

**APPLICATION FOR VARIATION OF PREMISES  
LICENCE IN RESPECT OF – BROMYARD RUGBY  
FOOTBALL CLUB, CLIVE RICHARDS SPORTS  
GROUND, INSTONE, TENBURY ROAD, BROMYARD,  
HEREFORDSHIRE, HR7 4LW - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

**Wards Affected:**

Bromyard

**Purpose**

1. To consider an application for variation of the premises licence in respect of Bromyard Rugby Football Club, Clive Richards Sports Ground, Instone, Tenbury Road, Bromyard, Herefordshire, HR7 4LW.

**Background Information**

2.

Applicant	<b>Bromyard Rugby Football Club Management Committee (Deborah Jayne PIGGOTT)</b>		
Solicitor	<b>N/A</b>		
Premise	<b>Bromyard Rugby and Football Club, Clive Richards Sports Ground, Instone, Tenbury Road, Bromyard, Herefordshire, HR7 4LW</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>

**Conversion Licence Application**

3. A conversion licence will be issued as follows; -

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon to Sat – 1100 to 2300 hours Sunday, Christmas Day and Good Friday – 1700 to 2030 hours Open 1100 am when necessary Mon – Sat until 2300 pm, Sunday 2300 pm Match days – 1430 pm – 2300 pm

The premises does not hold a current public entertainment licence.

### Variation Licence Application

4. The application for a variation has received representations by responsible authorities. The Applicant has been request to confirm in writing that they agree with the conditions but to date have not responded. Therefore the application is brought before the sub-committee for determination.

### Summary of Application

5. The licensable activates applied for are: -  
**Live Music (Indoors only)**  
**Recorded Music (Indoors only)**  
**Anything of a Similar Description (Indoors only)**  
**Provision of facilities for dancing (Indoors only)**  
Supply of Alcohol (On the premises)

**(Activities in bold are those not previously licensed)**

6. The following hours have been applied for in respect of Live Music:-
- |                    |             |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday             | 1900 – 0200 |
| Saturday           | 1200 – 0200 |
| Sunday             | 1200 – 2230 |
7. The following hours have been applied for in respect of recorded music (*Indoors only*):-
- |                    |             |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday             | 1900 – 0200 |
| Saturday           | 1200 – 2230 |
8. The following have been applied for in respect of anything of a similar description (*indoors only*):-
- |                    |             |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday             | 1900 – 0200 |
| Saturday           | 1200 – 0200 |
| Sunday             | 1200 – 2230 |
9. The following hours have been applied for in respect of provision of facilities for dancing (*indoors only*):-
- |                    |             |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday             | 1900 – 0200 |
| Saturday           | 1200 – 0200 |
| Sunday             | 1200 – 2230 |
10. The following hours have been applied for in respect of supply of alcohol:-
- |                    |             |
|--------------------|-------------|
| Monday to Thursday | 1900 – 0000 |
| Friday             | 1900 – 0200 |
| Saturday           | 1200 – 0200 |
| Sunday             | 1200 – 2230 |

**11. Non Standard hours**

There is no request for non-standard hours.

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

Have made representation in relation to the supply of alcohol to persons other than members or their guests.

They have the following representations to make in respect of the licensing objectives for this application for the conversion with variation of an existing Club Registration Certificate to a Club Premise Certificate.

The Police Authority note from the rule book submitted with the application the rule 28.2.3 allows for the sale of alcohol to be made to persons other than members or their guests.

The Licensing Act 2003 does not provide any facility for people who are not members or guests to be supplied with alcohol, even if the club rules permit it.

It is known that the club under the present licensing regime often applies for special orders of exemptions for "party's" such as engagements or 21<sup>st</sup> etc, and that the use of this club rule allows for non-members to be served alcohol. Clarification is sought on how the club intends to operate such functions in the future, and how they intend to ensure that in accordance with the Licensing Act 2003, non-members are not sold alcohol.

**Environmental Health**

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

In Section N of the application the applicant states that the club does not intend to open continuously and that the increase in opening hours are only for irregular use. This is deemed as an ad hoc application. Provisions have been made in the act to cover such an ad hoc basis by way of Temporary Event Notices (TENs). The club needs to apply for the actual hours it intends to be open.

In respect of Public Safety they seek some general conditions in relation to the safety of the public and performers on the premise, fire and electrical safety, overcrowding, ventilation and heating, first aid, lighting, gas installations and open containers.

In respect of Public Nuisance they ask for conditions in relation to the prevention of noise and vibration.

In respect of Protection of Children from Harm they ask for conditions relating to restricting access by children, preventing unlawful supply of alcohol, drugs and other products.

The suggested conditions can be found within the background papers.

### **Fire Authority**

The Fire Authority have made comment, reminding the applicant that a fire risk assessment should be carried out.

### **Interested Parties**

There are no representations from members of the public.

## **13. Issues for Clarification**

This Authority has requested clarification from the applicants on their operating hours not listed in their application. 'As necessary' is not acceptable.

## **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 forms

- Environmental Health & Trading Standards Comments
- Application Form
- Any other associated papers

**Background papers are available for inspection in the Town Hall, St Owen Street, 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...

5.74 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.