

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'COUNTRYWIDE FARMERS STORE, RAILWAY INDUSTRIAL ESTATE NORTH, WORCESTER ROAD, LEOMINSTER, HR6 8AR' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Leominster

1. Purpose

To consider an application for variation of the premises licence in respect of Countrywide Farmers Store, Railway Industrial Estate North, Worcester Road, Leominster, HR6 8AR.

2. Background Information

Applicant	Countrywide Farmers Plc	
Solicitor	N/A	
Type of application: Variation	Date received: 22/08/07	28 Days consultation 18/10/07

The advertisement for the premises has been seen.

3. Current Licence

The currently licence authorises the sale of alcohol (Off Premise only) as follows: -

Monday to Saturday: 08.00 - 17.30
Sunday: 10.00 - 16.00

4. Variation Licence Application

The application for a variation has received a representation from the Environmental Health Officer.

5. Summary of Application

The licensable activity applied for is: -
Supply of Alcohol (Off Sales)

6. The following new hours have been requested: -

Monday to Saturday: 08.00 – 23.00
Sunday: 10.00 – 22.30

7. The hours the premises are to be open to the public are: -

Monday to Saturday: 08.00 – 23.00
Sunday: 10.00 – 22.30

8. Seasonal Variations

There is no application for seasonal variation.

9. Non Standard hours

The application states 'The store may stay open longer for occasional events and at times of peak demand which may, for example, include Easter and Christmas'.

10. Removal of Conditions

The applicant has not applied to remove any conditions.

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

West Mercia Police have made no representation to make in respect of Crime and Disorder.

Environmental Health

Environmental Health made comment regarding the ad-hoc nature of the application and has requested that the hours be restricted.

Fire Authority

The Fire Authority has made no representation regarding this application.

12. Issues for Clarification

The revised Guidance Notes issued under Section 182 of the Licensing Act 2003 by the Department of Culture Media and Sport under section 10.21 states: -

'Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping'.

The applicant has been asked to explain to the Committee why they have applied for a terminal hour for the sale of alcohol up to 6 ½ hours after this, which is contrary to the guidance issued.

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

- Application Form
- Comments of EHO
- Copy of representation
- Location Map

Background papers are available for inspection in the Council Chamber, Brockington, 30 minutes before the start of the hearing.

NOTES

Guidance issued under section 182 of the Licensing Act 2003

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 judgement. This may be difficult for ward councillors 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 councillor 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.

Hours of trading

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

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.