

A G E N D A

Regulatory Sub Committee

Date: **Friday, 30th September, 2005**

Time: **10.00 a.m.**

Place: **Town Hall, St. Owen's Street,
Hereford**

Notes: Please note the **time, date** and **venue** of
the meeting.

For any further information please contact:

*Ricky Clarke, Members' Services,
Tel: 01432 261885 Fax: 01432 260286*

email: rclarke@herefordshire.gov.uk

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors G.W. Davis, R.I. Matthews and J.W. Newman

	Pages
1. ELECTION OF CHAIRMAN	
To elect a Chairman for the hearing.	
2. APOLOGIES FOR ABSENCE	
To receive apologies for absence.	
3. NAMED SUBSTITUTES (IF ANY)	
To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
4. DECLARATIONS OF INTEREST	
To receive any declarations of interest by Members in respect of items on the Agenda.	
5. APPLICATION FOR VARIATION OF PREMISES LICENCE 'TITLEY VILLAGE HALL, STAGG MEADOW, TITLEY, KINGTON, HR5 3RL.'	5 - 10
To consider an application for variation of the premises licence in respect of Titley Village Hall, Stagg Meadow, Titley, Kington, HR5 3RL.	
6. APPLICATION FOR VARIATION OF PREMISES LICENCE 'BROCKINGTON HALL, BODENHAM, HEREFORD, HR1 3HX.'	11 - 18
To consider an application for variation of the premises licence in respect of Brockington Hall, Bodenham, Hereford, HR1 3HX.	
7. APPLICATION FOR VARIATION OF PREMISES LICENCE 'BROMYARD RUGBY FOOTBALL CLUB, CLIVE RICHARDS SPORTS GROUND, INSTONE, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4LW.'	19 - 24
To consider an application for variation of the premises licence in respect of Bromyard Rugby Football Club, Clive Richards Sports Ground, Instone, Tenbury Road, Bromyard, Herefordshire, HR7 4LW.	
8. APPLICATION FOR VARIATION OF PREMISES LICENCE 'DV8 NIGHTCLUB, 1 GAOL STREET, HEREFORD, HR1 2HU.'	25 - 32
To consider an application for variation of the premises licence in respect of DV8 Nightclub, 1 Gaol Street, Hereford, HR1 2HU.	
9. APPLICATION FOR VARIATION OF PREMISES LICENCE 'THE KITE'S NEST INN, SWAINSHILL, HEREFORD, HR4 7QA.'	33 - 38
To consider an application for variation of the premises licence in respect of The Kite's Nest Inn, Swainshill, Hereford, HR4 7QA.	

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- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
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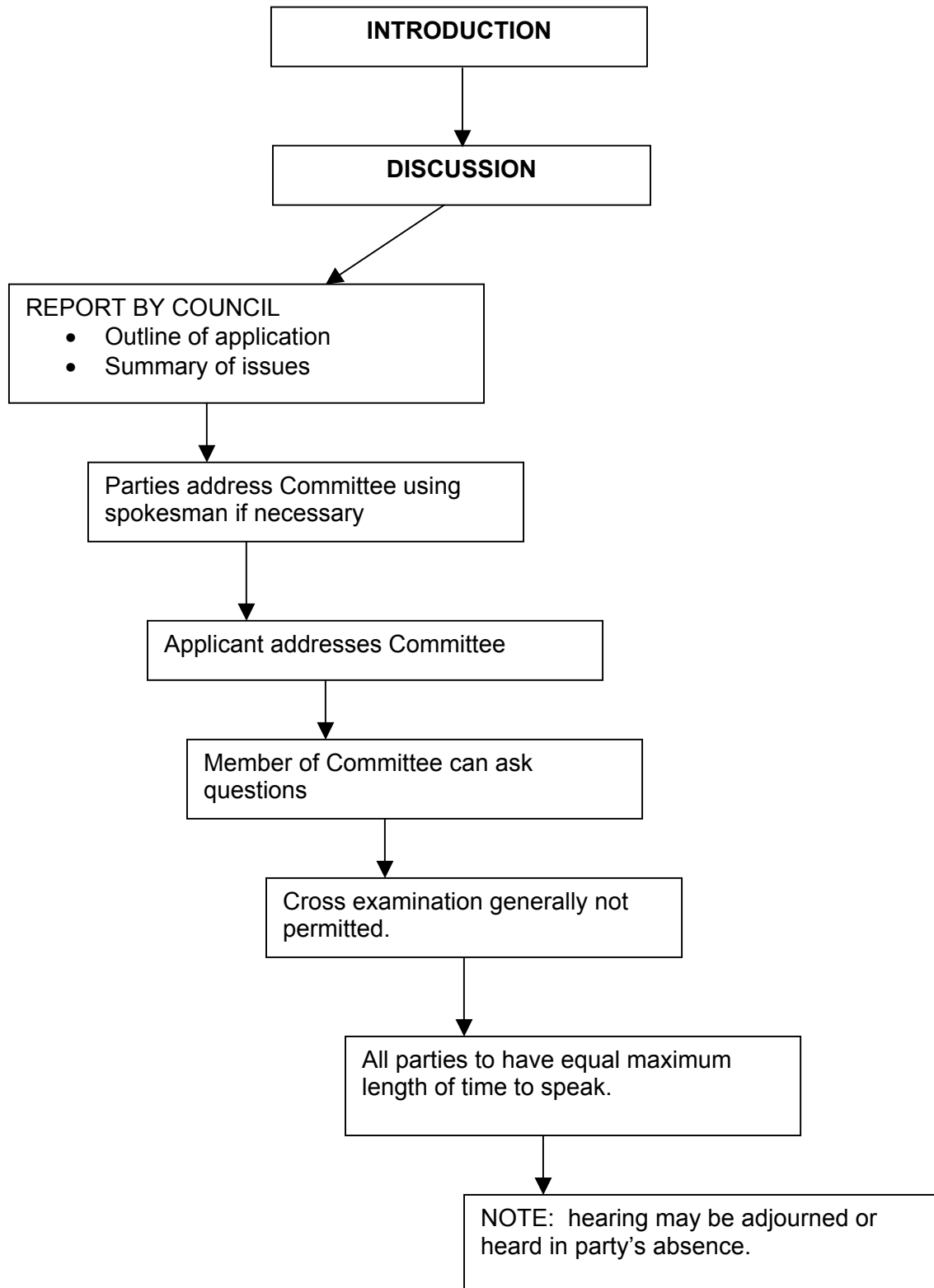
Agenda and individual reports can be made available in large print, Braille or on tape. Please contact the officer named below in advance of the meeting who will be pleased to deal with your request.

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LICENCING HEARING FLOW CHART



APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – ‘TITLEY VILLAGE HALL, STAGG MEADOW, TITLEY, KINGTON, HR5 3RL’ - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Pembridge with Lyonshall

Purpose

1. To consider an application for variation of the premises licence in respect of Titley Village Hall, Stagg Meadow, Titley, Kington, HR5 3RL.

Background Information

- 2.

Applicant	Titley Village Hall Committee, Pinecroft, Titley, Kington, HR5 3RL		
Solicitor	N/A		
Premises	Titley Village Hall, Stage Meadow, Titley, Kington, HR5 3RL		
Type of application: Variation	Date received: 04/08/05	28 Days consultation 01/09/05	Issue Deadline: 04/10/05

Conversion Licence Application

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

Licensable activity	Hours
Live Music Performances of Dance	Mon – Sat 1100 am – 0100 am

With the following condition attached:-

- To retain all embedded permissions and restrictions attached to a Public Entertainment Licence.

Variation Licence Application

4. The application for a variation has received representations by responsible authorities and the applicants have not responded to our frequent requests for written confirmation, therefore the application is now brought before the sub-committee for determination.

Summary of Application

5. The licensable activities applied for are: -

Live Music (indoors)

Performances of Dance (indoors)

Supply of Alcohol (both on and off premises)

Hours premises are open to public

(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	0800 am – 0030 am
Fri – Sat	0800 am – 0200 am
Sun	0800 am – 0030 pm

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

Mon – Thurs	0800 am – 0030 am
Fri – Sat	0800 am – 0200 am
Sun	0800 am – 0030 pm

8. The following hours have been applied for in respect of supply of alcohol:-

Mon – Thurs	1200 am – 2400 midnight
Fri – Sat	1200 am – 0130 am
Sun	1200 am – 2400 midnight

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

Mon – Thurs	0800 am – 0030 am
Fri – Sat	0800 am – 0200 am
Sun	0800 pm – 0030 pm

11. **Non Standard hours**

The application applies for '**non-standard**' hours.

In respect of the supply of alcohol:-

Drinking up time half an hour after the finish time for the sale of alcohol

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

Village Hall hired out for private hire at whatever time the hirer wishes

13. Summary of Representations

West Mercia Police

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

In order to promote the licensing objectives and in particular, with a view to preventing crime and disorder, they would seek the licensing authority to impose the following conditions:-

- That all functions where the licensable activity of the retail of alcohol takes place will be pre booked functions and that a record of that booking will be kept and made available for inspection by the licensing authority and police.
- That the Chair of the village hall management committee will work closely with the Designated Premise Supervisor to ensure that the sale of alcohol at the premises is carried out in such a way that the overall character of the hall remains that of a community premises and that all 4 licensing objectives are promoted.
- Hirers of the hall will be required to make suitable arrangements for the sale of alcohol with the DPS if the sale is undertaken in accordance with the premises licence as opposed to a temporary event notice.

These are the minimum conditions the Chief Constable would require to see on any premise licence issued to a "Village Hall" authorised for the sale of alcohol.

Fire Authority

The fire authority have made no comments.

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.

In respect of Public Safety they seek conditions in relation to open containers And overcrowding.

With regards to the prevention of public nuisance they seek conditions in Relation to the prevention of noise and vibration.

With regards to the protection of children from harm they recommend some conditions in respect of proof of age cards and unlawful supply of alcohol and drugs.

Interested Parties

The Local Authority has not received any letters of representation in respect of the application.

14. Issues for Clarification

None.

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.

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – ‘BROCKINGTON HALL, BODENHAM, HEREFORD, HR1 3HX’ - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Bodenham

Purpose

1. To consider an application for variation of the premises licence in respect of Brockington Hall, Bodenham, Hereford, HR1 3HX.

Background Information

- 2.

Applicant	Mr. Russell Warren Stevens, Park Hall, Blakedown, Kidderminster, DY10 3NL		
Solicitor	Mr. Derek Backhouse, T A Matthews, 6 King Street, Hereford, HR4 9BS		
Premises	Brockington Hall, Bodenham, HR1 3HX		
Type of application: Variation	Date received: 02/08/05	28 Days consultation 30/08/05	Issue Deadline: 02/10/05

Conversion Licence Application

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

Licensable activity	Hours
Sale of Alcohol on and off the premises	<ul style="list-style-type: none"> ▪ Monday to Sat incl 1000 am – 1100 pm (other than Christmas Day, Good Friday and New Years Eve) ▪ Sunday (other than Christmas Day or New Years Eve) 12:00 noon to 1030 pm ▪ Good Friday 1200 noon to 1030 pm ▪ Christmas Day 1200 noon to 300 pm and 700 pm to 1030 pm ▪ New Years Eve (Except Sunday) 1100 am to 1100 pm ▪ New Years Eve (Sunday) 1200 noon to 1030 pm ▪ New Years Eve from the end of the permitted hours as stated above to the start of the permitted hours on the following day ▪ The above restriction does not prohibit the sale or supply of alcohol to persons residing on the

Further information on the subject of this report is available from Suzanne Laughland, Licensing Manager on (01432) 261675

	<p>premises or their private friends being entertained there outside the hours mentioned above.</p> <ul style="list-style-type: none"> ▪ Alcoholic beverages shall only be served to persons attending pre-arranged functions.
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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.

Variation Licence Application

4. The application for a variation to the premise licence has received representations by responsible authorities and therefore 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 entertainment facilities for making music (indoors)

Provision of entertainment facilities for dancing (indoors)

Supply of Alcohol (on and off premises)

(Activities in bold are those not previously licensed)

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

Mon – Sat 2000 – 2300

Sun 2000 – 2230

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

Mon – Sat 2000 – 2300

Sun 2000 – 2230

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

Mon – Sat	2000 – 2300
Sun	2000 – 2230

9. The following hours have been applied for in respect of supply of alcohol:-

- Monday to Sat incl 1000 am – 2300
- Sunday 12:00 noon to 2230 pm
- Good Friday 1200 noon to 2230 pm
- Christmas Day 1200 noon to 1500 pm and 1900 pm to 2230 pm
- New Years Eve (Except Sunday) 1100 am to 2300 pm
- New Years Eve (Sunday) 1200 noon to 2230 pm
- New Years Eve from the end of the permitted hours as stated above to the start or the permitted hours on the following day
- The above restriction does not prohibit the sale or supply of alcohol to persons residing on the premises or their private friends being entertained there outside the hours mentioned above.
- Alcoholic beverages shall only be served to persons attending pre-arranged functions.

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

Mon – Sat	1000 – 2330
Sun	1200 – 1500 & 1900 – 2300

11. **Non Standard hours**

None

13. **Summary of Representations**

West Mercia Police

Have no representations.

Fire Authority

The fire authority have made representation in respect of the application and request further information from the client regarding fire safety details in the marquee.

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.

In respect of Public Safety they seek conditions in relation to overcrowding, Ventilation and heating, first aid, electrical installation, fire safety, gas Installations and open containers.

With regards to the prevention of public nuisance they seek conditions in relation to the prevention of noise and vibration.

With regards to the protection of children from harm they recommend some conditions in respect of proof of age cards, unlawful supply of alcohol and drugs, and films or videos.

14. **Issues for Clarification**

This Authority has requested clarification from the applicant, Russell Warren Stevens.

Mr Stevens is the Premises Supervisor but his home address is in Kidderminster – What arrangements is he making for the sale of alcohol if away from the premises?

There is also a concern that the client indicates weddings are to take place and yet all of the entertainment is stated for the times 2000 – 2300. We need clarification on how this is the case.

In part B of the application form in the box dealing with proposed variation you do not specify that the use of the marquee is part of the variation, yet in box I – provision of facilities for making music – there is a mention of the marquee. We sought confirmation on this.

If the marquee is not permanently there we need to know the dates when it will be in use.

In boxes E (live music), F (recorded music), and J (provision of facilities for dancing) all state the activities will take place inside. Does this include the marquee?

The risk assessment does not appear to address the marquee area.

What provisions are in place to ensure the licensing objectives are fulfilled for the marquee?

The fire authority have asked for clarification on the following points:

Dimension of marquee, floor area in M², Dimensions and direction of openings of exits and associated door furniture to marquee, Details required of a means of raising the alarm in the event of fire, Details of emergency lighting, Details of signage, Details of firefighting equipment, Proposed maximum numbers of persons within structure and the minimum number of stewards.

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

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NOTES

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The operating schedule

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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.

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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.

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – BROMYARD RUGBY FOOTBALL CLUB, CLIVE RICHARDS SPORTS GROUND, INSTONE, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4LW - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Bromyard

Purpose

1. To consider an application for variation of the premises licence in respect of Bromyard Rugby Football Club, Clive Richards Sports Ground, Instone, Tenbury Road, Bromyard, Herefordshire, HR7 4LW.

Background Information

- 2.

Applicant	Bromyard Rugby Football Club Management Committee (Deborah Jayne PIGGOTT)		
Solicitor	N/A		
Premise	Bromyard Rugby and Football Club, Clive Richards Sports Ground, Instone, Tenbury Road, Bromyard, Herefordshire, HR7 4LW		
Type of application: Variation	Date received: 03/08/05	28 Days consultation 31/08/05	Issue Deadline: 03/10/05

Conversion Licence Application

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

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon to Sat – 1100 to 2300 hours Sunday, Christmas Day and Good Friday – 1700 to 2030 hours Open 1100 am when necessary Mon – Sat until 2300 pm, Sunday 2300 pm Match days – 1430 pm – 2300 pm

The premises does not hold a current public entertainment licence.

Variation Licence Application

4. The application for a variation has received representations by responsible authorities. The Applicant has been request to confirm in writing that they agree with the conditions but to date have not responded. Therefore the application is brought before the sub-committee for determination.

Summary of Application

5. The licensable activates applied for are: -
Live Music (Indoors only)
Recorded Music (Indoors only)
Anything of a Similar Description (Indoors only)
Provision of facilities for dancing (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:-
- | | |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday | 1900 – 0200 |
| Saturday | 1200 – 0200 |
| Sunday | 1200 – 2230 |
7. The following hours have been applied for in respect of recorded music (*Indoors only*):-
- | | |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday | 1900 – 0200 |
| Saturday | 1200 – 2230 |
8. The following have been applied for in respect of anything of a similar description (*indoors only*):-
- | | |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday | 1900 – 0200 |
| Saturday | 1200 – 0200 |
| Sunday | 1200 – 2230 |
9. The following hours have been applied for in respect of provision of facilities for dancing (*indoors only*):-
- | | |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday | 1900 – 0200 |
| Saturday | 1200 – 0200 |
| Sunday | 1200 – 2230 |
10. The following hours have been applied for in respect of supply of alcohol:-
- | | |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday | 1900 – 0200 |
| Saturday | 1200 – 0200 |
| Sunday | 1200 – 2230 |

11. Non Standard hours

There is no request for non-standard hours.

12. Summary of Representations**West Mercia Police**

Have made representation in relation to the supply of alcohol to persons other than members or their guests.

They have the following representations to make in respect of the licensing objectives for this application for the conversion with variation of an existing Club Registration Certificate to a Club Premise Certificate.

The Police Authority note from the rule book submitted with the application the rule 28.2.3 allows for the sale of alcohol to be made to persons other than members or their guests.

The Licensing Act 2003 does not provide any facility for people who are not members or guests to be supplied with alcohol, even if the club rules permit it.

It is known that the club under the present licensing regime often applies for special orders of exemptions for "party's" such as engagements or 21st etc, and that the use of this club rule allows for non-members to be served alcohol. Clarification is sought on how the club intends to operate such functions in the future, and how they intend to ensure that in accordance with the Licensing Act 2003, non-members are not sold alcohol.

Environmental Health

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

In Section N of the application the applicant states that the club does not intend to open continuously and that the increase in opening hours are only for irregular use. This is deemed as an ad hoc application. Provisions have been made in the act to cover such an ad hoc basis by way of Temporary Event Notices (TENs). The club needs to apply for the actual hours it intends to be open.

In respect of Public Safety they seek some general conditions in relation to the safety of the public and performers on the premise, fire and electrical safety, overcrowding, ventilation and heating, first aid, lighting, gas installations and open containers.

In respect of Public Nuisance they ask for conditions in relation to the prevention of noise and vibration.

In respect of Protection of Children from Harm they ask for conditions relating to restricting access by children, preventing unlawful supply of alcohol, drugs and other products.

The suggested conditions can be found within the background papers.

Fire Authority

The Fire Authority have made comment, reminding the applicant that a fire risk assessment should be carried out.

Interested Parties

There are no representations from members of the public.

13. Issues for Clarification

This Authority has requested clarification from the applicants on their operating hours not listed in their application. 'As necessary' is not acceptable.

14. 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.

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.
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- To reject the application.

16. Background Papers

- Public Representation forms

- Environmental Health & Trading Standards Comments
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- 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.

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Guidance issued under section 182 of the Licensing Act 2003, Section S18(7)

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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.

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'DV8 NIGHTCLUB, 1 GAOL STREET, HEREFORD, HR1 2HU' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Central

1. Purpose

To consider an application for variation of the premises licence in respect of DV8 Nightclub, 1 Gaol Street, Hereford, HR1 2HU.

2. Background Information

Applicant	LUKE WILLIAM MORRIS		
Solicitor	N/A		
Type of application: Variation	Date received: 04/08/05	28 Days consultation 01/09/05	Issue Deadline: 04/10/05

The Justices Licence has been seen and accepted, as has the public entertainment licence. The advertisement for the premises has not been seen.

3. Conversion Licence Application

The premises currently hold a Justices On Licence and a Public Entertainment Licence. A conversion licence has been issued as follows; -

Licensable activity	Hours	
Sale of alcohol on and off the premises	Mon-Sat	1000 to 2300 hours
	Sun	1200 to 2230 hours
	Good Friday	1200 to 2230 hours
	Christmas Day	1200 to 1500 hours and 1900 to 2230 hours.
	New Years Eve	1000 hours to 2300 hours
	New Years Day	
Live Music, Recorded Music, Performance of Dance	Mon to Thurs	1100 to 0100 hours
	Fri and Sat	1100 to 0200 hours
	Sundays & Easter Sunday	1100 to 0030 hours (Music & Dancing)
	Bank Holiday	1100 to 0200 (Music & Dancing)
	Christmas Eve	1100 to 0200

With the following conditions attached: -

- The maximum number of persons admitted to the premises shall be: 200
- The maximum number of visually identifiable stewards shall be: 3
- The Standard Conditions for Licensing of Premises for Regulated Entertainment. [As specified in the outgoing public entertainment licence] (See Appendix)
- 30 minute drinking up period at the end of the sale of alcohol

4. **Variation Licence Application**

The application for a variation has received representations by responsible authorities. Whilst the applicant has agreed to the conditions requested by the responsible authorities verbally, despite numerous promises the applicant still has not agreed to the conditions in writing. It is therefore now brought before committee to determine the application.

5. **Summary of Application**

The licensable activities applied for are: -

Live Music

Recorded Music

Performance of Dance *

Anything of a similar description to live/recorded music or performance of dance *

Provision for facilities for making music *

Provision for facilities for dancing *

Provision of facilities for entertainment of a similar description nature to facilities for making music and dancing *

Supply of Alcohol

(*Not previously licensed)

6. The following hours have been requested in respect of all the licensable activities applied for (*Indoors only*) to include the sale of alcohol (*both on & off premises*): -

Wednesday 1900 - 0200

Thursday 1900 - 0300

Friday 1900 - 0400

Saturday 1200 - 0400

Sunday 1200 - 0200

The premises to close at the same time that as activities end.

7. **Seasonal Variations**

The application applies for Seasonal Variations in respect all the licensable activities applied for and in respect of the hours the premises are open to the public as follows: -

Bank Holidays 12:00 to 03:00 hours

8. Non Standard hours

The application applies for 'non-standard' hours in respect all the licensable activities applied for and the hours the premises are open to the public as follows: -

Christmas Eve 12:00 to 02:00 hours
New Years Eve 24 hours

9. Removal of Conditions

The applicant has not applied to remove any conditions.

10. Summary of Representations

A copy of any suggested conditions and representations can be found within the background papers.

West Mercia Police

West Mercia Police request a total of eleven conditions to be shown on the licence to address the licensing objective of crime and disorder.

The conditions requested by West Mercia Police have been agreed verbally at the time of this report but the applicant still has failed to confirm this in writing.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public Nuisance and Public Safety.

In respect of public nuisance they ask for seven conditions in relation to prevention of noise and vibration. One in relation to fly-posting.

In respect of public safety they accept that the public entertainment licence conditions will remain but request one other condition in relation to the removal of open containers.

In respect of the protection of children from harm they request the inclusion of four conditions.

Fire Authority

There has been no representation received from the Fire Authority.

11. Issues for Clarification

This Authority has requested clarification on particular points from the parties shown: -

Applicant – Luke MORRIS

Has been requested to provide clarification in respect of matters relating to the application as follows: -

Performance of Dance

Whether it is intended that the premises shall be used for the performance of dance, which will take place in the presence of an audience for their entertainment.

If so, then a description of the type(s) of dance to be provided.

Anything of a similar description to live/recorded music or performance of dance

Details have been requested of the types of activities that will be covered under this part of the licence, as the details provided are all dealt with within other licensable activities.

Provision for facilities for dancing

It has been noted from the application that no details have been provided regarding this.

The applicant therefore has been requested to provide details.

Provision of facilities for entertainment of a similar description nature to facilities for making music and dancing

Details have been requested of the types of activities that will be covered under this part of the licence, as the details provided are all dealt with within other licensable activities.

Hours premises are open to the public

It is noted that the finish time is identical to the conclusion time for all the activities applied for.

The applicant therefore has been asked to state how he intends to manage closer of the premises at the same time as conclusion of the activities.

12 **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.

13 **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.

14. Background Papers

- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form
- Location Map
- PEL Conditions

Background papers are available for inspection in the Council Chamber, Town Hall, 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....

5.75 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);

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.

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – ‘THE KITE’S NEST INN, SWAINSHILL, HEREFORD, HR4 7QA’ - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Credenhill

Purpose

- To consider an application for variation of the premises licence in respect of The Kite’s Nest Inn, Swainshill, Hereford, HR4 7QA.

Background Information

2.

Applicant	Emma Causer (owners) Punch Taverns Plc, Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF		
Solicitor	TLT Solicitors, One Redcliff Street, Bristol, BS1 6TP		
Premise	Kites Nest Inn, Swainshill, Hereford, HR4 7QA		
Type of application: Variation	Date received: 04/08/05	28 Days consultation 01/09/05	Issue Deadline: 04/10/05

Conversion Licence Application

- A conversion licence will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon – Sat 1100 am – 2300 pm Sunday 1200 midday – 2230 pm New Years Eve 1100 am – 0000 midnight New Years Day 0000 – 2300 pm Christmas Day 1200 – 1500 and 1900 – 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.

The premises does not hold a current public entertainment licence.

Variation Licence Application

- The application for a variation of 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)

Recorded Music (indoors)

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

Supply of alcohol (on and off premises)

Hours the premise are open to the public (not licensable on its own)

(Activities in bold are those not previously licensed)

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

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1200 pm – 2230 pm

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

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1100 am – 2300 pm

8. The following have been applied for in respect of facilities for entertainment of a similar description to that falling within I or J (*indoors only*):-

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1200 pm – 2230 pm

9. The following hours have been applied for in respect of supply of alcohol (*indoors and outdoors*):-

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1200 pm – 2230 pm

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

Mon – Weds	1100 am – 2330 pm
Thurs – Sat	1100 am – 0030 am
Sun	1200 pm – 2330 pm

11. **Non Standard hours**

The application applies for '**non-standard**' hours.

In respect of Live Music, Recorded Music, Provision of facilities for entertainment of a similar description to that falling within I or J, sale of alcohol and hours the premises are open to the public, the applicant has stated the following:-

A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend.

A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend.

A further additional hour every Christmas Eve.

A further additional hour every Boxing Day.

To reflect existing New Year's Eve/Day hours.

13. **Summary of Representations**

West Mercia Police

Have made no relevant representations.

Fire Authority

The fire authority have made no relevant representations, but recommend a suitable and sufficient fire risk assessment be carried out.

Environmental Health – Licensing

Have not inspected the premise. It is still boarded up and not expected to re-open after refurbishment until Spring 2006, although the applicant has offered to un-board the premise for an inspection to take place.

Environmental Health – Commercial

The premises has been closed for some time and during the inspection on Tuesday 8th February 2005 it was found to be in an unacceptable condition. The gas had been disconnected and there was water leaking from the boiler. The premise was in need to general repair. A total of 7 improvement notices were drafted when the brewery decided to voluntarily close the public house on 15th February 2005. It is appreciated that the Environmental Health Commercial report was received after the 28 day consultation period had passed. But in view of the serious conditions of the premises, this application has been brought to committee to decide what option to take.

Additional information is in the background notes.

14. **Issues for Clarification**

It has been suggested to the applicants that they may wish to apply for a provisional statement. The applicant's solicitor rejected the proposal and has requested that the application be determined.

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.
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- To exclude from the scope of the licence any of the licensable activities to which the application relates.
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17. **Background Papers**

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

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