

## APPLICATION FOR VARIATION OF PREMISES LICENCE 'KINGS FEE, 49-53 COMMERCIAL ROAD, HEREFORD. HR1 2BP' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Central

### 1. Purpose

To consider an application for variation of the premises licence in respect of Kings Fee, 49-53 Commercial Road, Hereford. HR1 2BP.

### 2. Background Information

Applicant	<b>JD Wetherspoon PLC, Wetherspoon House, Reeds Crescent, Watford. WD24 4QL.</b>		
Solicitor	<b>Gosschalks, Queens Gardens, Hull.HU1 3DZ.</b>		
Type of application: <b>Variation</b>	Date received: <b>26/07/05</b>	28 Days consultation <b>23/08/05</b>	Issue Deadline: <b>25/09/05</b>

The Justices Licence, Children's Certificate and advertisement for the premises have been seen and accepted.

### 3. Conversion Licence Application

The premises currently hold a Justices On Licence and a children's certificate. 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 public entertainment licence.

**4. Variation Licence Application**

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

**5. Summary of Application**

The licensable activities applied for are: -

Late Night Refreshment

Supply of Alcohol

(\* Not previously licensed)

**6. The following hours have been applied for in respect Late Night Refreshment (*Indoors Only*): -**

Sunday to Thursday 2300 – 0030

Friday & Saturday 2300 – 0200

**7. The following hours have been applied for in respect the supply of alcohol (*Both On & Off Premises*): -**

Sunday to Thursday 0900 – 0030

Friday & Saturday 0900 – 0200

**8. The hours the premises will be open to the public are: -**

Sunday to Thursday 0700 – 0130

Friday & Saturday 0700 – 0300

**9. Non Standard hours**

The application applies for '**non-standard**' hours in respect of all the licensable activities as follows: -

On Christmas Eve until 3.00 am

On Boxing Day until 3.00 am

For an additional hour to finish times on the following days: -

Burns Night – 25 January

Australia Night – 26 January

St David's Day – 1 March

St Patrick's Day – 17 March

St George's Day – 23 April

St Andrew's Day – 30 November

For an additional 30 minutes to finish times on the following days: -

Thursday immediately preceding Good Friday

Sunday immediately preceding a Bank Holiday Monday

From 6.00 am until the beginning of the standard hours or until 3.00 am as follows: -

On no more than 12 occasions per calendar year. These extensions for the supply of alcohol can only take place if at least 7 days notice is provided to the police and the licensing authority and only if the police give their consent.

The application applies for '**non-standard**' hours in respect 'Hours Premises are open to the public as follows: -

In line with the hours mentioned under non-standard timings in Box M plus an additional hour.

For an additional hour on the morning of the day the clocks go forward (in order to negate the effect of the change from British Summer Time to Greenwich Meantime).

Notwithstanding these usual opening times, the premises, in accordance with the converted right, may choose to open to the public at any time for non-licensable activities/purposes.

#### 10. **Removal of Conditions**

The application applies to remove the following conditions: -

1. To remove the restrictions and effects of Section 168, 168A and Section 171 Licensing Act 1964 so as to allow the provisions under the Licensing Act 2003 to apply in relation to children.
2. To remove the restrictions relating to permitted hours as set out in Section 60 Licensing Act 1964 with the exception of New Years Eve.
3. To remove the restrictions on consumption of alcohol as set out in Section 63(1) Licensing Act 1964 (i.e. drinking up time).

#### 11. **Summary of Representations**

##### **West Mercia Police**

Have made representation in relation to the 12 ad-hoc occasions applied for.

They also request a further seven conditions to address the licensing objective of the prevention of crime and disorder.

The suggested conditions can be found within the background papers.

##### **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 use of the beer garden after 11pm.

In respect of public safety they ask for conditions in relation Gas and Electricity Safety certificates.

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

The suggested conditions can be found within the background papers.

**Fire Authority.**

The fire authority has no comment to make.

10. **Issues for Clarification**

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

Applicant – JD Wetherspoon

Has been requested to provide clarification in respect of matters relating to the application as follows: -

Licensing Objectives

It has been noted that the application, within the above section, states that the following JD Wetherspoon's Documents 'Overview of Operations' and 'Approach to Responsible Drinks Retailing' are referred to throughout the objectives. Clarification is sought that whenever either of these documents are updated or amended that the Licensing Authority will be supplied with an updated copy.

It has also been noted that these documents would only appear to apply during the additional hours applied for. Clarification is therefore sought that these documents and procedures will apply during the time the premises are used for all licensable activities.

11. **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.

12. **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**

- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form

**Background papers are available for inspection in the Town Hall, 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....

**Relaxation of opening hours for local, national and international occasions**

6.11 It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year – such as bank holidays – and to incorporate appropriate opening hours for these occasions in their operating schedules. Similarly, temporary event notices – in respect of which a personal licence holder may give fifty each year – should be sufficient to cover events like Golden Wedding Anniversaries or 21st Birthday parties which take place at premises which do not have a premises licence or club premises certificate. However, with the passage of time exceptional events of local, national or international significance will arise which could not or have not been anticipated. Such events can give rise to the need to vary the conditions of large numbers of premises licences and club premises certificates. In such circumstances, it will be open to the Secretary of State to make a licensing hours order to provide for premises with a premises licence or club premises certificate to open for specified, generally extended, hours on these special occasions. Examples might include a one-off local festival, a Royal Jubilee, a World Cup or an Olympic Games.

6.12 Such events should be genuinely exceptional and the Secretary of State will not consider making such an order lightly. Licensing authorities (or any other persons) approaching the Secretary of State about the making of such an order are advised that they should give at least six months notice before the celebration in question. Before making such an order, the Secretary of State is required to consult such persons as she considers appropriate, and this would generally enable a wide-range of bodies to make representations to her for consideration. In addition, such an order will require the approval of both

Houses of Parliament. Six months would be the minimum period in which such a process could be satisfactorily completed.

**West Mercia Constabulary Position is: -**

It is the view of the Chief Constable that non-standard timings related to known fixed events such as the bank holidays applied for in this application as opposed to events identified on an ad hoc basis by the operators of the premise. Provision has been made in the act to cover such ad hoc events by way of temporary event notices and there is no legal basis for the applicant to hold such ad hoc days

The guidance provided by section 182 of the act also provides at 6.11 specific power for the secretary of state to make a licensing hours order to cover such events.

**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.