

# APPLICATION FOR VARIATION OF A PREMISES LICENCE IN RESPECT OF BELMONT LODGE GOLF COURSE AND MARQUEE- LICENSING ACT 2003

Report for: Head Of Environmental Health And Trading Standards

## Wards Affected:

Hereford City

### 1. Purpose

To consider an application for a variation of a premises licence in respect of Belmont Lodge Golf Course and Marquee, Ruckhall Lane, Belmont, Hereford

### 2. Background Information

Applicant	<b>Christopher Tilden Smith</b>	
Type of application:	Date received:	28 Days consultation
<b>Variation</b>	<b>27 February 2009</b>	<b>26 March 2009</b>

The advertisement for the premise has been seen and approved.

### 3. Current Licence

The current licence allows: -

Provision of regulated entertainment

1. A performance of live music (Indoors & outdoors)
2. Any playing of recorded music (Indoors & outdoors)
3. A performance of dance (Indoors & outdoors)
4. Other regulated entertainment (Indoors & outdoors)

Provision of entertainment facilities

5. Making music (Indoors & outdoors)
6. Dancing (Indoors & outdoors)
7. Other entertainment facilities (Indoors & outdoors)

Provision of refreshment or alcohol

8. Sale by retail of alcohol (For consumption on the premises)

The times the licence authorises the carrying out of licensable activities are:-

A performance of live music

Monday-Saturday: 12:00 - 00:00

Sunday: 18:00 - 00:00

Any playing of recorded music

Monday-Sunday: 07:00 - 00:00

A performance of dance

Monday-Thursday: 18:00 - 00:00

Friday-Sunday: 12:00 - 00:00

Other regulated entertainment; Making music; Dancing; Other entertainment facilities  
Sunday-Friday: 18:00 - 00:00  
Saturday: 12:00 - 00:00

Sale by retail of alcohol  
Monday-Sunday: 10:00 - 00:00

Non standard timings:  
Dancing; A performance of live music  
New Years Eve until 01:00 Indoors only

The Marquee which is only licensed between April – October

A performance of live music (amplified)  
Monday – Saturday 12:00 – 18:30

A performance of live music (unamplified)  
Monday – Sunday 07:00 – 00:00

Any playing of recorded music  
Monday – Sunday 07:00 – 00:00

Other regulated entertainment; Making music; Dancing; Other entertainment facilities  
Monday Sunday 12:00 - 00:00

Late Night Refreshments  
Monday - Sunday 23:00 – 00:00

Sale by retail of alcohol  
Monday - Sunday: 10:00 - 00:00

4. **Summary of Variation Application**

There is an application to change the licensable activities shown on the premise licence which refers to the use of the marquee between 1 April to 31 October. This is to vary the hours as follows:-

A performance of live music – inside the marquee both amplified and unamplified between the 1 April to 3 October and outside unamplified only in the summer months during the hours of 12:00 to 01:00 Monday to Saturday and 12:00 to 00:00 on a Sunday.

Any playing of recorded music – inside the marquee Monday-Saturday 07:00 to 01:00

A performance of dance, other regulated entertainment (Similar to Live/Recorded or Performance of Dance), provision of facilities for making music and dancing or facilities of a similar nature in the marquee both amplified and unamplified during Monday-Saturday 12:00 to 01:00 and 12:00 to 00:00 on Sundays.

Late Night Refreshment in the marquee between 23:00 to 01:00 Monday to Saturday and 23:00 to 00:00 on a Sunday

Sale by retail of alcohol – in the marquee between 10:00 to 01:00 Monday-Saturday and 10:00 to 00:00 on a Sunday.

Non standard timings: Summer months only for Marquee 1 April to 31 October.

## 5. **Removal of Existing Conditions**

The application requests that the following conditions attached to the licence be removed.

### Licensing Conditions

#### General

Alcohol shall not be sold or supplied except during permitted hours.

The above restrictions do not prohibit:

- a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
- b) consumption of the alcohol on the premises by, or, the taking, sale or supply of alcohol to any person residing in the licensed premises;
- c) during the first twenty minutes after the above hours the ordering of alcohol to be consumed off the premises, or the dispatch by the vendor of the alcohol so ordered;
- d) the sale of alcohol to a trader or club for the purposes of the trade or club;
- e) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- f) the taking of alcohol from the premises by a person residing there; or
- g) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
- h) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

### Licensing objectives

#### General:

Management and staff at Belmont are committed to providing our guests and their families with a safe and responsibly run environment.

We do not tolerate drunken and inappropriate behaviour, nor do we promote excessive consumption of alcohol through irresponsible drink promotions and pricing Belmont has a positive reputation and it is managements sincere intention to keep it that way.

#### Prevention of Crime:

All areas on the licensed premises are adequately lit and CCTV cameras are strategically located in 9 positions within the licensed area.

CCTV footage is stored for a period of 3 months.

There is always a senior member of management on duty and staff are instructed to refuse service and access to persons displaying signs of overindulgence or aggression.

Alcohol stocks are kept locked in secure stores in areas not visible or accessible to the public.

We follow all the preventions to eradicate any Crime or Disorder

**Public Safety:**

Belmont currently complies with all statutory health and safety requirements regarding procedures and signage.

Management is on site at all times to ensure the safety of our guests in the event of emergency. This person will also be a first aider.

A direct telephone line to a taxi company is provided free of charge.

**Public safety**

Where regulated entertainment and alcohol is provided on any premises there is increased risk to public safety. I am confident that the premises is effectively managed in respect of health and safety legislation, however I would like to see the following specific conditions added to further safeguard public safety:

We are members of the Croners organization and are visited and checked by there organization twice a year

**General**

The Licensee shall take all reasonable precautions to ensure the safety of the public, the performers and employees on the premises. A risk assessment for all licensed outdoor areas, shall be recorded and maintained. Adequate systems shall be in place to ensure the actions (and precautions) identified in the risk assessment are effectively implemented.

**Crowd Control**

Adequate systems shall be in place to control numbers of persons entering the marquee to prevent overcrowding and alleviate crowd control problems.

**First Aid**

The Licensee shall ensure that an adequate and appropriate supply of first aid equipment and material is available on the premises.

**Prevention of Public Nuisance:**

Being fairly isolated, Belmont is not usually associated with instances of public nuisance. Drinking of alcohol is confined to the designated food and beverage areas and because of policies in place and the nature of the business, management is on hand in the unlikely event of such disturbance.

Reports of occasional noise from our seasonal marquee is currently being handled by Belmont Management. An acoustics consultant has been appointed to look into the matter and to recommend an effective means of controlling noise emission levels. It is envisaged that this will be resolved during 2005. Investigations to date have indicated that bands and amplified vocals are the main cause of such occasional disturbance.

The licensee shall ensure that noise and vibration does not emanate from the premises so as to cause a public nuisance.

Amplified live music shall only be provided in the marquee or outdoor area between 12.00 hours (midday) and 18.30 hours Monday to Saturday and not at any time on Sundays.

Unamplified live music shall be provided in the marquee or outdoor area between 12.00 hours (midday) and 00.00 hours (midnight) Monday to Saturday and 18.00 hours to 00.00 hours (midnight) Sunday.

All live music in the marquee or outdoor area shall be maintained at background levels only.

No karaoke shall be provided in the marquee or outdoor area at any time.  
The marquee or outdoor area shall not be used for the consumption of alcohol or licensable activities after 00.00 hours (midnight) on any day.  
No recorded music shall be provided in the marquee before 10.00 hours or after 00.00 hours (Midnight) on any day.  
We carry out regular sound Checks on all area around the Grounds of Belmont Lodge & Golf

**Protection of Children:**

Our restaurant and public lounge are smoke free areas and children are permitted in these areas.

Staff are instructed to refuse service or request Proof of Age cards in the event of any doubt of the age of the person being served

Childrens high chairs are provided in our restaurant.

As a general rule, we do not allow functions for under 18's, school year ends and similar events.

All the team are trained to think "21" before serving our member or guests

Conditions attached following a hearing: -

The condition stating 'it is our intention not to allow live music in our marquee from 2006 onwards, as an added measure we will not be permitting any form of music/performance/dance etc beyond midnight' to be removed from the licence as requested.

**INFORMATIVE NOTE**

**THIS INFORMATIVE NOTE MUST BE READ IN CONJUNCTION WITH THE ABOVE TABLE CONCERNING THE MARQUEE**

The applicant is reminded of the existing condition on the licence which states that amplified live music shall not be provided in the marquee or outside areas after 18:30 hours Monday to Saturday and at no time on a Sunday

**6. Summary of Representations**

Copies of the representations can be found from Environmental Health and Interested parties in the background papers.

**West Mercia Police**

Have no representation to make in relation to the application.

**Environmental Health**

The Environmental Health Officer has made representation and object to the variation.

**Fire Authority.**

The fire authority has no comment to make in relation to the application.

**Interested Parties.**

The Local Authority has received letters of representation in respect of the application, from interested parties, these are contained within the background papers.

**7. Issues for Clarification**

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The following information has been requested to assist the committee: -

Whilst information has been provided about how the proposed internal design of the marquee will reduce noise by a certain level, no information has been provided in respect of the level of the noise within the marquee which is to be controlled. Nor has any information been provided about the noise levels to be experienced by residents who have been subject to noise problems in the past.

Also no information has been provided about how noise breakout from the premises will be controlled.

There has been no contingency plan put forward to demonstrate what additional action would be taken if the proposed build design did not work.

This information will be essential for the committee to be able to make an informed judgement in respect of the grant of the variation of the licence.

The requested information shall be given to the Committee at the hearing in support of your application, representation or notice.

#### 8. **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

#### 9. **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 reject the application.
- To reach some other decision.

#### 10. **Background Papers**

- a. Environmental Health & Trading Standards Comments
- b. Application Form
- c. Representations from interested parties.

**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.