

7 APPLICATION FOR VARIATION OF PREMISES LICENCE 'THE WYE INN, HOLME LACY ROAD, HEREFORD. HR2 6EF' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Backbury

1. Purpose

To consider an application for variation of the premises licence in respect of The Wye Inn, Holme Lacy Road, Hereford, HR2 6EF.

2. Background Information

Applicant	Gordon BUCHER		
Solicitor	N/A		
Premise	The Wye Inn, Holme Lacy Road, Hereford. HR2 6EF.		
Type of application: Conversion Variation	Date received: 08/07/05	28 Days consultation 05/08/05	Issue Deadline: 07/09/05

The Justices Licence for the premises has been seen and accepted. The advertisement has not been seen by the Licensing Department at present.

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; -

Licensable activity	Hours
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 open for up to 30 minutes after the end of the sale of alcohol. (Drinking up time).

The Premises currently does not have a Public Entertainment Licence.

4. Variation Licence Application

The application for a variation of the premises licence has received representations by 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*

Live Music *

Recorded Music *

Performance of Dance *

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

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 and Recorded Music (*Both Indoors & Outdoors*): -

Monday to Thursday 0700 – 0030

Friday & Saturday 0700 – 0130

Sunday 1200 – N/K

7. The following hours have been applied for in respect of Live Music (*Both Indoors & Outdoors*) and Anything similar to Live Music or Recorded Music or Performance of Dance (*Both Indoors & Outdoors*): -

Monday to Sunday 1200 – 2300

8. The following hours have been applied for in respect of Performance of Dance (*Both Indoors & Outdoors*): -

Monday to Saturday 1200 – 0000

Sunday 1200 – 2330

9. The following hours have been applied for in respect of Supply of Alcohol (*Both on & off premises*): -

Monday 1000 – 0000

Tuesday to Thursday 1000 – 0030

Friday & Saturday 1000 – 0200

Sunday 1000 – 2300

10. The hours that the premises will be open to members of the public:-

Monday to Thursday 0700 – 0100

Friday & Saturday 0700 – 0230

Sunday 1200 – 2330

11. Non Standard hours

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

In respect of Films, Indoor Sporting Events and Recorded Music, 'When hours for the sale of alcohol are extended on Bank Holidays these hours are extended '

In respect of the supply of alcohol: -

10.00 New years Eve to 0400 New Years Day

10.00 - 0200 on Friday, Saturday, Sunday and Monday on Bank Holiday Weekends. Christmas Eve and Boxing Day

1000 - 0200 on St Georges Day, St Patrick's Day, St David's Day & St. Andrew's Day.

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

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

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

Have no relevant representation to make.

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 and vibration control.

They conclude the report with a comment in respect of outdoor events and the use of TENS.

No conditions have been agreed at the time of this report.

Interested Parties

The Local Authority has received 9 letters of representation from local residents, in respect of the application.

The concerns relate to:

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

13. Fire Authority.

The fire authority has made no representation.

14. Issues for Clarification

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

The Applicant – Gordon Bucher

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

Who applies for the premises licence? Page 1 of the application shows Gordon Bucher yet page 3 shows Melbia Limited, 21 Aconbury Ave, Putson, Hereford Herefordshire. HR2 6HR

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 entertainment on TV screens 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 seating is required, the number of seats to be provided.

Recorded Music

It is noted from the application that the applicant has made reference to New Years Eve when recorded music will be reduced to background levels at 0200 when a marquee is used in the rear garden or patio at the front of the building. The applicant is asked to explain why this was not shown on the plan of the premises, which would have allowed responsible authorities and interested parties to make representation.

Performance of Dance

Whether it is intended that the premises shall be used for the performance of dance, which will take place in the presence of an audience for their entertainment.

Supply of Alcohol

The application makes reference to 'Seasonal Variations' and states that 'From 01 December to 15th January the following year to sell alcohol from 10.00 to 02.00 the following morning, for Christmas Parties and Functions'.
What measures does the applicant have in place to ensure that these hours are only extended for a Christmas Party or Functions?

Clarification has also been asked for in respect of the meaning of 'Closing on the non-standard days listed in Section M' which is shown under 'non-standard timings of 'Hours Premises Open to Public' and also the actual hours the applicant applies for on Bank Holidays in respect of films, indoor sporting events and recorded music.

The hours applied for on a Sunday in respect of Films, Indoor Sporting Events and Recorded Music as the application states on Sunday 1200 to 2330 then on Monday 0000 to 0030.

15. **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.

16. **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.

17. **Background Papers**

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

Background papers are available for inspection in the Committee Room 1, Town Hall, St Owens Street, Hereford 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.