

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – PORTWAY HOTEL, HEREFORD, HR4 7NH - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Castle

Purpose

- To consider an application for variation of the premises licence in respect of Portway Hotel, Hereford, HR4 7NH

Background Information

2.

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|--|---|--|--------------------------------------|
| Applicant | Jason and Lee Stewart | | |
| Premise | Portway Hotel, Hereford, HR4 7NH | | |
| Type of application: Variation | Date received: 06/08/2005 | 28 Days consultation 03/09/2005 | Issue Deadline: 6 /10/2005 |

Conversion Licence Application

- A conversion licence will be issued as follows; -

| Licensable activity | Hours |
|---|---|
| Sale of alcohol on and off the premises | Mon – Sat 1000 am – 2300 pm Sunday 1200 midday – 2230 pm New Years Eve 1000 am – 0000 midnight New Years Day 0000 – 2300 pm Christmas Day 1200 – 1500 and 1900 – 2230 |

With the following condition attached:-

The premises does not hold a current public entertainment licence.

- To retain all embedded permissions and restrictions attached to a Justices On Licence.

Variation Licence Application

4. The application for a variation to the premise licence has received representations by responsible authorities and is therefore now brought before the sub-committee for determination.

Summary of Application

5. The licensable activities applied for are: -

Live Music (Indoors Only)

Late Night Refreshment (Indoors Only)

Supply of Alcohol (On The Premises)

(Activities in bold are those not previously licensed)

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

Mon – Sun 1100 – 0200

7. The following have been applied for in respect of Late Night Refreshment (*indoors*):-

Mon - Sun 1100 – 0200

8. The following hours have been applied for in respect of Supply of Alcohol (*On the Premises*):-

Mon - Sun 1100 – 0200

9. The following hours have been applied for in respect Hours Premises are Open to the Public:-

Mon – Sun 1100 – 0200

10. **Non Standard hours**

The application does not apply for '**non-standard**' hours.

11. **Summary of Representations**

West Mercia Police

Have made representation in respect of the application and request a number of conditions be applied to the licence to prevent crime and disorder.

They mention that the application gives no indication of what steps if any the applicant intends to take to promote any of the licensing objectives. The

operating schedule gives no indication of how the premise will operate, or when the regulated entertainment will take place.

In order to promote the licensing objectives and in particular, with a view to preventing crime and disorder, the police authority would like to see the following conditions imposed:

- The provision of CCTV which meets the requirements and expectations of the Licensing Authority and Police.
- The provision of a last entry time of 0000 midnight, except to residents and bona fida guests of residents
- The provision of an incident book
- The prevention of open containers being removed from the premise except to the beer garden
- The provision of a personal licence holder at all time the premise is open for the retail of alcohol

The above are the minimum conditions the police authority would wish to see on any converted licence issued.

Fire Authority

The fire authority have made no relevant representation.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public Safety, Prevention of Public Nuisance, and Protection of children from harm.

With respect to public safety they seek conditions in relation to overcrowding, ventilation and air conditioning, first aid, accidents, lighting, electrical installation, fire safety and gas installations.

With respect to the prevention of public nuisance they seek conditions in relation to noise and light pollution.

With respect to the protection of children from harm they seek conditions in relation to proof of age regulations and prevention of unlawful supply, consumption and use of alcohol, drugs and other products.

Interested Parties

The Local Authority has not received representation from interested parties.

12. Issues for Clarification

The licensing authority has requested clarification from the applicants Jason and Lee Stewart regarding the following issues:-

There is no provision for a drinking up time on the application.

Confirmation is sought on the promotion of the Licensing objectives; in particular how the premises will operate or when regulated entertainment will take place.

There is no provision for Bank Holidays, New Years Eve, Christmas Eve, and Christmas Day.

13. 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.

14. 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.

15. Background Papers

- Public Representation forms
- Environmental Health & Trading Standards Comments
- Application Form
- Any other associated papers

Background papers are available for inspection in the Library, Shirehall, 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.