

APPLICATION FOR VARIATION OF A PREMISES LICENCE AT 'THE CASTLE LODGE HOTEL, WILTON, ROSS ON WYE, HR9 6AD.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ross-on-Wye West

1. Purpose

To consider an application for a variation of a premises licence in respect of 'The Castle Lodge Hotel, Wilton, Ross on Wye, HR9 6AD.'

2. Background Information

Applicant	Juan Carlos FELICES	
Solicitor	T A Matthews	
Type of application: Variation	Date received: 18/10/07	28 Days consultation 14/11/07

The advertisement for the premise has been seen and accepted.

3. Variation Application

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

4. Summary of Application

The licensable activities applied for are: -

Live Music

Recorded Music

Provision of facilities for making music

Provision of facilities for dancing

Provision of late night refreshment

Supply of Alcohol

5. The variation to the licence if granted would only be used between 15th November and 31st December, annually.

6. The following hours have been applied for in respect of Live Music, Recorded Music, Provision of facilities for making music and dancing (*Indoors*)

All days of the week 1100 – 0230

7. The following hours have been applied for in respect of the Provision of Late Night Refreshment and the supply of *alcohol (Both on and off premise)*:

Monday to Saturday 2300 – 0230

Sunday 2230 – 0230

8. The premise to be open to the public for a further 30 minutes after these times.

9. **Current Licence**

The premise is currently authorised for all the above activities following the conversion of the existing licences upon commencement of the Licensing Act 2003.

The current activities and hours authorised are: -

For the provision of alcohol and late night refreshment:

On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10 a.m. to 11 p.m.

On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.

On Good Friday, 12 noon to 10.30 p.m.

On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.

On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

Alcohol may be sold or supplied [for one hour following the hours set out above and] [on Christmas day, between 3 p.m. and 7 p.m.] to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by such a person in that part of the premises as an ancillary to his meal. For other purposes or in other parts of the premises the hours set out above shall continue to apply.

For the provision of Entertainment:

Mondays to Saturdays 1100 – 2330 hrs

11. **Non Standard hours**

There is no application for 'non-standard' hours.

12. **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

West Mercia Police

Have no representation to make in relation to the application.

Environmental Health

The Environmental Health Officer has made a representation in relation to the application. This representation addresses the licensing objectives of Public Safety, and the Prevention of Public Nuisance.

In respect of Public Safety she has requested 2 conditions.

In respect of Public Nuisance she has requested a further 6 conditions.

Of note is condition 2.1 and 2.2 which requests a terminal hour of 0100 hours in respect of amplified music and supply of alcohol.

Fire Authority.

The fire authority has no comment to make in relation to the application.

Interested Parties.

The Local Authority has received seven (7) letters of representation in respect of the application, from local residents.

The concerns relate to:

- Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance

13. Issues for Clarification

This Authority has not requested clarification from the applicant at this time.

14. Committees Responsibility

The committee are responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- Our own statement of Licensing Policy.

15. 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.

16. Background Papers

- a. Public Representation
- b. Environmental Health & Trading Standards Comments
- c. Application Form
- d. Location Map

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

NOTES**HEARINGS**

9.24 As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.

RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

9.8. 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. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.

9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.

9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious 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. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.

9.11. Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgment. This may be difficult for ward councilors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councilor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

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.