

**APPLICATION FOR VARIATION OF PREMISES
LICENCE IN RESPECT OF – ‘GRAFTON MARKET (RE-
RACK), GRAFTON HOUSE, BURGESS STREET,
LEOMINSTER, HR6 8DE’ - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Purpose

1. To consider an application for variation of the premises licence in respect of Grafton Market (Re-Rack), Grafton House, Burgess Street, Leominster, HR6 8DE.

Background Information

2.

Applicant	Re-Rack Ltd (owners) George Bedford and Carol Bedford.		
Solicitor			
Premises	Grafton Market (Re-Rack), Grafton House, Burgess Street, Leominster, HR6 8DE		
Type of application: Variation	Date received: 29 September 2005	28 Days consultation 27 October 2005	Issue Deadline:

Conversion Licence Application

3. A conversion licence will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon – Sat 1000 am – 2300 pm Sunday 1200 midday – 2230 pm New Years Eve 1000 am – 0000 midnight New Years Day 0000 – 2300 pm Christmas Day 1200 – 1500 and 1900 – 2250

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.

The premises do not hold a current public entertainment licence.

- To retain all embedded permissions and restrictions attached to a Justices On Licence, the premises is a members only club.

Variation Licence Application

4. The application for a variation to the premises licence has received representations by responsible authorities and therefore is now brought before the sub committee for determination.

Summary of Application

5. The application has been submitted on a premises licence application form not a club premises form. Therefore the premises is varying the nature of the business to include any member of the public so they have applied to remove the members only clause.

The licensable activities applied for are: -

Indoor Sporting Events*

Live Music*

Recorded Music (indoors)*

Provision of facilities for dancing*

Provision of facilities for entertainment of a similar description to that falling within i or j (indoors)*

Supply of Alcohol (on and off premises)

* - Activities not previously licensed

6. The following hours have been applied for in respect of Indoor Sporting Events:-

Mon – Thurs 1100 – 0000

Fri – Sat 1100 – 0200

Sun 1100 – 0000

7. The following hours have been applied for in respect of Live Music (*Indoors only*):-

Mon – Thurs 1100 – 0000

Fri – Sat 1100 – 0200

Sun 1100 – 0000

8. The following hours have been applied for in respect of recorded music (*Indoors only*):-

Mon – Thurs 1100 – 0000

Fri – Sat 1100 – 0200

Sun 1100 – 0000

9. The following hours have been applied for in respect of provisions of facilities for dancing:-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

10. The following hours have been applied for in respect of facilities for entertainment of a similar description to that falling within l or j (*indoors only*):-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

11. The following hours have been applied for in respect of supply of alcohol (on and off the premises):-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

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

Mon – Thurs	1100 – 0030
Fri – Sat	1100 – 0230
Sun	1100 – 0030

13. **Non Standard hours**

The application applies for ‘**non-standard**’ hours in relation to all licensable activities applied for, that:-

New years eve/day hours to remain as existing

14. **Removal of Conditions**

The applicant has applied to remove the ‘members only’ restriction.

15. **Summary of Representations**

West Mercia Police

Have made representation in relation to the application. This representation addresses whether the application should be viewed as an application to vary as opposed to being an application to grant.

Fire Authority

The fire authority have made no comments.

Environmental Health

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

In respect of Public Safety they seek conditions in relation to precautions to ensure the safety of the public, ventilation, heating, first aid, and fire risk assessments.

With regards to public nuisance they recommend some conditions in respect of music levels and windows and doors.

With regards to the protection of children from harm they recommend some conditions in respect of the prevention of alcohol drugs and other products, and under age drinking precautions.

At the time of this report no negotiations had taken place in respect of these conditions.

Interested Parties

The Local Authority has received one objection letter holding signatures of 14 people in respect of the application, and general area from residents.

The concerns relate to:

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

16. Issues for Clarification

This Authority has requested clarification from the applicants, Re-Rack Ltd.

- A) Who's property does this building open out on to?
- B) What is the construction of the premises and what measures are taken to prevent noise nuisance to neighbouring properties?
- C) What are the planned provisions to ensure against over crowding?

17. 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.

18. 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.

19. Background Papers

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

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