

## 6 APPLICATION FOR VARIATION OF PREMISES LICENCE 'THE EAGLE, 23 BROAD STREET, ROSS ON WYE. HR9 7EA' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Ross on Wye West & Ross on Wye East

#### 1. Purpose

To consider an application for variation of the premises licence in respect of The Eagle, 23 Broad Street, Ross on Wye. HR9 7EA..

#### 2. Background Information

Applicants	<b>Richard John DENBY &amp; Helen Christine DENBY</b>		
Solicitor	<b>N/A</b>		
Premise	<b>The Eagle, 23 Broad Street, Ross on Wye. HR9 7EA.</b>		
Type of application: <b>Conversion Variation</b>	Date received: <b>12/07/05</b>	28 Days consultation <b>09/08/05</b>	Issue Deadline: <b>11/09/05</b>

Both the advertisement and the current justices licence have been seen and accepted

#### 3. Conversion Licence Application

The premises currently only holds a Justices On Licence and no other licence. A conversion licence, has been issued as follows; -

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon-Sat 1000 to 2300 hours
	Sun 1200 to 2230 hours
	Good Friday 1200 to 2230 hours
	Christmas Day 1200 to 1500 hours and 1900 to 2230 hours.
	New Years Eve 1000 hours to 2300 hours
	New Years Day

With the following condition attached:-

- The premise will be permitted to remain open for up to 30 minutes after the end of the sale of alcohol. (Drinking up time).

The premises do not hold a current public entertainment licence.

**4. Variation Licence Application**

The application for a variation to the premises licence has received representations from responsible authorities and also members of the public. It is therefore now brought before the sub-committee for determination.

**5. Summary of Application**

The licensable activities applied for are: -

Films\*

Indoor Sporting Events\*

Anything similar to Live Music or Recorded Music or Performance of Dance \*

Late Night Refreshment

Supply of Alcohol

Hour's premises open to the public (Not licensable on it's own)

(\* Not previously licensed)

**6. The following hours have been applied for in respect of Films (*Indoors only*) and Indoor Sporting Events: -**

Sunday to Thursday 0800 – 0000

Friday & Saturday 0800 – 0130

The following hours have been applied for in respect of Anything similar to Live Music or Recorded Music or Performance of Dance (*Indoors Only*): -

Sunday to Thursday 1000 – 0000

Friday & Saturday 1000 – 0100

**7. The following hours have been applied for in respect of Late Night Refreshment (*Indoors only*): -**

Friday & Saturday 2300 – 0130

**8. The following hours have been applied for in respect of supply of alcohol (*On Premises only*): -**

Sunday to Thursday 1000 – 2330

Friday & Saturday 1000 – 0100

**9. The hours that the premises will be open to members of the public**

Sunday to Thursday 0800 – 0000

Friday & Saturday 0800 – 0130

**10. Non Standard hours**

The application applies for 'non-standard' hours.

In respect of Films and Indoor Sporting Events the applicant has stated the following: - 'When hours for the sale of alcohol are extended on Bank Holidays and other non-standard days in Section M, these hours are also extended.'

In respect of the supply of alcohol: -

10.00 - 0100 on Friday, Saturday, Sunday and Monday on Bank Holiday Weekends

10.00 – 0100 on St George's Day, St Patrick's Day, St David's Day & St Andrews Day.

In respect of 'Hours the premises are open to the public': -

Closing on the non-standard days listed in Section M.

15. The applicant has applied to 'Remove the restriction on late night refreshment only being available in the first floor restaurant'.

16. **Summary of Representations**

**West Mercia Police**

Have made representation in respect of the application and request a number of conditions be applied to the licence to prevent crime & disorder.

**Fire Authority**

The fire authority have made no comments.

**Environmental Health**

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public Nuisance and Public Safety.

In respect of Public Nuisance they seek conditions in relation to the prevention of noise.

With regards to public safety, they recommend some conditions in respect of Fire Safety.

At the time of this report no negotiation had taken place in respect of these conditions.

**Interested Parties**

The Local Authority has received 2 letters of representation in respect of the application, from a local resident.

The concerns relate to:

- Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance

**17. Issues for Clarification**

This Authority has requested clarification on particular points from the party shown.

The Applicants – Richard John DENBY & Helen Christine DENBY

Have been requested to provide clarification in respect of matters contained within their application, regarding the following activities: -

*Films*

The type and certification of the videos to be shown on the premises.

Whether or not it is intended to show any other type of film other than video entrainment on TV and Amusement Machines.

*Indoor Sporting Events*

The type of pub games the premises will be used for and whether spectators will be seated or not. If seated the number of seats to be provided.

*Anything of a similar description to live or recorded music*

Whether it is intended that the premises should be used for any other activity than as shown within the description of the type of entertainment to be provided.

*Late Night Refreshment*

Will the provision of late night refreshment be limited to the function room.

The areas within the premises that it is intended to provide late night refreshment.

Clarification has also been asked for in respect of the actual hours the applicant applies for on Bank Holidays regarding films and indoor sporting events.

Clarification has been sought as to the meaning shown under Non Standard Timings within 'Hours Premises are open to the public' which reads 'Closing on the non-standard days listed in Section M'.

The application suggests on Page 5 within the 'hours currently licensed' that the premises has a Section 77 licence. The applicant has been asked to state whether the premises actually has a Section 77 licence or not.

**18. 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.

19. **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.

20. **Background Papers**

- Public Representation Form
- Environmental health & Trading Standards Comments
- Application Form
- Police Authority Comments

**Background papers are available for inspection in Committee Room 1, The Town Hall 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....

**The operating schedule**

5.46 The operating schedule will form part of the completed application form for a premises licence. 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 also set out the following details:

the relevant licensable activities to be conducted on the premises;  
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);

**Pub games**

5.15 Games commonly played in pubs and social and youth clubs like pool, darts, table tennis and billiards may fall within the definition of indoor sports in Schedule 1, but normally they would not be played for the entertainment of spectators but for the private enjoyment of the participants. As such, they would not normally constitute the provision of regulated entertainment, and the facilities provided (even if a pub provides them with a view to profit) do not fall within the limited list of entertainment facilities in that Schedule (see paragraph 5.11 above).

It is only when such games take place in the presence of an audience and are provided to, at least in part, entertain that audience, for example, a darts championship competition, that the activity would become licensable.

### **Incidental music**

5.18 The incidental performance of live music and incidental playing of recorded music may not be regarded as the provision of regulated entertainment activities under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself entertainment or the provision of entertainment facilities.

So, for example, a juke box played in a public house at moderate levels would normally be regarded as incidental to the other activities there, but one played at high volume would not benefit from this exemption. **Stand-up comedy** is not regulated entertainment and musical accompaniment incidental to the main performance would not make it a licensable activity.

### ***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.