

APPLICATION FOR VARIATION OF PREMISES LICENCE 'IMPERIAL, 31 WIDEMARSH STREET, HEREFORD. HR4 9EA' - 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 Imperial, 31 Widemarsh Street, Hereford. HR4 9EA.

2. Background Information

Applicant	Barracuda Pubs & Bars Company Ltd, Henley Road, Medmenham, Marlow. Bucks. SL7 2ER.		
Solicitor	John Gaunt & Partners, Omega Court, 372 Cemetery Road, Sheffield. S11 8FT		
Type of application: Variation	Date received: 26/07/05	28 Days consultation 23/08/05	Issue Deadline: 25/09/05

The Justices Licence, Public Entertainment Licence and Section 77 Licence for the premises have been seen and accepted. The advertisement has not been seen at this time.

3. Conversion Licence Application

The premises currently hold a Justices On Licence, a PEL and Section 77 Licence (Special Hours 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
Public Entertainment	Mon to Sat 1100 to 2330 hours Sunday 1100 to 2230 hours for musical entertainment only and 1900 to 22.30 for dancing where no admission charge is made
Section 77 Licence	Friday & Saturday 1200 to 1500 Then 1900 to 0100

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).

4. **Variation Licence Application**

The application for a variation to the premise licence 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: -

Films *
Indoor Sporting Events *
Live Music
Recorded Music
Performances of Dance *
Provision of facilities for making music *
Provision of facilities for dancing *
Late Night Refreshment
Supply of Alcohol
(* Not previously licensed)

6. The following hours have been applied for (*Indoors Only*) in respect of Films, Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Provision of facilities for making music and dancing, Late Night Refreshment and the Supply of Alcohol (*Both on and off premises*): -
All days of the week 1000 – 0100

7. The hours the premises will be open to the public are: -
All days of the week 0800 - 0130

8. **Non Standard hours**

The application applies for '**non-standard**' hours in respect all the licensable activities applied for (with the exception of the sale of alcohol) and states the following:-

'When hours for sale of alcohol are extended hereunder these hours are also extended (see box M below)'

Under Box M 'Sale of Alcohol' the following is shown against no standard times: -

'To the extent that the variation in Part B1 paragraph 4 is not granted or does not permit: to permit the sale of alcohol and such regulated entertainment as authorised hereunder until 0100 on Friday, Saturday, Sunday and Monday at Bank Holiday Weekends, Christmas Eve, Boxing Day and also to the extent that the variation in part B1 paragraph 4 is not granted to open to the same

hour on up to 20 occasions per annum at my discretion upon 14 days prior notice to the police (if required by them)

Christmas Day: 1100 to 2300

New Years Eve: 1000 to New Years Day – terminal hour proposed.

To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours such opening times for this purpose to be confined upon 14 days prior notice in writing to the police before the premises intend to open, such notification to include opening times and the sporting event which is to be shown.

Part B1 paragraph 4 states: -

'To allow the sale of alcohol and such regulated entertainment as specified in the appropriate boxes below.

9. **Removal of Conditions**

The applicant has applied to remove all embedded restrictions inherent in the Licensing Act 1964, The Cinematograph (Safety) Regulations 1955 and The Children and Young Persons Act 1933

10. **Summary of Representations**

West Mercia Police

Have made representation in relation to the application for the ad-hoc events applied for.

They request a further twelve conditions to be shown on the licence 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 Safety.

In respect of public safety they ask for a condition in relation to Fire Safety.

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 made no representation.

11. **Issues for Clarification**

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

The Applicants - Barracuda Pubs & Bars Company Ltd

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

Non Standard Timings Box M

The statement contained within Box M states: -

'To the extent that the variation in Part B1 paragraph 4 is not granted or does not permit: to permit the sale of alcohol and such regulated entertainment as authorised hereunder until 0100 on Friday, Saturday, Sunday and Monday at Bank Holiday Weekends, Christmas Eve, Boxing Day and also to the extent that the variation in part B1 paragraph 4 is not granted to open to the same hour on up to 20 occasions per annum at my discretion upon 14 days prior notice to the police (if required by them). If has been requested that the applicant explains this in simple terms as to exactly what they are applying for if the application for extended hours is unsuccessful.

It is noted that in respect of the application for films, indoor sporting events, live music, performance of dance and late night refreshment that the box which asks for 'Further Details' in each case it states 'As stated in B1 above'

Box B1 states: -

1. To permit regulated entertainment comprising: Live music and amplified voice, recorded music by juke box and music systems, comperes for functions and quizzes and similar forms of entertainment, indoor pub games comprising a sporting event in the presence of an audience, video entertainment on screens and TV screens and amusement machines.
2. To the extent that the variation in paragraph 4 is not granted or does not permit: to permit sale of alcohol and such regulated entertainment until 01:00 the following morning on Friday, Saturday, Sunday and Monday at bank holiday weekends, Christmas Eve, Boxing Day and also to the extent that the variation in paragraph 4 is not granted to open to the same hour on up to 20 occasions per annum at my discretion upon 14 days prior notice to the police (if required by them).
3. To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours as identified in box M such opening times for this purpose to be confirmed upon 14 days prior notice in writing to the police before the premises intend to open, such notification to include the opening times and the sporting event which is to be shown.
4. To allow the sale of alcohol and such regulated entertainment as specified in the appropriate boxes below.
5. To permit provision of refreshment after 23:00
6. To remove the special conditions on the PEL as identified in box P.
7. To remove the requirement for the provision of entertainment and the requirement for the availability of food under the Special Hours Certificate.
8. To remove all embedded restrictions under LA 1964 and in particular those restrictions relating to the, Special Hours Certificate, Children and

Young Persons Act 1933, Cinematograph (Safety) Regulations 1955 and Sporting Events (Control of Alcohol etc) Act 1985.

Clarification is therefore sort in respect of the details of the activities applied for as follows: -

Films

The type and certification of the videos to be shown on the premises. Whether additional seating will be provided. If so, then a plan showing the seating arrangement.

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.

Performance of Dance

The type of dance that will be performed on the premises and the number of dancers likely to be involved in the performance.

Provision of facilities for making music

The type of equipment at the premises for the making of music

Provision of facilities for dancing

Whether or not the premises have a clearly defined dance floor.

12. **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.

13. **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.

14. **Background Papers**

- Public Representation Form
- Police Comments
- Environmental Health & Trading Standards Comments
- Fire Officers Comments
- Application Form

Background papers are available for inspection in the Library, Shirehall, 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.