

**APPLICATION FOR VARIATION OF PREMISES
LICENCE IN RESPECT OF – ‘THE PLOUGH INN, 82
WHITECROSS ROAD, HEREFORD, HR4 0DH’ -
LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford – Three Elms

Purpose

1. To consider an application for variation of the premises licence in respect of The Plough Inn, 82 Whitecross Road, Hereford, HR4 0DH.

Background Information

2.

Applicant	Colin Joseph Brown Owners: Punch Taverns Plc, Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF		
Solicitor	TLT Solicitors, One Redcliff Street, Bristol, BS1 6TP		
Premise	The Plough Inn, 82 Whitecross Road, Hereford, HR4 0DH		
Type of application: Variation	Date received: 06/08/05	28 Days consultation 03/09/05	Issue Deadline: 06/10/05

Conversion Licence Application

3. A conversion licence will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon – Sat (incl) 1000 am – 2300 pm Sunday 1200 midday – 2230 pm New Years Eve 1000 am – 0000 midnight New Years Day 0000 – 2300 Christmas Day 1200 – 1500 and 1900 – 2230 Public Entertainment; Mon – Sat 1100 – 2300 Sunday 2230

With the following condition attached:-

- The premise will be permitted to open for up to 30 minutes after the end of the sale of alcohol. (mentioned above)

- The premises does not hold a current public entertainment licence.
- To retain all embedded permissions and restrictions attached to a Justices On Licence
- To retain all embedded permissions and restrictions attached to the public entertainment licence

Variation Licence Application

4. The application for a variation has received representations by responsible authorities and 2 members of the public therefore it is now brought before the sub-committee for determination

Summary of Application

5. The licensable activities applied for are: -

Live Music (*Indoors*)

Recorded Music (*Indoors*)

Provision of facilities for making music (*Indoors*)

Provision of facilities for dancing (*Indoors*)

Provision of facilities for entertainment of a similar description to that falling within I or J (*Indoors*)

(Activities in bold are those not previously licensed)

6. The following hours have been applied for in respect of Live Music (*Indoors only*):-

Mon – Thurs, and Sunday 1000 am – 0000 midnight

Friday – Saturday 1000 am – 0030 am

7. The following hours have been applied for in respect of recorded music (*Indoors only*):-

Mon – Thurs, and Sunday 1000 am – 0000 midnight

Friday and Saturday 1000 am – 0200 am

8. The following have been applied for in respect of the provision of facilities for making music (*indoors only*):-

Mon – Thurs, and Sunday 1000 am – 0000 midnight

Friday and Saturday 1000 am – 0030 am

9. The following hours have been applied for in respect of provision of facilities for dancing (*indoors only*):-

Mon – Thurs, and Sunday 1000 am – 0000 midnight

Friday and Saturday 1000 am – 0200 am

10. The following hours have been applied for in respect of provision of facilities for entertainment of a similar description to that falling within I or J (*Indoors and Outdoors*):-

Mon – Thurs, and Sunday 1000 am – 0000 midnight

Friday and Saturday 1000 am – 0200 am

11. The following hours have been applied for in respect of supply of alcohol (*Indoors or outdoors*):-

Mon – Thurs, and Sunday	1000 am – 0000 midnight
Friday and Saturday	1000 am – 0200 am

12. The hours that the premises will be open to members of the public:-

Mon – Thurs, and Sunday	1000 am – 0030 am
Friday and Saturday	1000 am – 0230 am

13. **Non Standard hours**

The application applies for ‘**non-standard**’ hours.

In respect of Live Music, Recorded Music, Performances of Dance, Provision of facilities for making music and Provision of facilities for dancing, the applicant has stated the following:-

To reflect existing New Years Eve/Day hours.

In respect of the supply of alcohol:-

1100 New Years Eve to start of permitted hours New years day
Bank holidays 1100 – 0100
Sunday before Bank Holiday 1100 - 0100

In respect of ‘Hours the premises are open to the public’:-

Closing on the non-standard days as listed in Section M with a 30 minute drinking up time added on.

14. **Summary of Representations**

West Mercia Police

Have recommended that in order to promote the licensing objectives and in particular, with a view to preventing crime and disorder, they would like to see the licensing authority impose the following conditions:

- The provision of a last entry time of 0000
- The provision of a terminal hour for the use of the garden area on the plan for the consumption of alcohol
- The provision of a condition preventing the removal of open containers from the premise, except to the beer garden/skittle alley.

Fire Authority

The fire authority have made comments about a fire risk assessment being required.

Environmental Health Pollution

Environmental Health Pollution Team received a letter dated 26/07/05 concerning a noise limitation device with the complainant believes has been removed from the Plough inn. Previous complaints were received in May 2005 concerning new proprietors using skittle alley although unsuitable for live music.

Environmental Health

Have made comments on the prevention of public nuisance, public safety, and protection of children from harm, in particular measures relating to noise levels to ensure that these do not cause nuisance to neighbouring properties. There has been noise problems at the premises and recently the licensee operating outside his Public Entertainment Licence conditions whereby the noise limiting device was removed and not reinstalled until the Licensing Officer and Environmental Health Officer took enforcement action to ensure it was fitted out and calibrated following noise complaints.

Interested Parties

The Local Authority has received 2 letters of representation in respect of the application, and general area from residents.

The concerns relate to:

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

15. 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 specified within the DCMS Guidance.

16. 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.

17. Background Papers

- Public Representation forms
- Environmental Health & Trading Standards Comments

- Application Form
- Any other associated papers

Background papers are available for inspection in the Town Hall, St Owen Street, Hereford, 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...

5.74 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...

The operating schedule

5.46 The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.

An operating schedule must also set out the following details:

- The relevant licensable activities to be conducted on the premises;
- The times during which it is proposed that the relevant licensable activities are to take place (including the times during each day of the week, during particular holiday periods and during particular seasons, if it is likely that the times would be different during different parts of the year);

Schedule 1 of the Licensing Act 2003 defines regulated entertainment as follows: -

The descriptions of entertainment are-

- a performance of a play,
- an exhibition of a film,
- an indoor sporting event,
- a boxing or wrestling entertainment,
- a performance of live music,
- any playing of recorded music,

- a performance of dance,
- entertainment of a similar description to that falling within paragraph (e), (f) or (g),

where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.

Incidental music

5.18 The incidental performance of live music and incidental playing of recorded music may not be regarded as the provision of regulated entertainment activities under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself entertainment or the provision of entertainment facilities.

So, for example, a juke box played in a public house at moderate levels would normally be regarded as incidental to the other activities there, but one played at high volume would not benefit from this exemption. Stand-up comedy is not regulated entertainment and musical accompaniment incidental to the main performance would not make it a licensable activity.

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.