

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'DV8 NIGHTCLUB, 1 GAOL STREET, HEREFORD, HR1 2HU' - 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 DV8 Nightclub, 1 Gaol Street, Hereford, HR1 2HU.

2. Background Information

Applicant	LUKE WILLIAM MORRIS		
Solicitor	N/A		
Type of application: Variation	Date received: 04/08/05	28 Days consultation 01/09/05	Issue Deadline: 04/10/05

The Justices Licence has been seen and accepted, as has the public entertainment licence. The advertisement for the premises has not been seen.

3. Conversion Licence Application

The premises currently hold a Justices On 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-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	
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 conditions attached: -

- The maximum number of persons admitted to the premises shall be: 200
- The maximum number of visually identifiable stewards shall be: 3
- 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. Whilst the applicant has agreed to the conditions requested by the responsible authorities verbally, despite numerous promises the applicant still has not agreed to the conditions in writing. It is therefore now brought before committee to determine the application.

5. **Summary of Application**

The licensable activities applied for are: -

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 dancing *

Provision of facilities for entertainment of a similar description nature to facilities for making music and dancing *

Supply of Alcohol

(*Not previously licensed)

6. The following hours have been requested in respect of all the licensable activities applied for (*Indoors only*) to include the sale of alcohol (*both on & off premises*): -

Wednesday 1900 - 0200

Thursday 1900 - 0300

Friday 1900 - 0400

Saturday 1200 - 0400

Sunday 1200 - 0200

The premises to close at the same time that as activities end.

7. **Seasonal Variations**

The application applies for Seasonal Variations in respect all the licensable activities applied for and in respect of the hours the premises are open to the public as follows: -

Bank Holidays 12:00 to 03:00 hours

8. Non Standard hours

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

Christmas Eve 12:00 to 02:00 hours
New Years Eve 24 hours

9. Removal of Conditions

The applicant has not applied to remove any conditions.

10. Summary of Representations

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

West Mercia Police

West Mercia Police request a total of eleven conditions to be shown on the licence to address the licensing objective of crime and disorder.

The conditions requested by West Mercia Police have been agreed verbally at the time of this report but the applicant still has failed to confirm this in writing.

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 seven conditions in relation to prevention of noise and vibration. One in relation to fly-posting.

In respect of public safety they accept that the public entertainment licence conditions will remain but request one other condition in relation to the removal of open containers.

In respect of the protection of children from harm they request the inclusion of four conditions.

Fire Authority

There has been no representation received from the Fire Authority.

11. Issues for Clarification

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

Applicant – Luke MORRIS

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

Performance of Dance

Whether it is intended that the premises shall be used for the performance of dance, which will take place in the presence of an audience for their entertainment.

If so, then a description of the type(s) of dance to be provided.

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

Details have been requested of the types of activities that will be covered under this part of the licence, as the details provided are all dealt with within other licensable activities.

Provision for facilities for dancing

It has been noted from the application that no details have been provided regarding this.

The applicant therefore has been requested to provide details.

Provision of facilities for entertainment of a similar description nature to facilities for making music and dancing

Details have been requested of the types of activities that will be covered under this part of the licence, as the details provided are all dealt with within other licensable activities.

Hours premises are open to the public

It is noted that the finish time is identical to the conclusion time for all the activities applied for.

The applicant therefore has been asked to state how he intends to manage closer of the premises at the same time as conclusion of the activities.

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 specified within the DCMS Guidance.

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

- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form
- Location Map
- PEL 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....

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);

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.