

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'TIME, 100 COMMERCIAL ROAD, HEREFORD, HR1 2BJ'. - 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 Time, 100 Commercial Road, Hereford, HR1 2BJ.

2. Background Information

Applicant	Luminar Midlands and West Limited, 41 King Street, Luton, LU1 2DW		
Solicitor	Poppleston Allen, 37 Stoney Street, The Lace Market, Nottingham, NG1 1LS		
Type of application: Variation	Date received: 03/08/05	28 Days consultation 31/08/05	Issue Deadline: 02/10/05

The advertisement for the premises has been seen and accepted.

3. Conversion Licence Application

The premises currently hold a Justices On Licence, Special Hours Certificate, Cinema Licence and a Public Entertainment Licence. A conversion licence has been issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon to Thurs 2000 to 0100 hours Fri and Sat 2000 to 0200 hours Sundays 2000 to 0030 hours except on a Sunday before a bank holiday when the times are 2000 to 0130 hours (excluding Easter Sunday which shall be 2000 to 0030 hours
Films	

Late Night Refreshment	Mon to Thurs 2300 to 0130 hours Fri and Sat 2300 to 0230 hours Sundays 2300 to 0100 hours except on a Sunday before a bank holiday when the times are 2300 to 0200 hours (excluding Easter Sunday which shall be 2000 to 0100 hours)
Live Music, Recorded Music, Performance of Dance	Mon to Thurs 1100 to 0100 hours Fri and Sat 1100 to 0200 hours Sundays & Easter Sunday 1100 to 0030 hours (Music & Dancing) Bank Holiday 1100 to 0200 (Music & Dancing) Christmas Eve 1100 to 0200

With the following condition attached: -

- The maximum number of persons admitted to the premises shall be: Ground Floor 600, First Floor 280
- The maximum number of visually identifiable stewards shall be: Ground Floor 5, First Floor 4.
- The Standard Conditions for Licensing of Premises for Regulated Entertainment. [As specified in the outgoing public entertainment licence] (See Appendix)
- 30 minute drinking up period at the end of the sale of alcohol

4. **Variation Licence Application**

The application for a variation has received representations by responsible authorities and interested parties. It is therefore now brought before committee to determine the application.

5. **Summary of Application**

The licensable activities applied for are: -

Films

Boxing or Wrestling entertainment *

Live Music

Performance of Dance *

Provision for facilities for making music *

Provision for facilities for dancing *

Late Night Refreshment

Supply of Alcohol

(*Not previously licensed)

6. The following hours have been applied for in respect of Late Night Refreshment: -
Monday to Sunday 2300 – 0300 hours

7. The following hours have been requested (*Indoors only*) in respect of all the licensable activities applied for (except Late Night Refreshment)-
All days of the week 1100 – 0300 hours

The premises to close 30 minutes after these times.

8. **Seasonal Variations**

There is no application for any seasonal variations

9. **Non Standard hours**

The application applies for 'non-standard' hours in respect all the licensable activities applied and the hours the premises open to the public as follows: -

- An additional hour to the standard and non-standard times on the day when British Summertime commences.
- New Years Eve – from the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day.
- In the event of a screening of any international sporting event involving any of the countries from the United Kingdom and the Republic of Ireland which falls outside the current permitted hours on the premises licence to permit the showing of films commencing one hour before the start of the event and one hour after the end of the event, the details of the transmission to be notified to the Police 7 days beforehand and provided the Police have not objected to the additional hours within 72 hours of being notified.

10. **Removal of Conditions**

The applicant has applied to remove the following conditions: -

Any condition limiting the times alcohol can be sold, late night refreshment provided or regulated entertainment provided.

Any restrictions which are placed on the licence by virtue of Schedule 8 paragraph 6 (8) of the Licensing Act 2003, except: -

- 1) The extended permitted hours for the sale and consumption of alcohol and provision of regulated entertainment on New Years Eve/New Years Day.
- 2) On commencement of British Summertime, the benefit of the clock going forward at 2:00am, instead of 1:00am GMT
- 3) The requirement that the sale of alcohol is ancillary to music and dancing

The restriction on drinking up time is to be replaced with the finish time 03:30.

All the conditions on the Video/Cinema Licence to be replaced by the existing provisions on the Public Entertainment Licence and the provisions of section 20 of the Licensing Act 2003

To remove condition 4.2 on the Public Entertainment Licence restricting trade on Christmas Day.

To remove condition 4.3 on the Public Entertainment Licence regarding last admission time to the premises.

To amend standard condition 2.3 and condition 2 in the schedule on the Public Entertainment Licence regarding Steward numbers so that it reads "1 Door Supervisor for every 100 persons or part thereof on the premises with a minimum number of 2".

To remove the condition on the Public Entertainment Licence regarding dates and hours of opening.

To remove the condition on the Public Entertainment Licence regarding reporting of accidents.

11. **Summary of Representations**

West Mercia Police

Have made representation in relation to the 12 ad-hoc occasions applied for.

They also request a total of ten conditions to be shown on the licence to address the licensing objective of crime and disorder

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

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public Nuisance and Public Safety.

In respect of public nuisance they ask for a seven condition in relation to prevention of noise.

In respect of public safety they accept that most of the public entertainment licence conditions will remain but seek reassurance regarding the cleanliness of the carpet at the premises.

They request two additional conditions in respect of the showing of films and three in respect of Boxing and Wrestling Matches.

No conditions have been agreed at the time of this report.

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

Fire Authority

The Fire Authority reiterates their agreed maximum number of persons to be :-

Ground Floor 600 with 5 stewards/attendants
Upper Floor 280 with 4 stewards/attendants

Interested Parties

The Local Authority has received 1 letters of representation in respect of the application from the Hereford City Partnership Ltd

The concerns relate to: -

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

12. Issues for Clarification

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

Applicant – Luminar Midlands and West Limited

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

Recorded Music & Provision of Facilities for Making Music

It is noted that the application has made no request for Recorded Music. Yet application has been made for the provision of facilities for making music, where it give further details of 'In house music system playing amplified music controlled by staff'. Whilst the converted licence will allow the playing of recorded music up to 0200 hours it would not allow it until 0300 as applied for under the provision for making music.

This Authority therefore has requested confirmation that the applicant will not be playing recorded music between the hours of 0200 to 0300.

It also requires the applicant to state the reason for applying for the provision of making music up to 0300.

Licensing Objectives – Public Safety

It is noted that objective 6 shown under the Public Safety Objective states 'The seating layout shall be agreed with the appropriate authorities'.

Clarification has been sort as to whom these appropriate authorities are.

13. 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.

14. 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.

15. Background Papers

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

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....

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.