

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF – ‘THE BAY HORSE, 19/21 HIGH STREET, BROMYARD, HR7 4AA.’ - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Bromyard

Purpose

- To consider an application for variation of the premises licence in respect of The Bay Horse, 19/21 High Street, Bromyard, HR7 4AA.

Background Information

2.

Applicant	Enterprise Inns P.L.C, 3 Monkspath Hall Road, Solihull, West Midlands, B90 4SJ		
Solicitor	Osborne Clarke, 2 Temple Back East, Bristol, BS1 6EG		
Premises	The Bay Horse, 19/21 High Street, Bromyard, HR7 4AA		
Type of application: Variation	Date received: 03/08/05	28 Days consultation 31/08/05	Issue Deadline: 03/10/05

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. (mentioned above)

The premises does not hold a current public entertainment licence.

- To retain all embedded permissions and restrictions attached to a Justices On Licence.

Variation Licence Application

4. The application for a variation has received a representation from a resident and is therefore now brought before the sub-committee for determination.

Summary of Application

5. The licensable activities applied for are: -

Films (indoors)

Live Music (indoors and outdoors)

Recorded Music (indoors and outdoors)

Provision of regulated entertainment – anything of a similar description to that falling within (e), (f) or (g) (indoors)

Provision of entertainment facilities for making music and dancing (indoors)

Late night refreshment (indoors)

Supply of Alcohol (on and off premises)

Hours the premises are open to the public.

(Activities in bold are those not previously licensed)

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

Mon – Thurs, and Sunday	1000 – 0030
Fri – Sat	1000– 0130

7. The following hours have been applied for in respect of Live music (*Indoors and Outdoors*):-

Mon – Thurs, and Sunday	1000– 0000
Fri – Sat	1000– 0100

8. The following hours have been applied for in respect of Recorded Music (*indoors and Outdoors*):-

Mon – Thurs, and Sunday	1000– 0000
Fri – Sat	1000– 0100

9. The following hours have been applied for in respect of provision of regulated entertainment – anything of a similar description to that falling within (e), (f) or (g) (*Indoors*):-

Mon – Sun 1100 – 0000

10. The following hours have been applied for in respect of provision of
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entertainment facilities for making music and dancing (Indoors) :-

Mon – Sun 1100 – 0000

11. The following hours have been applied for in respect of Provision of late night refreshment (indoors)

Mon – Thurs, and Sunday 2300– 0030
Fri – Sat 2300– 0130

12. The following hours have been applied for in respect of supply of alcohol:-

Mon – Thurs, and Sunday 1000– 0000
Fri – Sat 1000 – 0100

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

Mon – Thurs, and Sunday 1000 – 0030
Fri – Sat 1000 – 0130

11. **Non Standard hours**

The application applies for ‘non-standard’ hours.

In respect of Films:-

When hours for sale of alcohol are extended on bank holidays, these hours are also extended between 1000 am and 0130 am in the morning at the end of trading hours.

In respect of Late Night Refreshment:-

When hours for sale of alcohol are extended on bank holidays, these hours are also extended between 1000 am and 0100 am in the morning at the end of trading hours.

In respect of the supply of alcohol:-

1000 am – 0100 am on Sundays on bank holiday weekends, Christmas Eve and Boxing Day.

In respect of ‘Hours the premises are open to the public’:-

Trading hours may be extended on Bank Holidays, between 1100 am and 0130 am in the morning at the end of normal trading hours.

The applicant has applied to 'Remove all embedded restrictions inherent in the Licensing Act 1964, the Cinematograph (Safety) Regulations 1955 and the Children and Young Persons Act 1933.

13. Summary of Representations

The landlord and area manager have agreed with all recommendations set by the Police, Environmental Health Officers and the Fire Officers, but the local representation has not been agreed.

West Mercia Police

Have made representation in respect of the application and request that a closed door policy be operated from Midnight on Friday and Saturday night preventing public admittance beyond that time in order to maintain order and ensure the integrity of the four licensing objectives is met. **These conditions have been agreed.**

Fire Authority

The fire authority have advised that a suitable and sufficient risk assessment should be carried out. **These conditions have been agreed.**

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the Licensing Objectives of Public Safety, Prevention of Public Nuisance, and protection of Children from harm.

In respect of Public safety they seek conditions in relation to overcrowding, ventilation and heating, first aid, lighting, electrical installation, fire safety, gas installations, and open containers.

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

In respect of the protection of Children from harm they seek conditions in Relation to proof of age regulations, films and videos, and proven anti drug and alcohol methods.

These conditions have been agreed.

Interested Parties

The Local Authority has received 1 letter of representation from a resident.

The concerns relate to:

- The Prevention of Crime & Disorder
- Prevention of Public Nuisance
- Public Safety

14. Issues for Clarification

This Authority has requested clarification on particular points from Enterprise Inns.

Clarification is sought on what provision of regulated entertainment with regard to box H – anything of a similar description to that falling within (e), (f) and (g), will take place on the premise.

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 Assembly Hall, Town Hall, St. Owen's Street, 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.