

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'THE ANGEL INN, KINGSLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9QS' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Bircher

Purpose

- To consider an application for variation of the premises licence in respect of The Angel Inn, Kingsland, Leominster, Herefordshire, HR6 9QS.

Background Information

2.

Applicant	Susan and Matthew Frost		
Solicitor	Slee Blackwell Solicitors, 10 Cross Street, Barnstaple, Devon, EX31 1BA		
Premise	The Angel Inn, Kingsland, Leominster, Herefordshire, HR6 9QS		
Type of application: Variation	Date received: 05/08/05	28 Days consultation 02/09/05	Issue Deadline: 05/10/05

Conversion Licence Application

- A conversion licence will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	National licensing hours Mon – Sat 1100 am – 2300 pm Sunday and Good Friday 1200 midday – 2300 pm New Years Eve 1100 am – 24 midnight Christmas Day 1200 midday – 1500pm and 1900 pm – 2230 pm

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 premise 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 and outdoors*)
Recorded music (*Indoors and outdoors*)
Performance of dance (*Outdoors*)
Provision of facilities for dancing (*Indoors*)
Late Night Refreshment (*Indoors and outdoors*)

6. The following hours have been applied for in respect of Live Music (*Indoors only*):-

Friday and Saturday	1100 – 0100
Sunday	1100 – 2400

7. The following hours have been applied for in respect of recorded music (*Indoors only*):-

Monday to Thursday, & Sunday	1100 – 2400
Friday and Saturday	1100 – 0100

8. The following have been applied for in respect of performances of dance (*outdoors only*):-

Friday, Saturday and Sunday	1100 – 2100
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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*):-

Friday, Saturday and Sunday	1100 – 0100
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10. The following hours have been applied for in respect of Late Night Refreshment (*indoors and outdoors*):-

Monday to Thursday, & Sunday	1100 – 2400
Friday and Saturday	1100 – 0100

11. The following hours have been applied for in respect of supply of alcohol (*indoors and outdoors*):-

Monday to Thursday, & Sunday	1100 – 2400
Friday and Saturday	1100 – 0100

12. The hours that the premises will be open to members of the public:-

Monday to Thursday & Sunday	1100 – 2400
Friday and Saturday	1100 – 0100

13. Non Standard hours

The application applies for 'non-standard' hours.

In respect of Recorded Music and Late Night Refreshment, the applicant has stated 'a further additional hour from 11am on New Years Eve through to 0200 am on New Years Day.'

In respect of the supply of alcohol and the hours the premises are open to the public:-

1100 New Years Eve through to 0200 am New years day

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

Have made no objection regarding the conversion of the licence. However, in respect of the variation, they have noted that the provision is made for a drinking up time but the hours stated at M and O within the form do not reflect this fact.

Fire Authority

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

Environmental Health

Environmental Health have made comment on the prevention of public nuisance, public safety and prevention of harm of children. The suggestions are listed in the background papers.

Interested Parties

The Local Authority has received 17 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

15. Issues for Clarification

The Authority has requested clarification from the applicants, Susan and Matthew Frost, on opening times and sale of alcohol Bank Holidays and Christmas Eve, drinking-up times, and clarification on times for dancing inside and outside. Also clarification is sought on occasional live music and "the appropriate volume".

16. 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.

17. 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.

18. 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, 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.