

APPLICATION FOR NEW PREMISES LICENCE 48 ST OWENS STREET, HEREFORD, HR1 2PU - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Central

1. Purpose

To consider an application for a new premises licence in respect of '48 St Owens Street, Hereford, HR1 2PU.

2. Background Information

Applicant	Miro Catering Ltd	
Solicitor	N/A	
Type of application:	Date received:	28 Days consultation
New	14/2/08	13/03/08

The advertisement for the premises has not been seen at this time.

3. New Licence Application

The application for a new licence has received representations from interested parties. It is therefore now brought before the sub-committee for determination.

4. Summary of Application

The licensable activities applied for are: -

Plays

Films

Live Music

Performance of Dance

Provision of facilities for making music

Provision of facilities for dancing

Late night refreshment

Supply of alcohol

5. The following days and times have been applied for (*Indoors Only*) in respect of: -

Plays, Films

Monday to Sunday 1000 – 2300

Live music

Monday – Saturday 1000 – 2330

Sunday 1000 – 2230

Performance of dance, Provision of facilities for making music, Provision of facilities for dancing

Monday – Thursday	1000 – 2330
Friday – Saturday	1000 – 0000
Sunday	1000 – 2230

Late night refreshment Monday – Sunday	2300 – 0000
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Supply of alcohol (<i>on premise</i>) Monday – Saturday	1000 – 0000
Sunday	1000 – 2230

Hours premises are open to the public Monday – Saturday	1000 – 0000
Sunday	1000 – 2230

6. Seasonal Variations

The application requests the following seasonal variations:

Live Music, Performance of dance, Provision of facilities for making music, Provision of facilities for dancing, Supply of alcohol, premises open to the public.

Christmas Eve	1000 – 0100
New Year's Eve	1000 – 0200
New Year's Day	1000 – 0200
Sunday before Bank Holiday	1000 – 0200

Late night refreshment Christmas Eve	2300 – 0100
New Year's Eve	2300 – 0200
New Year's Day	2300 – 0200
Sunday before Bank Holiday	2300 – 0200

7. Summary of Representations

Copies of all representations and suggested conditions can be found within the background papers.

West Mercia Police

Have made no representation in respect of the application.

Environmental Health

Environmental Health Officers have made no representation in respect of this application as the applicant has removed amplified music from the application.

Fire Authority

The Fire Authority has no representation to make.

Interested Parties

The Local Authority has received 32 Representations from interested parties.

The concerns relate to:

- Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

8. Issues for Clarification

This Authority has requested clarification on the following points from the applicant:

Licensing Objectives

The application states within the licensing objective of 'Public Safety' that 'The premises shall be adequately ventilated whilst open to the general public'. Clarification has been sought in respect of the type of ventilation that will be used.

The application states within 'The prevention of public nuisance' that 'All external doors (except for access/egress) and windows shall be kept closed after 22.00 hours whilst entertainment is provided at the premises. Confirmation has been requested that amplified music has been removed from the application and also details of the musical entertainment to be provided.

Clarification has also been sought as to whether there will be any age restriction in respect of the premises.

9. Committees Responsibility

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

10. 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.

9. Background Papers

- Public Representations
- Application Form
- Location Plan

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

NOTES

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 judgment. This may be difficult for ward councilors 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 councilor 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.

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.