

6 APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF THE COURTYARD THEATRE, EDGAR STREET, HEREFORD. LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Three Elms and Aylestone

Purpose

- To consider an application for variation of the premises licence in respect of Courtyard Theatre, Edgar Street, Hereford, HR4 9JR.

Background Information

2.

Applicant	The Court Yard Trust		
Solicitor	N/A		
Premise	Court Yard Theatre, Edgar Street, Hereford, HR4 9JR		
Type of application: Conversion Variation	Date received: 15 June 2005	28 Days consultation 13/07/05	Issue Deadline: 15/08/05

Conversion Licence Application

- A conversion licence, on receipt of all the Justices Licences, will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon to Sat– 1100 am – 11 pm Sun 12 midday – 10.30 pm Good Friday – 12 pm – 10.30 pm Christmas day 12 pm – 3 pm & 7 pm – 10.30pm
Theatre Licence	Same as below for live music etc.
Live Music, Recorded Music, Performance of Dance	Mon to Sat 1100 am – 23.30 pm Sun 11.00 am – 10.30 pm (musical entertainment only) (for dancing where no charge for admission has been made)

With the following conditions are attached:-

- The premise will be permitted to open for up to 30 minutes after the end of the sale of alcohol. (mentioned above)
- The Standard Conditions for Licensing of Premises for Regulated Entertainment and theatres licence. [As specified in the outgoing public entertainment licence] (See **Appendix A and B** respectively).
- The maximum number of persons admitted and number of stewards as stated below:

	Maximum persons			Number of stewards		
	Seated	Or	Flat Floor	Seated	Or	Flat Floor
Studio/theatre	144		220	3		3
Stalls	264		460	4		4
1 st floor gallery	24		-	2		-
2 nd floor gallery	138		-	3		-
Rehearsal room	-		100	-		2
Bar/Foyer	-		380	-		4
The maximum number of persons allowed on the premises for Public Entertainment at any one time is to be restricted to 1,000						

Variation Licence Application

4. The application for a variation has received representations by responsible authorities and local residents therefore is now brought before the committee to determine the application.

At the time of print it is believed that the application should read as follows;

Summary of Application

5. The licensable activities applied for are: -
 - Plays
 - Films
 - Indoor sporting events
 - Live Music
 - Recorded Music
 - Performance of dance
 - Anything of a similar description
 - Provision of facilities for making music
 - Provision of facilities for dance
 - Provisions for entertainment of a similar description
 - Provision of Late night entertainment
 - Supply of Alcohol

6. The following hours have been applied for in respect of the licensable activities shown above:-

Plays (indoors and out), Films, Indoor sporting Events (although does not currently take place we are considering snooker exhibitions/competitions and other similar events), live music (indoors and out), performance of dance(indoors and out), and anything similar(indoors and out).

Provision of facilities for making music (indoors and out), Provision of facilities for dancing (indoors and out) and provision of facilities for entertainment of a similar description(indoors and out).

Monday	0900 – 2400
Tuesday	0900 – 2400
Wednesday	0900 – 2400
Thursday	0900 – 2400
Friday	0900 – 2400
Saturday	0900 – 2400
Sunday	0900 – 2400

Recorded music (indoors)

Monday	0600 – 0100
Tuesday	0600 – 0100
Wednesday	0600 – 0100
Thursday	0600 – 0100
Friday	0600 – 0100
Saturday	0600 – 0100
Sunday	0600 – 0100

Music played wherever premises open to the public.

Late night refreshment (indoors and out)

Monday	2300 – 0100
Tuesday	2300 – 0100
Wednesday	2300 – 0100
Thursday	2300 – 0100
Friday	2300 – 0100
Saturday	2300 – 0100
Sunday	2300 – 0100

Supply of alcohol (indoors and out)

Monday	1000 – 0100
Tuesday	1000 – 0100
Wednesday	1000 – 0100
Thursday	1000 – 0100
Friday	1000 – 0100
Saturday	1000 – 0100
Sunday	1000 – 0100

Box N in relation to adult entertainment states; films will be shown of all certifications and sold to those admissible accordingly.

7. The hours applied for the premises to be open to the public are: -
- | | |
|-----------|-------------|
| Monday | 0600 – 0100 |
| Tuesday | 0600 – 0100 |
| Wednesday | 0600 – 0100 |
| Thursday | 0600 – 0100 |
| Friday | 0600 – 0100 |
| Saturday | 0600 – 0100 |
| Sunday | 0600 – 0100 |

Section Q (a) of application states; as we do not intend to vary our current procedures and opening times this is not applicable. Only reason for making a variation is to cover all possible eventualities and those occasions when we would have previously applied for a special order.

Non Standard hours

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

Box B Films times to be extended during film festivals (unknown until programmes)

Previous Licence Conditions To Be Removed

9. The applicant has not requested that all time restraints that due to the extended hours to cover all eventualities will no longer exist.

Summary Of Representations

10. West Mercia Police

Make no representations

11. Representations form the businesses and the public.

Herefordshire Council has received 5 letters objecting to the proposals from interested parties local residents.

The concerns relate to:

- Noise emanating from inside and outside the premises late at night
- Noise of bottles going into the bin late at night
- Noise from car in car park late at night.
- Concerned children will not be able to sleep through the noise.

Copies of representations are attached as **appendix C to G**.

12. Environmental Health

Environmental Health Officers have made representations in relation to the extension of operating hours and noise emanating to neighbouring dwellings. **appendix H**.

Environmental Health also express concerns in relation to

Prevention of nuisance

Reduce hours of licensable activities requested in application.
Restrict licensable activities taking place outside the premises.
Control of refuse

Protection of children from harm

Proof of Age
Restrictions on access by children shall be conspicuously displayed throughout premises.

13. Fire Authority.

The fire authority have made no representations.

14. Request for further information:

- A) To provide a written consent from the proposed premise supervisor Mr Martin Green.
- B) To provide information detailing where you propose the following activities to take place outside the premises as indicated on your application;
 - Box A plays,
 - Box E Live music,
 - Box G, Performance of dance,
 - Box H Anything of a similar description to that falling within (e), (f) or (g),
 - Box I Provision of facilities for making music,
 - Box J Provision of facilities for dancing.
 - Box K provision of facilities for entertainment of a similar description to that falling within I or J,
 - Box L Late night refreshment standard days and timings and
 - Box M supply of alcohol standard days and timings.

- C) To confirm whether or not the films indicated in box N would include restricted 18 films requiring a sex establishment's licence.
- D) The plan provided states all areas of the building is to be used for all licensable activates, please confirm which rooms in the premise you would require the licensable activates to take place.
- E) In your application section Q a) 'it states you do not intend to carry our current procedures and opening times this is not applicable. The only reason for making a variation is to cover all possible eventualities and those occasions when we would have previously applied for a special order.' Also in box B you state under seasonal variation 'that times may be extended during film festivals (unknown until Programmed)'. Please provide information on what occasions and when you would use the extended hours.
- F) Please clarify what type of activates indicated in box H and box K would take place on the premises.
- G) Please clarify what type of late night refreshment and to whom the late night refreshment is intended to be supplied.
- H) Boxes A,B,E,E,G,I,J, do not specify the nature of the activity that will take place.
- I) In Box F recorded music, you state that music will be played 'whenever the building is open to the public' please clarify if this is pre-recorded background music.

Herefordshire Council Licensing Policy

14. 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.

Options:-

15. 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.

Background Papers

- Standard Conditions for Licensing for Public Entertainment
- Theatre Licence Conditions
- Public Representation forms
- Environmental Health and Trading Standards Comments
- Application Form
- Any Other Associated Papers

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

NOTES

1. Relevant, vexatious and frivolous representations

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

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....

2. Ad-hoc events

The application applies for extension by one hour before and one hour after the transmission of an international event, the details of which will be notified to the police 10 days beforehand.

DCMS Guidance

Under Section 182 of the Licensing Act 2003 The Secretary for Culture, Media & Sport (DCMS) issued Guidance in respect of the Act.

Paragraph 6.11 is titled ‘Relaxation of opening hours for local, national and international occasions’. The guidance in respect of this is that it will be open to the Secretary of State to extend hours on these special occasions .e.g. World Cup

ACPO Guidance

The Association of Chief Police Officer (ACPO) have issued a letter in respect of this matter which states 'To maintain a consistent approach across the country ACPO suggest that Constabularies consider the following approach in relation to these applications - No more than 12 extensions per premises per year (excluding applications made under TENS) should be allowed.

A minimum of 7 days notice to police and the licensing authority.

An absolute veto for police in respect of any of these occasions.

It is, of course, open to all the other responsible authorities to raise objections if they consider it necessary."

West Mercia Police

It is known that the West Mercia Police do not endorse this guidance issued by ACPO. PC Steve Thomas will explain to the committee the current position for their perspective.

Section 17 (4) (b) Licensing Act 2003

An operating schedule is a document, which is in the prescribed form and includes a statement of the times during which it is proposed that the relevant licensable activities are to take place.

Guidance issued under section 182 of the Licensing Act 2003.

5.46 operating schedule... 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 set out 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.

3. 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.