

**APPLICATION FOR VARIATION OF PREMISES  
LICENCE IN RESPECT OF THE LION HOTEL, 52  
BRIDGE STREET, KINGTON, HEREFORDSHIRE, HR5  
3DJ - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

**Wards Affected:**

Kington

**Purpose**

1. To consider an application for variation of the premises licence in respect of The Lion Hotel, 52 Bridge Street, Kington, Herefordshire, HR5 3DJ.

**Background Information**

2.

Applicant	<b>Mr Neil Morris</b>		
Solicitor	<b>N/A</b>		
Premise	<b>The Lion Hotel, 52 Bridge Street, Kington HR5 3DJ</b>		
Type of application: <b>Variation</b>	Date received: <b>18/07/05</b>	28 Days consultation <b>15/08/05</b>	Issue Deadline: <b>18/9/05</b>

**Conversion Licence Application**

3. A conversion licence will be issued as follows; -

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon to Sat - 1100 to 2300 Sun - 1200 and 2230 Good Friday – 1200 midday to 2030 Christmas day – 1200 Midday – 1500 & 1800 – 2000 New Years Eve 2400 Hours (as deregulated)

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. (mentioned above)

The premises do not hold a current public entertainment licence.

### Variation Licence Application

4. The application for a variation has received representations by responsible authorities and is therefore brought before the sub-committee for determination.

### Summary of Application

5. The licensable activities applied for are: -  
**Live Music (Indoors)**  
**Recorded Music (Indoors)**  
**Performances of dance (Indoors)**  
**Provision of facilities for making music (indoors)**  
**Provision of facilities for dancing (Indoors)**  
Supply of Alcohol (*Both on and off premises*)  
Hours premises open to the public (Not licensable on it's own)  
**(Activities in bold are those not previously licensed)**
6. The following hours have been applied for in respect of Live Music (*Indoors only*):-
- |                    |                      |
|--------------------|----------------------|
| Monday to Saturday | 1100 – 0100          |
| Sunday             | 1200 – 0000 midnight |
7. The following hours have been applied for in respect of recorded music (*Indoors only*):-
- |                    |                      |
|--------------------|----------------------|
| Monday to Saturday | 1100 – 0100          |
| Sunday             | 1200 – 0000 midnight |
8. The following have been applied for in respect of performances of dance (*indoors only*):-
- |                    |                      |
|--------------------|----------------------|
| Monday to Saturday | 1100 – 0100          |
| Sunday             | 1200 – 0000 midnight |
9. The following hours have been applied for in respect of provision of facilities for making music and provision of facilities for dancing (*indoors only*):-
- |                    |                      |
|--------------------|----------------------|
| Monday to Saturday | 1100 – 0100          |
| Sunday             | 1200 – 0000 midnight |
10. The following hours have been applied for in respect of supply of alcohol:-
- |                    |                      |
|--------------------|----------------------|
| Monday to Saturday | 1100 – 0100          |
| Sunday             | 1200 – 0000 midnight |
11. The hours that the premises will be open to members of the public:-
- |                    |             |
|--------------------|-------------|
| Monday to Saturday | 1100 - 0130 |
| Sunday             | 1200 – 0030 |

**12. Non Standard hours**

The application applies for 'non-standard' hours.

In respect of Live Music, Recorded Music, Performances of Dance, Provision of facilities for making music and Provision of facilities for dancing, the applicant has stated the following:- 'When hours for the sale of alcohol are extended on Bank Holidays..'

In respect of the supply of alcohol:-

1100 New Years Eve to start of permitted hours New years day

Bank holidays 1100 – 0100

Sunday before Bank Holiday 1100 - 0100

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

Closing on the non-standard days as listed in Section M with a 30 minute drinking up time added on.

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

Have no relevant representations to make but would like clarification on the patio storage area. Planning permission is sought to add this area to the premises licence therefore it is not considered appropriate to include these areas under the application to vary. The Applicant has withdrawn this area from the application with the appropriate plan until permission has been granted.

**Fire Authority**

The fire authority have no objection.

**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 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. The applicant has subsequently agreed to all recommended conditions.

**Interested Parties**

The Local Authority has received 11 letters of representation in respect of the application, and general area from residents.

The concerns relate to:

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

14. **Issues for Clarification**

The Authority has requested clarification from the applicant, Neil Morris.

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

**Background papers are available for inspection in the Council Chamber, 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...

5.74 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.