

**APPLICATION FOR VARIATION OF PREMISES
LICENCE IN RESPECT OF 'THE LITTEN TREE,
COMMERCIAL ROAD, HEREFORD.
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 The Litten Tree, Commercial Road, Hereford, HR1 2BP

2. Background Information

Applicant	The Laurel Pub Company, Porter Tun House, 500 Capability Green, Luton, LU1 3LS		
Solicitor	Lester Aldridge, Russell House, Oxford Road, Bournemouth, BH8 8EX		
Type of application: Variation	Date received: 15/09/05	28 Days consultation 13/10/05	Issue Deadline: 14/11/05

The Justices Licence has been seen and accepted. The advertisement for the premises has not been seen at this time.

3. Conversion Licence Application

The premises currently hold a Justices On, Children's Certificate 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	36 hours
Children in Bars	Mon-Sat	1100 to 1900 hours
	Sun	1200 to 1900 hours
	in respect of the Library and Conservatory.	

Live Music, Recorded Music, Performance of Dance	Mon to Sat	1100 to 2330 hours
	Sun	1200 to 2200 hours (Music Entertainment only)
	Sun	1900 to 2230 (Dancing where no admission charge is made)

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. (Drinking up time).
- The maximum number of persons admitted to the premises shall be: 500
- The maximum number of visually identifiable stewards shall be: 4.
- The Standard Conditions for Licensing of Premises for Regulated Entertainment. [As specified in the outgoing public entertainment licence] (See Appendix)

4. **Variation Licence Application**

The application for a variation has received representations by responsible authorities and interested parties. It is therefore now brought before the Regulatory Sub-Committee for determination.

5. **Summary of Application**

The licensable activities applied for are: -

Films*

Indoor Sporting Events *

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 making dance *

Anything of a similar description to provision of facilities for making music or dancing *

Late Night Refreshment

Supply of Alcohol

(* Not previously licensed)

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

Monday to Sunday 0800 – 0100

7. The following hours have been applied for in respect of Indoor Sporting Events, (*All indoors*) Live Music, Performance of Dance, Anything of a similar description to Live/Recorded Music or Performance of dance, Provision of

facilities for making of music and dancing, Anything of a similar description to provision of facilities for making music or dancing: -
Monday to Sunday 1000 – 0100

8. The following hours have been applied for in respect of Late Night Refreshment: -
Monday to Sunday 2300 – 0100

9. In respect of hours premises open to the public are:-
Monday to Sunday 0800 – 0145

10. **Seasonal Variations**

The application requests seasonal variations in respect of all the activities applied for as follows: - New Year's Eve 36 hours change GMT to BST an additional hour; Bank Holiday Weekends Fridays to Mondays, on St Patrick's Day, St George's Day, St Andrew's Day and Valentine's Day and on the day before Christmas eve to Boxing Day (excluding Christmas Day) and New Year's Day – an additional hour, Christmas Day 1200 to 2300 hours.

In respect of hours premises open to the public:- an additional 45 minutes to the hours shown if appropriate for the licensable activities listed above.

11. **Non Standard hours**

The application requests non-standard timings in respect of all the activities applied for as follows: - 'On a maximum of 12 occasions a year, such hours as may be agreed by the Police for special occasions, the Police to have an absolute veto (not to be unreasonably withheld). At least 7 days notice of such a request will be given to the Council and Police'.

In respect of hours premises open to the public: - an additional 45 minutes to the hours shown if appropriate for the licensable activities listed above.

12. **Conditions requested to be removed**

- Current statutory restrictions on permitted hours, S77 Certificates, and Credit in particular
- PEL conditions terms and conditions
- All other current statutory restrictions under statutes governing the operation of liquor and PEL licensing in general

13. **Summary of Representations**

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

West Mercia Police

Representation has been received from West Mercia Police in respect of the application. They request a total of eleven conditions to address the licensing objectives of the prevention of crime and disorder.

They also comment upon the application for the 12 ad-hoc applications per year.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objective of Prevention of Public Nuisance.

In respect of Public Nuisance they seek four conditions to address the control of noise.

They also request one condition in respect of indoor sporting events and one in respect of films.

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

Fire Authority

The Fire Authority have made no comment.

Interested Parties

The Local Authority has received 2 letters of representation in respect of the application from local residents.

The concerns relate to:-

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

14. 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.

15. 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.

16. **Background Papers**

- Public Representation
- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form

Background papers are available for inspection in the Library, Shirehall, 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....

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.