

APPLICATION FOR VARIATION OF PREMISES LICENCE 'THE CROWN INN, WALWYN ROAD, COLWALL. WR13 6QP' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hope End

1. Purpose

To consider an application for variation of the premises licence in respect of The Crown Inn, Walwyn Road, Colwall, WR13 6QP.

2. Background Information

Applicant	Kenneth Robert MULHOLLAND		
Solicitor	N/A		
Type of application: Variation	Date received: 29/07/05	28 Days consultation 26/08/05	Issue Deadline: 28/09/05

The Justices Licence for the premise has been seen and accepted. The advertisement has not been seen at this time.

3. Conversion Licence Application

The premises currently only has a Justices On Licence. 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

The premise does not have a Public Entertainment Licence.

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 has received representations by responsible authorities and from interested parties. It therefore is now brought before the sub-committee for determination.

5. Summary of Application

The licensable activities applied for are: -

Films *

Indoor Sporting Events *

Recorded Music *

Anything of a similar nature to Live Music, Recorded Music or Performance of Dance *

Provision of facilities for making music *

Supply of Alcohol

(* Not previously licensed)

6. The following hours have been applied for (*Indoors Only*) in respect of Films, Indoor Sporting Events and Recorded Music: -

Monday to Thursday 1100 – 0030

Friday & Saturday 1100 – 0130

Sundays 1100 – 2330

7. The following hours have been applied for (*Indoors Only*) in respect of Anything of a similar nature to Live Music, Recorded Music or Performance of Dance: -

All days of the week 1100 – 0000

8. The following hours have been applied for (*Indoors Only*) in respect of Provision of facilities for making music and the supply of Alcohol (Both on & off premises): -

Monday to Thursday 1100 – 0000

Friday & Saturday 1100 – 0100

Sundays 1100 – 2300

The premises to remain open for a further 30 minutes after these times.

9. Non Standard hours

The application applies for '**non-standard**' hours in respect films, indoor sporting events and recorded music and states the following:-

When hours for sale of alcohol are extended on Bank Holidays these hours are also extended between 1100 and 0130.

In respect of the sale of alcohol it states: -

1100 – 0100 on Sundays of Bank Holiday weekends, Christmas Eve and Boxing Day.

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 no representation.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm.

In respect of public safety they ask for three general conditions and conditions to address Overcrowding, Ventilation & heating, First Aid, Lighting, Electrical & Gas Installations, Fire Safety and the removal of open containers. They also seek three further conditions in respect of Films and Indoor Sporting Events.

With regard to public nuisance they request three conditions to address Noise and Vibration.

In respect of the protection of children from harm they seek a further five conditions.

At the time of this report, the applicant has indicated that he would be willing to accept them and his written agreement is awaited.

A copy of the suggested conditions can be found within the background papers.

Fire Authority.

The fire authority has made no representation.

Interested Parties.

The application has received 6 letters of representation from members of the public. Only 1 of these was received within the 28 day period. It has been established that a member of the public, who wished to make representation, were advised by this Authority, that the 28 day period concluded on 29th September. This in fact was the latest issue date for the licence and not the end of the 28 day period. Legal advice has been obtained from our solicitors in respect of this and it has been decided that only those representations received up to the date the error was discovered would be accepted.

11. Issues for Clarification

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

The Applicant - Kenneth Robert MULHOLLAND

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

Films

The type and certification of the videos to be shown on the premises. Confirmation that the films will be restricted to 'Video Entertainment on TV screens and amusement screens'.

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.

Anything of a similar nature to Live Music, Recorded Music or Performance of Dance

Confirmation that the only activities to be licensed are as shown within 'the description' shown in Box H of the application form.

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
- Environmental Health & Trading Standards 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....

COMPARES**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.