

## APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'THE BLACK LION' BRIDGE STREET, HEREFORD, HR4 9DG'. - 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 The Black Lion, Bridge Street, Hereford, HR4 9DG.

#### 2. Background Information

Applicant	<b>Christopher J. Chenery and Mark Chenery</b>		
Solicitor	<b>N/A</b>		
Type of application: <b>Variation</b>	Date received: <b>03/08/05</b>	28 Days consultation <b>31/08/05</b>	Issue Deadline: <b>03/10/05</b>

The Justices Licence has been seen and accepted. The advertisement for the premises has not been seen.

#### 3. Conversion Licence Application

The premises currently only holds a Justices On Licence. A conversion licence has been issued as follows; -

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon to Sat 10:00 – 23:00 hours
	Sunday 12:00 – 23:30 hours
	New Year's Eve 10:00 – 23:00 New Year's Day
	Good Friday and Christmas Day
	12:00 – 15:00 and 19:00 – 22:30

#### 4. Variation Licence Application

The application for a variation to the premise licence has received representations by responsible authorities and interested parties. 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

Performance of Dance \*

Anything of a similar description to live/recorded music or performance of dance \*

Provision for facilities for making music \*

Provision for facilities for dance \*

Supply of Alcohol

(\*Not previously licensed)

6. The following hours have been applied for in respect of (*Indoors only*) Films, Indoor Sporting Events, Recorded Music,
- |                     |                   |
|---------------------|-------------------|
| Sunday to Thursday  | 1100 – 0030 hours |
| Friday and Saturday | 1100 – 0230 hours |

7. The following hours have been applied for in respect of (*Indoors only*) Live Music, Performance of dance, Provision of facilities or making music, Provision of facilities for dancing,
- |                     |                   |
|---------------------|-------------------|
| Monday to Thursday  | 2300 – 0000 hours |
| Friday and Saturday | 2330 – 0100 hours |
| Sunday              | 1100 – 0000       |

8. In respect of hours premises open to the public: -
- |                     |                   |
|---------------------|-------------------|
| Sunday to Thursday  | 1100 – 0030 hours |
| Friday and Saturday | 1100 – 0230 hours |

**9. Seasonal Variations**

The following seasonal variation has been applied for in respect of Films, Indoor Sporting Events, Recorded Music:-

1100 to 0230 the following morning from December 1<sup>st</sup> to December 30<sup>th</sup>

The following seasonal variation has been applied for in respect of Live Music, Performance of Dance, Provision of facilities or making music and the Provision of facilities for dancing:-

1100 to 0100 the following morning from December 1<sup>st</sup> to December 30<sup>th</sup>

The following seasonal variation has been applied for in respect of anything of a similar description to live/recorded music or performance of dance and the supply of alcohol: -

1100 to 0200 the following morning from December 1<sup>st</sup> to December 30<sup>th</sup>.

**10. Non Standard hours**

The following non-standard times have been applied for in respect of Films, Indoor Sporting Events, Recorded Music:-

When hours for sale of alcohol are extended on Bank Holidays and "Event Days", these hours are also extended from 0000 to 0230 hours.

The following non-standard times have been applied for in respect of Live Music, Performance of dance, Anything of a similar description to live/recorded music or performance of dance, Provision of facilities or making music, Provision of facilities for dancing:-

When hours for sale of alcohol are extended on Bank Holidays and "Event Days", these hours are also extended from 0000 to 0100 hours.

The following non-standard times have been applied for in respect of the supply of alcohol:-

1100 New Year's Eve – 0500 New Year's Day

1100 – 0200 on Friday, Saturday, Sunday and Monday on bank holiday weekends

1100 – 0200 on St George's Day, St David's Day, St Patrick's Day & St Andrew's Day, "Event Days"

**11. Conditions requested to be removed**

There is no request for removal of any conditions

**12. Summary of Representations**

Any suggested conditions or representations can be found within the background papers.

**West Mercia Police**

Have made representation in respect of the application and request a total of nine conditions be applied to the licence to prevent crime & disorder.

They also seek clarification in respect of event days.

**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 seek conditions in relation to a fire risk assessment.

Have made representation in respect of the application and request conditions to address public safety.

**Fire Authority**

Have no representation to make.

**Interested Parties**

The Local Authority has received 6 letters of representation in respect of the application from local residents.

The concerns relate to:-

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance

**13. Issues for Clarification**

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

The Applicants – Christopher and Mark CHENERY

Has been requested to provide clarification in respect of matters contained within their application, regarding the following activities: -

Films

The type and certification of the videos to be shown on the premises

Indoor Sporting Events

The type of pub games the premises will be used for and whether spectators will be seated or not. If seat the number of seats to be provided.

Live Music, Performance of Dance, Anything of a similar nature to live or recorded music or performance of dance, Provision of Facilities for Making Music and Provision of facilities for dancing.

The application states that all of the above licensable activities Live Music will only be provided between the hours of 2330 to 0000 on a Monday to Thursday, from 2330 to 0100 on Friday and Saturdays and from 1100 to 0000 on Sundays. Confirmation is therefore sought that none of these activities will be provided in the premises outside these times.

Recorded Music

Within the further details of this section it is stated that 'Noise will be reduced to background levels during the wind down period. Clarification has therefore been sort as to the time the recorded music will commence and the time the background music will begin.

Performance of Dance

Whether it is intended to provide performance of dance other than as given in the further details of the application form

Anything of a similar nature to live or recorded music or performance of dance.

Whether it is intended to provide any other activities other than that shown in the further details.

Seasonal Variations

It has been noted that a seasonal variation between 1<sup>st</sup> and 30<sup>th</sup> December up to 0230 hours. The reason for applying for this has been requested.

Films, Indoor Sporting Events and Recorded Music.

The application would appear to apply for these activities to be licensed until the same time that the premises are to close. Clarification has therefore been sort as to how it is intended to close the premises when both the closing time and finishing time coincide.

#### Event Days

Throughout the application reference is made to 'event days'. Clarification has been sort as to what 'event days' are.

#### 14. **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.

#### 15. **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.

#### 16. **Background Papers**

- Public Representation
- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form
- Location Plan

**Background papers are available for inspection in the Council Chamber, 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....

**Pub games**

5.15 Games commonly played in pubs and social and youth clubs like pool, darts, table tennis and billiards may fall within the definition of indoor sports in Schedule 1, but normally they would not be played for the entertainment of spectators but for the private enjoyment of the participants. As such, they would not normally constitute the provision of regulated entertainment, and the facilities provided (even if a pub provides them with a view to profit) do not fall within the limited list of entertainment facilities in that Schedule (see paragraph 5.11 above).

**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.

**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.