

APPLICATION FOR VARIATION OF PREMISES LICENCE 'GOLDEN CROSS INN, SUTTON ST NICHOLAS, HEREFORD, HR1 2JO' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Sutton Walls

1. Purpose

To consider an application for variation of the premises licence in respect of The Golden Cross Inn, Sutton St Nicholas, Hereford.

2. Background Information

Applicant	John Patrick Murray		
Solicitor	N/A		
Premise	Golden Cross Inn, Sutton St Nicholas, Hereford, HR1 2JO		
Type of application: Variation	Date received: 20/07/05	28 Days consultation 17/08/05	Issue Deadline: 20/09/05

3. Conversion Licence Application

A conversion licence has been issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Standard National Hours Monday – Saturday 1100 am – 2300 pm Sunday 12 noon – 2230 pm Restaurant area has supper licence 20 minutes drinking up time

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 has received representations by responsible authorities and also members of the public. It is therefore brought before the committee for determination.

5. **Summary of Application**

The licensable activities applied for are: -

Live Music (*Both Indoors & Outdoors*)*

Recorded Music (*Indoors*)*

Supply of Alcohol (*Both on and off the premises*)

Hours 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 live music:- (both indoors and outdoors)

Monday to Sunday 1000 – 2400 midnight

7. The following hours have been applied for in respect of recorded music- (both indoors and outdoors)

Monday to Sunday 0001 – 2401

8. The following hours have been applied for in respect of supply of alcohol (both indoors and outdoors)

Monday to Sunday 0001 - 2401

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

Monday to Sunday 0001 - 2401

10. **Non Standard hours**

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

In respect of Live and Recorded Music, which will be amplified. Indoor music will be conducted in the daytime or evening. Outdoor music will only be conducted occasionally, with the event ending before sundown and only if its done with the approval of immediate neighbours.

Additional information in the notes

11. **Summary of Representations**

West Mercia Police

Have made comments and representations against the applicant(s) but would like clarification on the exact daily timings. To date, the applicant has not agreed to modify his application as stated in his e-mail of 18th August, 2005.

Fire Authority

The Fire Authority have no objections.

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 and where and when music can be played at the premise.

With regards to public safety, they recommend some general conditions as well as conditions in relation to; 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.

In respect of Protection of Children from harm, they comment that the applicant needs to ensure the prevention of underage sales.

Interested Parties

The Local Authority has received 6 letters of representation in respect of the application, from local residents.

The concerns relate to:

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

12. Issues for Clarification

The applicant John P Murray has been requested to provide clarification on operating times not stated in his application , as follows -

Under proposed variation (on page 8 of the application form) clarification has been requested on the statement "as and when needed "

and The hours of operation for recorded music as an entertainment.

13. 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.

14. 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.

15. Background Papers

- Public Representation forms
- Environmental Health & Trading Standards Comments
- Application Form
- Any other associated papers

Background papers are available for inspection in the Council Chamber, Town Hall, St Owens Street, Hereford.

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);

Schedule 1 of the Licensing Act 2003 defines regulated entertainment as follows: -

The descriptions of entertainment are-

- a performance of a play,
- an exhibition of a film,
- an indoor sporting event,
- a boxing or wrestling entertainment,
- a performance of live music,
- any playing of recorded music,
- a performance of dance,
- entertainment of a similar description to that falling within paragraph (e), (f) or (g),

where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.

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.