

8 APPLICATION FOR VARIATION OF PREMISES LICENCE 'THE GAMECOCK INN, 38 HOLME LACY ROAD, HEREFORD. HR2 6BY' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Lower Bullingham

1. Purpose

To consider an application for variation of the premises licence in respect of The Gamecock Inn, 38 Holme Lacy Road, Hereford, HR2 6BY.

2. Background Information

Applicants	David Michael James WOOD & Charlotte Louise COLDHAM-WOOD		
Solicitor	N/A		
Premise	The Gamecock Inn, 38 Holme Lacy Road, Hereford. HR2 6BY.		
Type of application: Conversion Variation	Date received: 13/07/05	28 Days consultation 10/08/05	Issue Deadline: 12/09/05

Both the advertisement and the current licences 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; -

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 do not hold a current public entertainment licence.

4. Variation Licence Application

The application for a variation of the premises licence has received representations by responsible authorities and also a member 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 *

Anything similar to Live Music or Recorded Music *

Provision of facilities for dancing *

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 Films (*Indoors only*), Indoor Sporting Events and Recorded Music (*Indoors only*): -

Monday to Thursday 0900 – 0030

Friday & Saturday 0900 – 0100

Sundays 1200 – 2330

7. The following hours have been applied for in respect Live Music (*Indoors only*) and The Provision of facilities for Making Music (*Indoors only*): -

Monday to Saturday 1200 – 2330

Sunday 1200 – 2230

8. The following hours have been applied for in respect of Anything similar to Live Music or Recorded Music and Provision of facilities for dancing (*Indoors Only*): -

Monday to Saturday 1200 – 2330

Sunday 1200 – 2300

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

Monday to Thursday 1000 – 0000

Friday & Saturday 1000 – 0030

Sundays 1200 – 2300

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

Monday to Thursday 0900 – 0030

Friday & Saturday 0900 – 0100

Sundays 1200 – 2330

11. Non Standard hours

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

In respect of Films, Indoor Sporting Events and Recorded Music the applicants have stated the following: - 'When hours for the sale of alcohol are extended on Bank Holidays and 'Event' Days, these hours are also extended from 00.00 to 01.00

In respect of Provisions of facilities for dancing the applicants has stated the following: - 'When hours for the sale of alcohol are extended on Bank Holidays and 'Event' Days, these hours are also extended from 00.00 to 00.30

In respect of the supply of alcohol: -

10.00 - 0030 on Friday, Saturday, Sunday and Monday on Bank Holiday Weekends. Christmas Eve and Boxing Day

10.00 – 0030 on up to 12 other occasions per annum at my discretion (occasionals)

In respect of 'Hours the premises are open to the public': -
Closing on the non-standard days as listed in Section M.

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

Have made representation in respect of the application for 12 ad-hoc events during the year.

Fire Authority

The fire authority have made comments in respect of the requirement for a fire risk assessment.

Environmental Health

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

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

With regards to public safety, they recommend some general conditions as well as conditions in relation to: Crowd Control, Gas & Electrical Safety, Fire Safety, Lighting, and First Aid. With regard to the licensable activities of Indoor Sporting Events and Films they recommend a further two conditions. They also request three conditions in relation to the Protection of Children.

At the time of this report no negotiation had taken place.

Interested Parties

The Local Authority has received 1 letter of representation in respect of the application, from a local resident.

The concerns relate to:

- Prevention of Public Nuisance

17. Issues for Clarification

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

The Applicants – David WOOD & Charlotte COLDHAM-WOOD

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.

Recorded Music

Within the 'further details' under this section it is noted that the applicants state 'Noise will be reduced to background levels during the wind down period, yet the recorded music appears to coincide with the closing time of the premises. The applicants have been asked to identify the wind down period.

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.

Provision of facilities dancing

It is noted from the application that the provision of facilities for dancing will terminate at 2330 hours Monday to Thursday, 0030 hours on a Friday & Saturday and 2300 hours on a Sunday, yet recorded music is to be provided for a further 30 minutes after these times. Clarification is therefore sort as to how the applicants intend to stop people dancing during this 30 minute period.

Clarification has been sort 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'.

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 Forms
- Police Authority Comments
- Fire Authority Comments
- Environmental health & Trading Standards Comments
- Application Form
- Any other associated papers

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.

Spontaneous music, singing and dancing

- 5.19 The spontaneous performance of music, singing or dancing does not amount to the provision of regulated entertainment and is not a licensable activity. The relevant part of the 2003 Act to consider in this context is paragraph 1(3) of Schedule 1 to the Act. This states that the second condition which must apply before an activity constitutes the provision of regulated entertainment is that the premises (meaning "any place") at which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or purposes which include the purpose, of enabling the entertainment concerned to take place. In the case of genuinely spontaneous music (including singing) and dancing, the place where the entertainment takes place will not have been made available to those taking part for that purpose

Ad-hoc events

The application applies for up to 12 other occasions per annum at the applicant's discretion (occasionals).

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.

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.