

APPLICATION FOR VARIATION OF PREMISES LICENCE 'THREE HORSESHOES INN, ALLENSMORE, HEREFORD, HR2 9AS.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Valletts

1. Purpose

To consider an application for variation of the premises licence in respect of Three Horseshoes, Allensmore, Hereford, HR2 9AS.

2. Background Information

Applicants	Mark William & Brigitte Anne RATCLIFFE		
Solicitor	N/A		
Type of application: Variation	Date received: 2/08/05	28 Days consultation 30/08/05	Issue Deadline: 1/10/05

The Justices Licence and advertisement for the premises have been seen and accepted.

3. Conversion Licence Application

The premises currently have a Justices On Licence only. 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 does not currently hold a justices on licence.

4. Variation Licence Application

The application for a variation to the premises licence has received no representations from responsible authorities but one from an interested party. It therefore is now brought before the sub-committee for determination.

5. Summary of Application

The licensable activities applied for are: -
Late Night Refreshment
Supply of Alcohol

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

Monday to Thursday	1000 – 0000
Saturday & Sunday	1000 – 0100

(No hours have been applied for on Fridays)

7. The following hours have been applied for in respect of the Supply of Alcohol (*Both on and off premises*): -

Sunday to Thursday	1000 – 0000
Friday & Saturday	1000 – 0100

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

Monday to Thursday	1000 – 0030
Friday & Saturday	1000 – 0330

(According to the application the premises are not to open on a Sunday)

9. Non Standard hours

There is no application for 'non-standard' hours.

10. Seasonal Variation

The application applies for a seasonal variation on Christmas Evening with the opening hours of 1000 till 0200.

11. Removal of Conditions

The applicant has not applied to remove any conditions.

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

Have made no representation in relation to the application.

Environmental Health

Environmental Health Officers have made no representation in relation to the application.

Fire Authority.

The fire authority has made no representation.

Interested Parties

The Local Authority has received 1 letter of representation in respect of the application, from a local resident.

The concerns relate to:

- Prevention of Crime & Disorder
- Prevention of Public Nuisance

11. Issues for Clarification

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

The Applicant – Mark William & Brigitte Anne RATCLIFFE

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

Recorded Music

It has been noted from the application, that whilst recorded music has not been applied for, that within the recorded music box the words 'Background Music Only' are shown. The applicant has been asked to confirm that any music provided at the premises will be incidental to the licensable activities applied for.

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 submitted in respect of the application.

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
- 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....

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. This exemption does not extend to the provision of other forms of regulated entertainment. Whether or not music of this kind is “incidental” to other activities is expected to be judged on a case by case basis and there is no definition in the 2003 Act. It will ultimately be for the courts to decide whether music is “incidental” in the individual circumstances of any case. In the first instance, the operator of the premises concerned must decide whether or not he considers that he needs a premises licence. One factor that is expected to be relevant is “volume”. Common sense dictates that live or recorded music played at volumes which predominate over other activities at a venue could rarely be regarded as incidental to those activities. 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. But there are likely to be some circumstances which occupy a greyer area. In cases of doubt, operators should seek the advice of the licensing authority, particularly with regard to their policy on enforcement.

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.