dash of orange bitters*

Apple and berry infusion 6.00
This cocktail has been around since the beginning of time. used as a herbal medicine in the 18th century, we here at the Lazy Cow believe we've perfected the art of fabulous drinks, we can't grantee it will cure any aches, pains or colds, but trust us after a couple you'll feel a million dollars.
- *Calvados • Chopped raspberries • Chopped strawberries*
- *Chopped blueberries • Demerara sugar*
- *Cinnamon sprinkle • Nutmeg sprinkle*
- *Flamed orange zests*

Strawberry Fields 6.00
So legend has it this cocktail is an adaptation of a classic invented in 1908, with a Lazy Cow twist "style and panache preferred by ladies and drunk by men "come on guys admit it...you love it" fresh, crisp and smooth I hear you cry!
- *Martel V.S.O.P Cognac • Cherry brandy*
- *Strawberries/Puree • Demerara • Sparkling wine*

Pimm's Royal 6.00
Halfway between two classics, the standard Pimm's and champagne cocktail, it's clean-tasting and exceptionally refreshing, and a superior sparkling wine will suffice, and remember Pimms isn't just for summer
- *Pimm's No 1 • Cointreau • Sparkling wine to top*
- *Lemon zest, cucumber peel and mint leaves*
- *Strawberries to garnish*

Watermelon Martini 6.00
Words aren't needed for this cocktail try one...fresh watermelon is one of the world's most refreshing drinks, as you know if you've ever eaten one. Better still is this Martini, Brilliantly simple, utterly winning.
- *A bartender chunk of fresh watermelon, seeded*
- *Lemon vodka • Demerara*

Blueberry Martini 6.00
This is a creation of the legendary Salvatore Calabrese (Cocktail GOD) It's a slightly different approach to fruit Martinis, since the fruit is crushed by the action of ice in the Boston shaker, if you can't beat them join them! this is perfection in a glass.
- *Blueberries • Vodka • Blue Curacao • Cointreau*

Lemony 6.00
This drink bursts with fresh and lively flavours! But also has slight undertones of summer, lemoncello is a Tuscan lemon liquor, and when added to the flavoured vodka gives it that kick to start your night, So close your eyes and think of summer in Italy even if it's raining outside.
- *Lemon vodka • Lemoncello • Fresh lemon juice*
- *Demerara*

Make mine a 6.00
This dessert in a glass comes from our love of all things sweet and crisp, the method for this cocktail is easy, but the flavours are outstanding! The sweet orange flavours really hit the back of your pallet, but wait...you then get hit with sour and bitter flavours does this cocktail play tricks with you mind? Tell us what you think.
- *Pisco • Grand Marnier • Cointreau*
- *Rhubarb-and-orange preserve*
- *Passion-fruit purée and lime.*

Sugar cane surprise 6.00
A classic but with a TLC twist, can you guess the name of the cocktail it derived from? Ask your liquid chef they will tell you all you need to know, love Rum? You'll love this.
- *Havana 3 year • Calvados • Poire William eau-de-vie*
- *Maraschino juice • Pineapple and lime juice*
- *Dark-rum float*

Pear Drop 6.00
We stole this cocktail from London's leading cocktail bar "I won't tell you the name can you guess?" we haven't tampered with any ingredients or method because this drink is true perfection.
- *Wyborowa pear vodka • Merlet poire*
- *Passion fruit syrup • Pear puree • Fresh lime squeeze*

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GREENE KING
Pub Partners

Authorisation to Sell Alcohol + Training Record

I.....the nominated Designated Premises Supervisor

of.....hereby Authorise the following members of staff to sell alcohol

under the terms of the Licensing Act 2003

Signed DPS.....

Print Name ..... **Dated** .....

I understand that as the DPS, I am still totally responsible for all matters appertaining to this house.

I also confirm that I have issued detailed instructions to and trained the nominated persons below on all aspects of the running of the house and he/she is fully aware of their responsibilities under the **Licensing Act 2003 including the serving to persons under the age of 18, serving to drunks, sale of tobacco to under 18's.**

Signed	Print Name	Dated

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GREENE KING

LICENSING ACT 2003
POST INCIDENT REPORT FORM

HOUSE NAME .....

AGREEMENT HOLDER .....

DPS (Designated Premises Supervisor) .....

DATE & TIME OF INCIDENT .....

DETAILS OF THE INCIDENT

.....

.....

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.....

.....

POLICE AND OR RESPONSIBLE AUTHORITIES IN ATTENDENCE (Name/Rank/Title/Address)

.....

.....

ACTION TAKEN .....

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WITNESS 1 .....

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TELEPHONE .....

FAX .....

E-MAIL .....

WITNESS 2 .....

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TELEPHONE .....

FAX .....

E-MAIL .....

PLEASE RETURN THIS FORM TO THE LICENSING TEAM:
GREENE KING PUB PARTNERS, ABBOT HOUSE, WESTGATE STREET, BURY ST EDMUNDS, SUFFOLK, IP33 1QT
TELEPHONE – 01284 714621 FAX – 01284 768656 E-MAIL – PPLICENSING@GREENEKING.CO.Uk

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Quiet Please

As you're leaving, please be considerate towards our neighbours.

Thank you.

why let good times go bad?

www.greenekingpubs.co.uk

drinkaware.co.uk

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Due Diligence Log

House Name.....

Location.....

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Daniel Thwaites plc v
Wirral Borough Magistrates' Court
The Saughall Massie Conservation Society (First Interested Party)
Wirral Metropolitan Borough Council (Second Interested Party)

QUEEN'S BENCH DIVISION
6 May 2008

The Hon Mrs Justice Black

Xxxxxxxx / xxxxxxxx

David MW Pickup (instructed by Napthens plc) for the Claimant
The Defendant did not appear and was not represented
David Flood (instructed by Messrs Kirwans) for the First Interested Party
Matthew Copeland (instructed by Wirral MBC) for the Second Interested Party

Mrs Justice Black:

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 a.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 parte 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:

"S 1 (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:
"S4(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 s18.
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)(1) 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. Wetherspoon 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, s18(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.