

APPLICATION FOR NEW PREMISES LICENCE 'THAI GALLERY, 48 & 49 BROAD STREET, HEREFORD, HR4 9AR.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford

1. Purpose

To consider an application for a new premises licence in respect of Thai Gallery, 48 & 49 Broad Street, Hereford, HR4 9AR.

2. Background Information

Applicant	Romano Mazzocchi	
Solicitor	N/K	
Type of application: New	Date received: 27/11/07	28 Days consultation 25/12/07

The advertisement for the premise has not been submitted to the licensing department at present.

3. New Licence Application

The application for a new licence has received representations from responsible authorities and interested parties. It is therefore now brought before the sub-committee for determination.

4. Summary of Application

The licensable activities applied for are: -
Live Music
Recorded Music
Sale by Retail of Alcohol

5. The following hours have been applied for in respect of all the above activities (Indoors): -

Monday – Saturday 12:00 – 00:00
Sunday 12:00 – 23:00

6. The premises to be open to the public All days of the week 12:00 – 00:00

7. Non Standard hours

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

8. 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 requested that the premises close at midnight on all days of the week and for a terminal hour of 23:30 Monday to Saturday and 23:00 on a Sunday in respect of all the licensable activities.

In respect of Public Safety she has requested 8 conditions and a further 3 conditions in respect of Public Nuisance.

To address the licensing objectives of the protection of children from harm she requests 2 further conditions.

Fire Authority.

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

Interested Parties.

The Local Authority has received nine (9) letters of representation in respect of the application, eight of these letters are from local residents and one from a local business.

The concerns relate mainly to:

- Prevention of Public Nuisance

9. Issues for Clarification

This Authority has requested clarification from the applicant as follows: -

The hours of operation are shown as Monday to Saturday as 12:00 to 12:00 and on a Sunday as 12:00 to 11:00 on the application form. The applicant has been asked to confirm that the terminal hour stated is pm (i.e. Midnight and 11 pm).

The application requests live music yet the application provides no details and does not state whether it will be amplified or unamplified. The applicant has been requested to provide this information.

The application states within the proposed conditions that 'The restaurant won't be open into the early hours and in fact last orders for food will be around 10 pm'. It also states 'stop serving food before 11 pm, we stop the people using the restaurant as another drinking establishment'. No application has been made for the provision of late night refreshment and therefore it would be illegal to supply hot food or drink after 11 pm. As this is the case the applicant has been asked to explain to the Committee why he has applied to be licensed until midnight in respect of Live & Recorded Music and the supply of alcohol.

10. Committees Responsibility

The committee is 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
- The Herefordshire Council Licensing Policy

11. 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.

12. Background Papers

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

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

NOTES**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.