

APPLICATION FOR VARIATION OF A PREMISES LICENCE IN RESPECT OF CLUB MO, 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 a variation of a premises licence in respect of 'Club MO, 1 Gaol Street, Hereford, HR1 2HU.'

2. Background Information

Applicant	Steve Harrison	
Solicitor	N/A	
Type of application: Variation	Date received:	28 Days consultation
	27/06/07	24/07/07

The original advertisement for the premises has been seen and has been accepted.

3. Variation Licence Application

The application for a variation to the premises licence has received representations from a responsible authority. It is therefore now brought before committee to determine the application.

4. Current Licence

The current licence authorises the following: -

Live Music, Recorded Music, Performance of Dance, Provision of facilities Music and Dancing, Sale by Retail of alcohol

Monday 12:00-01:30

Tuesday – Thursday 12:00-02:00

Friday & Saturday 12:00-03:00

Sunday 12:00-01:00

The current licence only authorises the downstairs area of the premises.

5. Summary of Application

The application makes no request for change of hours or for any additional licensable activities.

It does however seek to expand the area, which is to be included within the premise licence.

The application requests that the upstairs area be included which will contain two new seating areas and a flat roof terrace area.

In addition to this a new beer garden area will be created on the ground floor to the rear of the premises.

The new areas would not be authorised for any licensable activities but would be utilised for smoking. Although it should be noted that the two new seating areas would not comply with the Smoking Legislation.

6. **Additional Information**

The premises were visited by an Environmental Health Officer on 17th June, 2007 where noise at an 'unacceptable level' was witnessed. The applicant was written to regarding this on 3rd July. (A copy of the letter is included within the background papers).

7. **Non Standard hours**

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

8. **Summary of Representations**

A copy of the representation can be found within the background papers.

West Mercia Police

Have no representation to make.

Environmental Health

Have made representation in relation to public safety and prevention of public nuisance.

The representation deals with capacity limits, load bearings, safety rails and risk assessments, as well as issues surrounding the control of noise breakout from the premises.

Fire Authority.

A representation was received from the Fire Authority and it has been decided that it is not a relevant representation, although they did object to the grant of the variation.

9. **Issues for Clarification**

This Authority has not requested clarification on any point at this time.

10. **Herefordshire Council Licensing Policy**

In making its decision the committee will be obliged to have regard to its own policy, the DCMS guidance and all documents submitted in respect of the application.

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

- Application Form
- Environmental Health Officer's Comments
- Copy of letter to applicant from the Environmental Health Officer
- Location plan

Background papers were available for inspection in the Council Chamber, Brockington, 35 Hafod Road, 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....

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.