

**APPLICATION FOR VARIATION OF PREMISES  
LICENCE IN RESPECT OF 'BARONS CROSS INN,  
BARONS CROSS ROAD, BARONS CROSS,  
LEOMINSTER, HEREFORDSHIRE, HR6 8RS' -  
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 Barons Cross Inn, Barons Cross Road, Barons Cross, Leominster, Herefordshire, HR6 8RS.

**Background Information**

2.

Applicant	<b>Mr Henry Sewell Allen</b>		
Solicitor	<b>N/A</b>		
Premise	<b>Barons Cross Inn, Barons Cross Road, Barons Cross, Leominster, Herefordshire, HR6 8RS</b>		
Type of application: <b>Variation</b>	Date received: <b>02/08/05</b>	28 Days consultation <b>30/08/05</b>	Issue Deadline: <b>02/10/05</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	National Licensing hours apply to On and Off sales 1100am – 2300 Mon – Sat 1200 midday – 2330 Sunday and Good Friday 1100 am New Years Eve – 2400 midnight New Years Day 1200 midday – 1500 pm & 1900 – 2230 Christmas 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 of the premises licence has received representations by responsible authorities and 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 making music (indoors and outdoors)**  
**Provision of facilities for dancing (Indoors and outdoors)**  
**Late Night Refreshment**  
 Supply of Alcohol (*Both on and off premises*)  
 Hours premises open to the public (Not licensable on its own)  
**(Activities in bold are those not previously licensed)**
6. The following hours have been applied for in respect of Live Music (*Indoors and outdoors*):-
- |              |             |
|--------------|-------------|
| Mon – Sunday | 1200 – 2330 |
|--------------|-------------|
7. The following hours have been applied for in respect of recorded music (*Indoors only*):-
- |                             |             |
|-----------------------------|-------------|
| Monday, Thursday and Sunday | 0800 – 0300 |
| Friday and Saturday         | 0800 – 0400 |
8. The following have been applied for in respect of anything of a similar description to that falling within e, f and g (*indoors only*):-
- |           |             |
|-----------|-------------|
| Mon – Sun | 1200 – 2330 |
|-----------|-------------|
9. The following hours have been applied for in respect of provision of facilities for making music (*indoors and outdoors*):-
- |           |             |
|-----------|-------------|
| Mon – Sun | 1200 – 2330 |
|-----------|-------------|
10. In respect of provision of facilities for dancing, times have not been submitted.
11. The following hours have been applied for in respect of late night refreshment (*indoors and outdoors*):-
- |                         |             |
|-------------------------|-------------|
| Mon – Thurs, and Sunday | 2330 – 0300 |
| Friday and Saturday     | 2330 – 0400 |
12. The following hours have been applied for in respect of supply of alcohol (*indoors and outdoors*):-
- |                        |             |
|------------------------|-------------|
| Mon –Thurs, and Sunday | 0800 – 0200 |
| Friday and Saturday    | 0800 – 0300 |
13. The hours that the premises will be open to member of the public:-

Mon – Thurs, and Sunday                      0800 – 0300  
Friday and Saturday                              0800 – 0400

#### 14. **Removal of Embedded Restrictions**

The Applicant wishes to remove all Embedded Restrictions inherent in the Licensing Act 1964, The Cinematograph Safety Regulations 1955 and the Children and Young Persons Act 1933.

#### 15. **Summary of Representations**

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

Have commented on Prevention of Nuisance; 'The application which appears to be a photocopy of the original is illegible in parts and clarification is sought as to the control measures that are being proposed, further it is indicated in Section P(b) that the hours proposed are not the usual hours of opening.

'The regulations attached to the Licensing Act 2003 prescribed by Orders make no provision to allow an application for a premises licence to seek unspecified dates and times of operation, particularly where there is no intention of operating those days and hours. It is not lawful for an applicant to seek to keep their options open and avoid stating specifically when non-standard timings will operate.

'In order for a proper determination to be made of the application knowledge of the full extent of the licensable activities proposed and the times they will operate are essential so that responsible authorities and interested parties can form a proper view as to what measures may be necessary to ensure public safety and prevent public nuisance.

'A failure to set out the timing of the licensable activities as required by the Order will prejudice the ability of WNC to deliver a policing service tackling crime and disorder associated with the supply of alcohol on licensed premises.'

##### **Fire Authority**

The fire authority have objected to the granting of the licence on the grounds of Public Safety;

'Fire Safety details regarding the marquee have not been provided in this application:-

Any events taking place in a marquee will need to be the subject of a fire risk assessment.'

##### **Environmental Health**

Environmental Health have made comments on three of the four objectives; Prevention of Nuisance, Public Safety and Protection of Children from harm.

'The premise is situated in close proximity to residential properties and concerns are raised over the potential noise breakout in relation to noise emanating from the premises and people leaving the premises in the early hours of the morning. Local residents are entitled to the quiet enjoyment of their homes and would be grateful for undisturbed sleep. I believe that these opening times are excessive in the circumstances.'

With regards to Public Safety, they received some General Safety Conditions, as well as gas, electricity, fire safety, lighting and first aid.

In respect of Protection of Children from harm, they comment that the applicant needs to ensure the prevention of underage sales. Details are contained within the Environmental Health Officer's report. Additional information is contained within the background notes.

### **Interested Parties**

The Local Authority has received 2 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

### **16. Issues for Clarification**

This Authority has requested clarification from the applicant, Henry Sewell Allen, and the Area Manager, Paul Boswell. At the time of writing they have not been back in touch.

Clarification is sought on the following;

The 60 minute drinking up time.

The scheduled times for the supply of alcohol are not 'the usual' for occasional use only.

No detail is given to the use of the premises. A figure of 750 maximum people on the premises is given. Clarification is sought on what type of entertainment you propose and where and how you intend to prevent noise nuisance and ensure public safety. If it is a temporary structure then please advise the committee.

### **17. 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.

### **18. 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.

#### 19. **Background Papers**

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

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