

**APPLICATION FOR VARIATION OF PREMISES  
LICENCE IN RESPECT OF THREE HORSE SHOES,  
CORN SQUARE, LEOMINSTER, HEREFORDSHIRE  
HR6 8LR - LICENSING ACT 2003**

**Report By: Head Of Environmental Health And Trading Standards**

**Wards Affected:**

Leominster South

**Purpose**

1. To consider an application for variation of the premises licence in respect of Three Horse Shoes, Corn Square, Leominster, Herefordshire HR6 8LR.

**Background Information**

2.

Applicant	<b>S A Brain &amp; Co. Ltd – Cardiff Brewery, Crawshaw Street, Cardiff, CF10 1SP</b>		
Premise Supervisor	<b>Andrew D Burgess</b>		
Solicitor	<b>Edwards Geldard Solicitors, Cardiff and TLT Solicitors Bristol</b>		
Premise	<b>Three Horse Shoes, Corn Square, Leominster HR6 8LR</b>		
Type of application: <b>Variation</b>	Date received: <b>21/07/05</b>	28 Days consultation <b>18/08/05</b>	Issue Deadline: <b>21/9/05</b>

The Justices Licence for the premise has been accepted. The press advertisement has been received.

**Conversion Licence Application**

3. A conversion licence will be issued as follows; -  
*(The premise only holds a justices on licence and no other licence).*

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon to Sat - 1000 to 2300 Sun and Good Friday - 1200 to 2230 Christmas day – 1200 Midday to 1500 & 1900 to 2230 New Years Eve 1000 to 0000 (31/12) and 0000 – 2300 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. (mentioned above)

The premises does not hold a current public entertainment licence.

### Variation Licence Application

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

### Summary of Application

5. The licensable activities applied for are:-  
**Live Music (Indoors)**  
**Recorded Music (Indoors)**  
**Provision of facilities for entertainment of a similar description to that falling within I or J**  
 Supply of Alcohol (*Both indoors and outdoors*)  
 Hours premises open to the public (Not licensable of it's own)  
**(Activities in Bold: Not previously licensed)**
6. The following hours have been applied for in respect of Live Music (*Indoors only*):-
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am – 0130 am(now amended to 0030) |
7. The following hours have been applied for in respect of recorded music (*Indoors only*):-
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am – 0130 am(now amended to 0030) |
8. The following hours have been applied for in respect of provision of facilities for entertainment of a similar description to that falling within I and J
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am– 0030 am (now amended to 0030) |
9. The following hours have been applied for in respect of supply of alcohol:-
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am – 0130 am(now amended to 0030) |
10. The hours that the premises will be open to members of the public:-
- |                             |                   |
|-----------------------------|-------------------|
| Monday and Saturday         | 0900 am – 0200 am |
| Tues, Wed, Thurs and Friday | 0900 am – 0100 am |

Sunday 1000 am – 0200 am(now amended to 0030)

## 11. Non Standard Hours

The applicant applies for 'non-standard' hours.

In respect of Live Music, Recorded Music, Provision of facilities for Entertainment of a similar description to that falling within I or J, the applicant has stated a further additional hour following every 'Easter Bank Holiday weekend; Thursday 1:30am, Friday, Saturday and Sunday 02:30am (now amended to 00.30) and Monday until 01:30am'

A further additional hour into the morning Friday, Saturday and Sunday until 02:30 am and Monday 01:30 am for May Whitsun and August Bank Holiday.

An additional hour into the morning of Christmas Eve, Boxing Day and New Years Day;

An additional hour into the morning of St Georges Day and St Patrick's Day

The option to open 30 minutes before and 30 minutes after any televised international sporting event.

New Years Eve hours to remain with 30 minutes drinking up time.

## 13. Summary of Representations

### West Mercia Police

Have made representations about the opening times for major international sporting events and ad hoc events, and have recommended a number of conditions.

### Fire Authority

The fire authority have made comments about a fire risk assessment being required.

### Environmental Health

Environmental Health Officers have made representations in relation to the application under Public Nuisance and Public Safety.

The suggestions are listed in the background papers

In respect of prevention of Public Nuisance they seek conditions in relation to the prevention of noise and vibrations and the use of Temporary Event Notices for major international sporting events.

With regards to public safety, they recommend some general conditions as well as conditions in relation to; Gas & Electrical Safety, Fire Safety and First

Aid. The applicant has subsequently agreed to reduce the closing time on Sundays to 0030.

14. **Issues for Clarification**

This Authority has requested clarification from the applicant.

**Non Standard Timings**

Clarification on what time the entertainment will finish.

Confirmation that the hours the premises is open will be 0030 am and not 0200 am

Clarification on section K; provision of facilities for entertainment falling within a similar description to I and J.

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**

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

**Background papers are available for inspection in The Town Hall St Owen's 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.