

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'THE ROYAL OAK, 5 THE SOUTHEND, LEDBURY' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ledbury

1. Purpose

To consider an application for variation of the premises licence in respect of The Royal Oak, 5 The Southend, Ledbury, HR8 2EY.

2. Background Information

Applicant	Kerri CLARKE		
Solicitor	N/A		
Type of application: Variation	Date received: 05/08/05	28 Days consultation 2/09/05	Issue Deadline: 04/10/05

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 only 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: -

Films*

Indoor Sporting Events*

Live Music*

Recorded Music*

Similar description to Live/Recorded Music or 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 all licensable Activities applied for (*All Indoors except the supply of alcohol which is for On & Off Premises*): -

Sunday to Thursday 1000 – 0000 hours

Friday to Saturday 1000 – 0100 hours

7. In respect of hours premises open to the public are: -

Sunday to Thursday 0900 – 0100 hours

Friday and Saturday 0900 – 0200 hours

8 Seasonal Variations

There is no application for seasonal variation of hours

9. Non Standard hours

The following hours have been applied for all licensable activities:-

When hours for the sale of alcohol are extended on Friday, Saturday, Sunday Monday of Bank Holiday Weekends, Christmas Eve, Boxing Day, New Years Day, St Patrick's Day, St George's Day, St David's Day. In the event of a transmission of any recognised international sporting event which falls outside the current permitted hours on the premises licence to permit the activity commencing one hour before the start of the event and ending one hours after the event has ended. Details of the activity to be notified to the police 21 days beforehand. The event will not proceed if the police serve, 7 days prior to the event, written notification upon the designated premises supervisor. The event will not proceed after the 7 day period if the police have intelligence that disorder is likely to occur and they notify the designated premises supervisor. These hours are also extended between 24:00 and 02:00 at the end of trading hours

10. Conditions requested to be removed

All embedded restrictions inherent in the Licensing Act 1964, the Cinematographic (Safety) Regulations 1955 and the Children's and Young Persons Act 1933.

11 Summary of Representations

Any suggested conditions or representations will be found within the background papers.

West Mercia Police

West Mercia Police have made representation in respect of the application.

They make comment in respect of the application for opening of the premises for televised sporting events.

Environmental Health

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

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

In respect of public safety, they request some General Conditions, as well as conditions to address Overcrowding, Ventilation & Heating, First Aid, Lighting, Electrical and Fire Safety. They also request conditions in relation to Indoor Sporting Events and the removal of open containers from the premises.

In respect of the Protection of Children from Harm they request a further two conditions.

No conditions have been agreed at the time of this report.

Fire Authority

There has been no representation from the Fire Authority.

Interested Parties

The Local Authority has received 16 letters of representation and one petition containing 25 names, in respect of the application from local residents.

The concerns primarily relate to: -

- Public Safety
- Prevention of Public Nuisance

12 Issues for Clarification

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

The Applicant – Kerri CLARKE

Has been requested to provide clarification in respect of matters contained within his application, regarding the following activities: -

Films

The type and certification of the videos to be shown on the premises. Confirmation that the films will be restricted to 'Video Entertainment on TV screens and amusement screens'.

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.

Live Music

It is noted that contained within the General Licensing Objective it is stated 'The Types of regulated entertainment proposed re-instate and then enhance the normal pub entertainment that were previously unregulated'.

Clarification therefore is sort whether the live music is to be restricted to two in a bar as previously licensed.

Anything of a similar nature to Live Music, Recorded Music or Performance of Dance

Conformation that the only activities to be licensed are as shown within 'the description' shown in Box H of the application form.

Non-standard timings

In respect of all the licensable activities applied for within the non-standard timings it states that 'When the hours for the sale of alcohol are extended on Friday, Saturday, Sunday and Monday of Bank Holiday Weekends, Christmas Eve, Boxing Day, New Year Day, St Patrick's Day, St Georges Day & St David's Day'. It is noted that the same has been stated within the 'Supply of Alcohol' section.

Clarification is therefore sort as to the hours that were to apply on these days.

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 Representations & Petition
- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form
- Location Plan

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

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.