

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'HOPE AND ANCHOR, ROPEWALK, ROSS-ON-WYE'. - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ross-on-Wye West/East

1. Purpose

To consider an application for variation of the premises licence in respect of Hope and Anchor, Ropewalk, Ross-on-Wye, HR9 7GL.

2. Background Information

Applicant	Benjamin Paul FARRINGTON NELSEY		
Solicitor	John Gaunt & Partners Solicitors, 372 Omega Court Cemetery Road, Sheffield, S11 8FT		
Type of application: Variation	Date received: 06/08/05	28 Days consultation 03/09/05	Issue Deadline: 06/10/05

The Justices Licence has been seen and accepted. 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 to Sat	10:00 to 23:00 hours
	Sun and Good Friday	12:00 to 22:30 hours
	Christmas Day	1200 to 1500 hours and 1900 to 2230 hours.
	New Years Eve	1000 hours to 2300 hours
	New Years Day	
Public Entertainment Licence (Music, Singing & Dancing)	Mon to Sat	11:00 to 23:30 hours
	Sundays	11:00 to 22:30 hours (Musical Entertainment only)
	Sundays	19:00 to 22:30 hours for dancing where no charge is made.

With the following conditions attached: -

- The maximum number of persons admitted has been set by the Fire Authority for the purposes of the Public Entertainment Licence as: -
Conservatory 175 (With no more than 100 persons at the first floor level) and 4 stewards. Boat Bar & Entrance 100, Parlour Bar 20 and Parlour Restaurant 20 (All with 3 stewards).
- The Standard Conditions for Licensing of Premises for Regulated Entertainment.
- 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. Despite numerous attempts to resolve this application with the applicants' solicitor no response has been received and the representations still remain outstanding. It is therefore now brought before the sub-committee to determine the application.

5. **Summary of Application**

The licensable activities applied for are: -

Films*

Indoor Sporting Events*

Live Music

Recorded 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 requested in respect of Late Night Refreshment: -

Monday to Thursday	2300 – 0100 hours
Friday and Saturday	2300 – 0200 hours
Sunday	2300 – 0000 hours

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

Monday to Thursday	1000 – 0100 hours
Friday and Saturday	1000 – 0200 hours
Sunday	1000 – 0000 hours

The premises to close 30 minutes after the above times.

8. Seasonal Variations

No application is made for seasonal variations other than those applied for under non-standard Hours

9. 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: -

To the extent that the variation in part B1 paragraph 4 is not granted or does not permit: to permit sale of alcohol and such regulated entertainment as authorised hereunder until 02:00 on Friday, Saturday, Sunday and Monday at bank holiday weekends, Christmas Eve, Boxing Day and also to the extent that the variation in part B1 paragraph 4 is not granted to open to the same hour on up to 20 occasions per annum at my discretion upon 7 days prior notice to the police (if required by them)

New Year's Eve: 10:00 to New Year's Day – terminal hour as proposed.

To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside the normal hours, such opening times for this purpose to be confirmed upon 7 days notice in writing to the police before the premises intend to open, such notification to include the opening times and the sporting event which is to be shown.

10. Removal of Conditions

The applicant applies for the removal of all embedded restrictions inherent in Licensing Act 1964, save as specified elsewhere in part B of this application.

11. Summary of Representations

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

West Mercia Police

West Mercia Police have made representation in respect of the application and have made comments concerning the application for ad-hoc times. They request a total of nine conditions to be shown on the licence to address the licensing objective of crime and disorder.

Environmental Health

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

In respect of public safety they request a fire risk assessment.

Fire Authority

The Fire Authority has made no representation on the grounds that they rejected the application, as they did not receive it before 6th August 2005.

12. Issues for Clarification

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

Applicant – Benjamin FARRINGTON NELSEY

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

It is noted that in respect of the application for films, indoor sporting events, live music, performance of dance and late night refreshment that the box which asks for 'Further Details' in each case it states 'As stated in B1 above'
Box B1 states: -

1. To permit regulated entertainment comprising: Live music and amplified voice, recorded music by juke box and music systems, comperes for functions and quizzes and similar forms of entertainment, indoor pub games comprising a sporting event in the presence of an audience, video entertainment on screens and TV screens and amusement machines.

Clarification is therefore sought in respect of the details of the activities applied for as follows: -

Films

The type and certification of the videos to be shown on the premises. Whether additional seating will be provided. If so, then a plan showing the seating arrangement.

Whether it is intended to show anything else other than video entertainment on screens and TV screens and amusement machines.

Indoor Sporting Events

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

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.

Provision of facilities for making music

Full details are required of the facilities that are to be licensed. For example: The type of equipment at the premises for the making of music

Provision of facilities for dancing

Full details are required of the facilities that are to be licensed. For example: Whether or not the premises have a clearly defined dance floor.

All licensable activities

Confirmation is required from the applicant that if the licensable hours applied for were not granted, then the applicant applies to be permitted to sale alcohol and provide regulated entertainment until 02:00 the following morning on Friday, Saturday, Sunday and Monday at Bank Holiday weekends, Christmas Eve and Boxing Day

And also to open to the same hour on up to 20 occasions per annum at their discretion upon 14 days prior notice to the police (if required by them).

Non Standard Timings

Clarification is required from the applicant as to the hours that are applied for on New Year Eve.

It is unclear as to the actual hours that are applied for in respect of all the licensable activities with the exception of the sale of alcohol. Please state the hours that are to apply when the hours for alcohol are extended.

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

- Police Comments
- Environmental Health & Trading Standards Comments
- Fire Authority Comments
- Application Form
- Location Map
- PEL Conditions

Background papers are available for inspection in the Assembly Hall, 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).

It is only when such games take place in the presence of an audience and are provided to, at least in part, entertain that audience, for example, a darts championship competition, that the activity would become licensable.

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.