

APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'SUMMERHILL GOLF COURSE, CLIFFORD, HAY-ON-WYE, HR3 5EW' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Golden Valley

1. Purpose

To consider an application for variation of the premises licence in respect of 'Summerhill Golf Course, Clifford, Hay-on-Wye, HR3 5EW'.

2. Background Information

Applicant	David Clifford & Janet Elizabeth BOWEN		
Solicitor	N/A		
Type of application: Variation	Date received: 14/10/05	28 Days consultation 11/11/05	Issue Deadline: 13/12/05

The Justices Licence and the advertisement for the premises have been seen and accepted.

3. Conversion Licence Application

The premises currently only holds a Justices On Licence with Club Conditions attached, but 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: -

Indoor Sporting Events*

Live Music*

Recorded Music*

Performance of dance*

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

Provision of facilities for dancing*

Late Night Refreshment

Supply of Alcohol

(*Not previously licensed)

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

All days 1900 – 0200 hours

7. The following hours have been applied for in respect of (*All Indoors & Outdoors*) Live Music, Recorded Music, Performance of Dance, Provision of facilities for dancing, Late Night Refreshment and the supply of alcohol (*both On & Off Premises*): -

Friday to Sunday 1900 – 0200 hours

8. The following hours have been applied for in respect of 'Anything similar to Live/Recorded Music/Performance of Dance' (*Indoors only*): -

All days 1600 – 0200 hours

9. The premises to open to members of the public as follows: -

Monday to Thursday 0800 – 2330 hours

Friday 0800 – 0230 hours

Saturday & Sunday 0700 – 0230 hours

10. Seasonal Variations

The application applies for seasonal variation of hours on New Years Eve, Christmas Eve, Bank Holidays and Club Anniversary Date of 1900 to 0300 hours in respect of all the activities applied for (except Indoor Sporting Events and Anything similar to Live/Recorded Music/Performance of Dance).

11. Conditions requested to be removed

There is no application for removal of any conditions imposed on the converted licence

12. Summary of Representations

A copy of the agreed conditions and the representation received can be found within the background papers.

West Mercia Police

Made representation in respect of the application. However all the requested conditions have been agreed by the applicant.

Environmental Health

They requested that a number of conditions be attached to the licence. The applicant has also agreed these.

Fire Authority

The Fire Authority also made representation. Their concerns have now been addressed and the representation withdrawn.

Interested Parties

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

The concern relates to:-

- Prevention of Public Nuisance

13. Issues for Clarification

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

Applicant – David Clifford & Janet Elizabeth BOWEN

Has been requested to provide clarification in respect of matters relating to the application as follows: -

Indoor Sporting Events

The application would appear to request only one event per year, which is shown as 'annual darts tournament'. Clarification has been sought that there will only be one event. The approximate date of the event has also been requested.

Performance of Dance

Further details have been requested in respect of this activity.

Anything similar to Live/Recorded Music/Performance of Dance

Within the 'further details' it is stated 'Quiz night, comedian & other speakers'. Clarification is sought that these are the only types of entertainment to which this section applies.

Seasonal Variations

It is noted that the application applies for a seasonal variation for 'Club Anniversary Date'. The date of this has been requested.

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 Representation
- Environmental Health & Trading Standards Comments
- Fire Officers Representation
- Application Form
- Location Plan

Background papers are available for inspection in the Council Chamber, Brockington, Hafod Road, 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....

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.

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);

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.