

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – ‘THE KITE’S NEST INN, SWAINSHILL, HEREFORD, HR4 7QA’ - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Credenhill

Purpose

- To consider an application for variation of the premises licence in respect of The Kite’s Nest Inn, Swainshill, Hereford, HR4 7QA.

Background Information

2.

Applicant	Emma Causer (owners) Punch Taverns Plc, Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF		
Solicitor	TLT Solicitors, One Redcliff Street, Bristol, BS1 6TP		
Premise	Kites Nest Inn, Swainshill, Hereford, HR4 7QA		
Type of application: Variation	Date received: 04/08/05	28 Days consultation 01/09/05	Issue Deadline: 04/10/05

Conversion Licence Application

- A conversion licence will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon – Sat 1100 am – 2300 pm Sunday 1200 midday – 2230 pm New Years Eve 1100 am – 0000 midnight New Years Day 0000 – 2300 pm Christmas Day 1200 – 1500 and 1900 – 2230

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.

The premises does not hold a current public entertainment licence.

Variation Licence Application

- The application for a variation of the premise licence has received representations by responsible authorities and is therefore now brought before the sub-committee for determination.

Summary of Application

5. The licensable activities applied for are: -

Live Music (indoors)

Recorded Music (indoors)

Provision of facilities for entertainment of a similar description to that falling within I or J (indoors)

Supply of alcohol (on and off premises)

Hours the premise are open to the public (not licensable on its own)

(Activities in bold are those not previously licensed)

6. The following hours have been applied for in respect of Live Music (*Indoors only*):-

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1200 pm – 2230 pm

7. The following hours have been applied for in respect of recorded music (*Indoors only*):-

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1100 am – 2300 pm

8. The following have been applied for in respect of facilities for entertainment of a similar description to that falling within I or J (*indoors only*):-

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1200 pm – 2230 pm

9. The following hours have been applied for in respect of supply of alcohol (*indoors and outdoors*):-

Mon – Weds	1100 am – 2300 pm
Thurs – Sat	1100 am – 0000 am
Sun	1200 pm – 2230 pm

10. The hours that the premises will be open to members of the public:-

Mon – Weds	1100 am – 2330 pm
Thurs – Sat	1100 am – 0030 am
Sun	1200 pm – 2330 pm

11. **Non Standard hours**

The application applies for '**non-standard**' hours.

In respect of Live Music, Recorded Music, Provision of facilities for entertainment of a similar description to that falling within I or J, sale of alcohol and hours the premises are open to the public, the applicant has stated the following:-

A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend.

A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend.

A further additional hour every Christmas Eve.

A further additional hour every Boxing Day.

To reflect existing New Year's Eve/Day hours.

13. **Summary of Representations**

West Mercia Police

Have made no relevant representations.

Fire Authority

The fire authority have made no relevant representations, but recommend a suitable and sufficient fire risk assessment be carried out.

Environmental Health – Licensing

Have not inspected the premise. It is still boarded up and not expected to re-open after refurbishment until Spring 2006, although the applicant has offered to un-board the premise for an inspection to take place.

Environmental Health – Commercial

The premises has been closed for some time and during the inspection on Tuesday 8th February 2005 it was found to be in an unacceptable condition. The gas had been disconnected and there was water leaking from the boiler. The premise was in need to general repair. A total of 7 improvement notices were drafted when the brewery decided to voluntarily close the public house on 15th February 2005. It is appreciated that the Environmental Health Commercial report was received after the 28 day consultation period had passed. But in view of the serious conditions of the premises, this application has been brought to committee to decide what option to take.

Additional information is in the background notes.

14. **Issues for Clarification**

It has been suggested to the applicants that they may wish to apply for a provisional statement. The applicant's solicitor rejected the proposal and has requested that the application be determined.

15. **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.

16. **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.

17. **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, 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.