

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'THE BARREL INN, BROOKEND STREET, ROSS-ON-WYE, HR9 7EG' - 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 The Barrel Inn, Brookend Street, Ross-on-Wye, HR9 7EG.

2. Background Information

Applicant	Samantha Jane PEARCE		
Solicitor	Thorpe & Thorpe Solicitors, 2 Church Street, Ross on Wye, HR9 5HW		
Type of application: Variation	Date received: 05/08/05	28 Days consultation 3/09/05	Issue Deadline: 04/10/05

The Justices Licence and the advertisement for the premises have been seen and accepted.

3. Conversion Licence Application

The premises currently only holds a Justices On Licence and no public entertainment licence.

Licensable activity	Hours
Supply of Alcohol	Mon to Sat 11:00 to 23:00 hours
	Sunday and Good Friday 12:00 to 22:30 hours
	Christmas Day 12:00 to 15:00 hours
	19:00 to 22:30 hours

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: -

Live Music*

Recorded Music*

Similar description to Live/Recorded Music/Performance of Dance*

Provision of facilities for making Music*

Supply of Alcohol

(*Not previously licensed)

6. The following hours have been applied for in respect of (*Indoors Only*) Live music, Anything of a similar description to Live/Recorded Music or Performance of Dance: -

Sunday to Thursday 1100 – 2300 hours

Friday and Saturday 1100 – 0100 hours

7. The following hours have been applied for in respect of (*Indoors Only*) Films, Recorded Music, and the supply of alcohol (*both On & Off Premises*): -

Monday to Thursday 1100 – 0100 hours

Friday and Saturday 1100 – 0200 hours

Sunday 1100 – 0030 hours

The premises to close 30 minutes after these times.

8. Seasonal Variations

There is no application for seasonal variation of hours

9. Non Standard hours

There is no application for non-standard timings.

10. Conditions requested to be removed

There is no application for removal of any conditions imposed on the converted licence

11. Summary of Representations

A copy of the agreed conditions and the representation received can be found within the background papers.

West Mercia Police

Made representation in respect of the application. However all the requested conditions have been agreed by the applicant.

Environmental Health

They requested that a number of conditions be attached to the licence. The applicant has also agreed these.

Fire Authority

There has been no representation from the Fire Authority.

Interested Parties

The Local Authority has received 1 letter of representation in respect of the application from a local resident.

The concerns primarily relate to:-

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

12. Issues for Clarification

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

Applicant – Samantha PEARCE

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

Films

Apart from the films described within the further details of the application will any other films be shown.

If so, details have been requested.

Live Music

Confirmation has been sought as to whether the proposed live music will be restricted to no more than two performers at any one time.

Recorded Music

The application form states that CD's will be played during normal trading hours as background music and also a jukebox. Confirmation has been sort to confirm that this is the only kind of music to be played.

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 and Photographs
- Police Representation
- Environmental Health & Trading Standards Comments
- Application Form
- Location Plan

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....

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.