

APPLICATION FOR VARIATION OF PREMISES LICENCE 'THREE ELMS, 1 CANON PYON ROAD, HEREFORD. HR4 9QQ' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Three Elms

1. Purpose

To consider an application for variation of the premises licence in respect of Three Elms, 1 Canon Pyon Road, Hereford. HR4 9QQ.

2. Background Information

Applicants	Greene King Brewing & Retailing Ltd		
Solicitor	N/A		
Type of application: Conversion Variation	Date received: 09/09/05	28 Days consultation 07/10/05	Issue Deadline: 08/11/05

The current justices licence and public entertainment licence for the premises have been seen and accepted. The newspaper advertisement has not been seen at this time.

3. Conversion Licence Application

The premises currently holds a Justices On Licence and 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 1000 hours to 2300 hours New Years Day.
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 75.
- The minimum number of visually identified stewards shall be 3.

4. **Variation Licence Application**

The application for a variation has received representations by responsible authorities and also members of the public. It therefore is now brought before the committee to determine the application.

5. **Summary of Application**

The licensable activities applied for are: -

Live Music

Recorded Music

Anything similar to Live Music or Recorded Music or Performance of Dance *

Provision of facilities for dancing

Late Night Refreshment *

Supply of Alcohol

Hour's premises open to the public (Not licensable on it's own)

(* Not previously licensed)

6. The following hours have been applied for in respect of Live Music, Recorded Music, Anything similar to Live Music or Recorded Music or Performance of Dance and Provision of facilities for dancing: -

Sunday 2230 – 2300

7. The following hours have been applied for in respect of Late Night Refreshment (*Indoors only*): -

Friday & Saturday 2300 – 0000

8. The following hours have been applied for in respect of supply of alcohol (*Both On & Off Premises*): -

Sunday to Thursday 1100 – 2300

Friday & Saturday 1100 – 0000

9. The hours that the premises will be open to members of the public

Monday to Thursday 1100 – 0010

Friday & Saturday 1100 – 0040

Sunday 1100 – 2340

10. **Non Standard hours**

The application applies for '**non-standard**' hours as follows: -

In respect of all the licensable activities, including hours premises are open to the members of the public: -

'Christmas Eve, Christmas Day, Boxing Day, Spring & August Bank Holidays, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, St Patrick's Day & St Georges Day, Proceeding & Preceding Day before a Bank Holiday – One Extra Hour. Any other publicly declared holiday – One Extra Hour.

11. Removal of Conditions

The application requests that the following conditions be removed: -
'The number imposed of 75 is quite low, this should be reassessed to 150.
Remove current restrictions under S168 of Licensing Act 1964.

15. Summary of Representations

The copies of the representations made and the letter of representation can be found within the background papers.

West Mercia Police

Have made no representation in respect of the application.

Fire Authority

The fire authority has made comments.

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 Protection of Children from Harm.

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

With regards to public safety, they recommended three conditions in respect of overcrowding.

They also sought three conditions in respect of the Protection of Children from harm.

All these conditions have been agreed by the applicant.

Interested Parties

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

The concerns relate to:

- Prevention of Public Nuisance

17. Issues for Clarification

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

The Applicants – Greene King Brewing & Retailing Ltd

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

Live & Recorded Music

No details have been shown under further details for live and recorded music. The applicant has been requested to provide further details and to state whether such music will be amplified or non-amplified.

Anything of a similar description to live or recorded music

The description of the type of entertainment shown under this section is already covered by live or recorded music. Therefore the applicant has been asked to explain what additional activities are to be covered.

Provision of facilities for dancing

Again no further details have been shown under this section. The applicant has been asked to provide details of the facilities that are to be provided.

Late Night Refreshment

No details are shown again under further details. The applicant has been asked to provide further information.

It is also noted that the application requests the provision of late night refreshment both indoors and outdoors. The applicant has been asked to provide further details regarding the provision outdoors.

Removal of Conditions

It is unclear from the application whether the applicant applies to remove the maximum number of people permitted on the premises, which is set at 75 and increase that 150. The applicant has therefore been requested to provide clarification.

18. 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.

19. 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.

20. **Background Papers**

- Public Representation Form
- Environmental Health & Trading Standards Comments
- Application Form
- Any other associated papers
- Location Map

Background papers are available for inspection in The Shire Hall 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....

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.