

APPLICATION FOR VARIATION OF PREMISES LICENCE 'FLAMES, 21 UNION STREET, HEREFORD, HR1 2BT' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Central

1. Purpose

To consider an application for a variation premises licence in respect of 'Flames, 21 Union Street, Hereford, HR1 2BB'.

2. Background Information

Applicant	Cemmete Ltd	
Solicitor	Colin CHARVILL	
Type of application: New	Date received: 15/05/07	28 Days consultation 11/06/07

The advertisement for the premises has not been seen.

3. Current Licence

The current licence was issued by the Regulatory Sub-Committee on 27th October, 2005 and authorises as follows: -

	Late night refreshment	Open to the public
Monday	1200 - 2400	1200 - 2400
Tuesday	1200 - 2400	1200 - 2400
Wednesday	1200 - 0100	1200 - 0100
Thursday	1200 - 0100	1200 - 0100
Friday	1200 - 0130	1200 - 0130
Saturday	1200 - 0130	1200 - 0130
Sunday	1600 - 0100	1600 - 0100

NON-STANDARD HOURS

	Late night refreshment	Open to the public
Bank Holidays	1000 - 0130	1000 - 0130

CONDITIONS

The following conditions are attached: -

The Licensing Act 2003: Mandatory condition: door supervision -
Each individual required to carry out a security activity must be licensed by the Security Industry Authority

Prevention of Crime:

CCTV

Door men

The provision of CCTV which meets the requirements and expectations of the Licensing Authority and the Police
The provision of Pub Watch Radio

Prevention of Nuisance:

Litter bins provided outside premises

1. The licensee shall ensure that noise and vibration does not emanate from the premises so as to cause a public nuisance.
2. All chiller units/extraction units/ ventilation systems/ air conditioning systems shall be maintained in good working order and cleaned as per the manufacturers instructions. All securing bolts and fastenings shall be maintained in a good state of repair without slackening to minimise noise and vibration.
3. No noxious smells shall be emitted from the premises at any time so as to cause a nuisance.
4. The extraction/filtration system fitted in the kitchen/cooking area shall be maintained in a good state of repair and in clean condition.
5. A grease trap shall be fitted to the foul drainage pipe work serving the cooking area/kitchen to prevent grease accessing the pipe work that could cause a blockage. The grease trap shall be maintained in good working order and regularly cleaned.
6. Receptacles of sufficient capacity shall be provided for the deposit of litter in the shop front area at all times.

7. Receptacles of sufficient capacity with close fitting lids shall be provided at the premises for adequate storage of refuse and a regular waste collection contract in place to prevent accumulations and minimise the likelihood of nuisance.

8. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly

Public Safety:

Free Drinking Water

Door Supervisor

Effective & Responsible Management of the premises.

9. No serviettes, straws, cutlery or other eating utensils shall be stored in the customer area after 11pm.

10. No glass bottles or glass containers shall be supplied at the premises after 20.00 hours on any day.

11. Adequate systems shall be in place to effectively control the number of persons entering the premises and effectively deal with any altercations, aggressive behaviour or crowd control issues that may arise at the premises.

Protection of Children:

Restricted access to hazardous areas ie. kitchen

4. Variation Licence Application

The application for variation has received representations by responsible authorities. It therefore is now brought before committee to determine the application.

5. Summary of Application

The licensable activities applied for are: -
Late Night Refreshment

6. The following hours have been applied for (*Indoors*) in respect of Late Night Refreshment and the hours the premises are to open to public: -

Sunday & Thursday	2300 – 0230 hours
Friday & Saturday	2300 – 0330 hours

7. Non Standard hours

The application applies for 'non-standard' hours as follows: -
Bank Holidays & New Years Eve 2300 – 0330

8. Removal of Existing Conditions

The application does not request to remove any of the existing conditions.

9. Summary of Representations

A copy of the representations can be found within the background papers.

West Mercia Police

Have made representation in relation to the application regarding the promoting of the licensing objective of the prevention of crime and disorder.

In brief they request that in order to promote the licensing objective of 'the prevention of crime and disorder' that the terminal hour remains at 0130 hours.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objective of Public Nuisance and comments upon the impact this may have on local residents, as well as the impact on street cleaning.

10. Issues for Clarification

This Authority has requested clarification on particular points from the party shown: -

The Police

Have been requested to provide information on the effect that the current 1.30 am closure time has had on the prevention of crime and disorder.

11. Herefordshire Council Licensing Policy

In making its decision the committee will be obliged to have regard to its own policy, the DCMS guidance and have regard to all documents submitted in respect of the application.

12. Options: -

It is for the committee to take such steps below as it considers necessary for the promotion of the licensing objectives:

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
- Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory condition set out in the Licensing Act 2003.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

13. Background Papers

- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form
- Copy of current premises licence
- Location Plan

Background papers are available for inspection in the Council Chambers, Brockington, 35 Hafod Road, Hereford, HR1 1SH 30 minutes before the start of the hearing.

NOTES**Guidance issued under section 182 of the Licensing Act 2003, Section S18(7)****Relevant, vexatious and frivolous representations**

- 5.73 A representation would only be "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives....
- 5.75 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious....

The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness....

Schedule 2 of the Licensing Act 2003 states: -

The provision of late night refreshment

- 1 (1) For the purposes of this Act, a person "provides late night refreshment" if-
- (a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or
 - (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises

Licensing Authorities power to exercise substantive discretionary powers.**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.