

APPLICATION FOR VARIATION OF A PREMISES LICENCE IN RESPECT OF BELMONT LODGE GOLF COURSE AND MARQUEE- LICENSING ACT 2003

Report for: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford City

1. Purpose

To consider an application for a variation of a premises licence in respect of Belmont Lodge Golf Course and Marquee, Ruckhall Lane, Belmont, Hereford.

2. Background Information

Applicant	Christopher Tilden Smith	
Type of application: Variation	Date received: 7 July 2008 Date accepted: 8 July 2008	28 Days consultation 5 August 2008

The advertisement for the premise has been seen and approved.

3. Current Licence

The current licence allows: -

Provision of regulated entertainment

1. A performance of live music (Indoors & outdoors)
2. Any playing of recorded music (Indoors & outdoors)
3. A performance of dance (Indoors & outdoors)
4. Other regulated entertainment (Indoors & outdoors)

Provision of entertainment facilities

5. Making music (Indoors & outdoors)
6. Dancing (Indoors & outdoors)
7. Other entertainment facilities (Indoors & outdoors)

Provision of refreshment or alcohol

8. Sale by retail of alcohol (For consumption on the premises)

Further details:

(A performance of live music) Live music will be restricted to indoors only, exceptions to be for weddings i.e. harp/piper/strings or background type

(Any playing of recorded music) Early start (07.00) is to allow for playing of background music in our restaurant

(Dancing) i) Dance floor in bar for special events i.e. christmas/new year parties

ii) Dance floor in marquee (summer weddings)

Description of entertainment (Other regulated entertainment) Karaoke

Description of facilities provided (Other entertainment facilities) Karaoke

The times the licence authorises the carrying out of licensable activities

A performance of live music

Monday-Saturday: 12:00 - 00:00

Sunday: 18:00 - 00:00
Any playing of recorded music
Monday-Sunday: 07:00 - 00:00
A performance of dance
Monday-Thursday: 18:00 - 00:00
Friday-Sunday: 12:00 - 00:00
Other regulated entertainment; Making music; Dancing; Other entertainment facilities
Sunday-Friday: 18:00 - 00:00
Saturday: 12:00 - 00:00
Sale by retail of alcohol
Monday-Sunday: 10:00 - 00:00

Non standard timings:
Dancing; A performance of live music
New Years Eve until 01.00am Indoors only

Seasonal variations: None

The opening hours of the premises
Monday-Sunday: 07:00 - 00:00

Non standard timings: None

Opening hours to service areas whereas hotel rooms etc are open at all hours

4. **Summary of Variation Application**

There is an application to change the licensable activities shown on the premise licence and to vary the hours as follows:-

The opening hours of the premises

Monday-Sunday: 07:00 - 01:00

Non standard timings: None

1. A performance of live music – indoors and out
Monday-Sunday: 12:00 - 01:00
2. Any playing of recorded music – indoors and out
Monday-Sunday: 07:00 - 01:00
3. A performance of dance – indoor and out
Monday-Sunday: 12:00 - 01:00
4. Other regulated entertainment; Making music; Dancing; Other entertainment facilities – indoor and out
Monday-Sunday: 12:00 - 01:00
5. Provision of facilities for making music – indoor and out
Monday-Sunday: 12:00 – 01:00
6. Provision for facilities for dancing – indoor and out
Monday-Sunday: 12:00 – 01:00
7. Provision of facilities for entertainment – indoor and out
Monday-Sunday: 12:00 – 01:00
8. Late Night Refreshment – indoor and out
Monday-Sunday: 12:00 – 01:00
9. Supply of Alcohol – indoor and out

Monday-Sunday: 10:00 – 01:00

10. Sale by retail of alcohol – indoor and out

Monday-Sunday: 10:00 - 00:00

Non standard timings: Summer months only for Marquee April to end October. All year for Belmont Lodge and Golf Club Bar.

5. **Removal of Existing Conditions**

The application details what the applicant is proposing on the application (page 18) but has not specified any conditions to be removed.

6. **Summary of Representations**

Copies of the representations can be found from Environmental Health and Interested parties in the background papers.

West Mercia Police

Have no representation to make in relation to the application.

Environmental Health

The Environmental Health Officer has made representation.

Fire Authority.

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

Interested Parties.

The Local Authority has received letters of representation in respect of the application, from interested parties, these are contained within the background papers.

7. **Issues for Clarification**

A condition on the last licence specifies under the heading Prevention of Public Nuisance that “it is our intention not to allow live music in our marquee from 2006 onwards”. As an added measure, we will not be permitting any form of music/performance/dance etc beyond midnight”. The applicant has not requested the removal of this condition.

8. **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

9. **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 reject the application.
- To reach some other decision.

10. **Background Papers**

- a. Environmental Health & Trading Standards Comments
- b. Application Form
- c. Location plan
- d. Representations from interested parties.

Background papers are available for inspection in the Council Chamber, Town Hall, St Owen's Street, 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.