

# Regulatory Sub Committee

Date: **Wednesday, 23rd January, 2008**

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Time: **10.00 a.m.**

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Place: **The Council Chamber, Brockington, 35  
Hafod Road, Hereford**

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Notes: Please note the **time, date** and **venue** of the meeting.

*For any further information please contact:*

*Ricky Clarke, Democratic Services Officer,*

*Tel: 01432 261885 Fax: 01432 260286*

**E-mail: [rclarke@herefordshire.gov.uk](mailto:rclarke@herefordshire.gov.uk)**

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**County of Herefordshire  
District Council**



# AGENDA

## for the Meeting of the Regulatory Sub Committee

To: Councillors CM Bartrum, JHR Goodwin and JW Hope MBE

### Pages

**1. ELECTION OF CHAIRMAN**

To elect a Chairman for the hearing.

**2. APOLOGIES FOR ABSENCE**

To receive apologies for absence.

**3. NAMED SUBSTITUTES (IF ANY)**

To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.

**4. DECLARATIONS OF INTEREST**

To receive any declarations of interest by Members in respect of items on the Agenda.

#### GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is and leave the meeting room.

**5. APPLICATION FOR A NEW PREMISES LICENCE AT 'THAI GALLERY, 48 & 49 BROAD STREET, HEREFORD, HR4 9AR.'**

To consider an application for a new premises licence in respect of Thai Gallery, 48 & 49 Broad Street, Hereford, HR4 9AR.

1 - 6

**6. APPLICATION FOR A NEW PREMISES LICENCE AT 'THE WHITE SWAN, EARDISLAND, LEOMINSTER, HR6 9BD.'** 7 - 12

To consider an application for a new premises licence in respect of The White Swan, Eardisland, Leominster, HR6 9BD.

**7. APPLICATION FOR A NEW PREMISES LICENCE AT 'THE RED LION, HIGH STREET, PEMBRIDGE, HR6 9DS.'** 13 - 18

To consider an application for a variation of a premises licence in respect of the Red Lion, High Street, Pembridge, HR6 9DS.

# **The Public's Rights to Information and Attendance at Meetings**

## **YOU HAVE A RIGHT TO: -**

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

## **Please Note:**

Agenda and individual reports can be made available in large print. Please contact the officer named on the front cover of this agenda **in advance** of the meeting who will be pleased to deal with your request.

The meeting venue is accessible for visitors in wheelchairs.

A public telephone is available in the reception area.

## **Public Transport Links**

- Public transport access can be gained to Brockington via the service runs approximately every half hour from the 'Hopper' bus station at the Tesco store in Bewell Street (next to the roundabout junction of Blueschool Street / Victoria Street / Edgar Street).
- The nearest bus stop to Brockington is located in Old Eign Hill near to its junction with Hafod Road. The return journey can be made from the same bus stop.

If you have any questions about this agenda, how the Council works or would like more information or wish to exercise your rights to access the information described above, you may do so either by telephoning the officer named on the front cover of this agenda or by visiting in person during office hours (8.45 a.m. - 5.00 p.m. Monday - Thursday and 8.45 a.m. - 4.45 p.m. Friday) at the Council Offices, Brockington, 35 Hafod Road, Hereford.

## **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**

**BROCKINGTON, 35 HAFOD ROAD, HEREFORD.**

### **FIRE AND EMERGENCY EVACUATION PROCEDURE**

In the event of a fire or emergency the alarm bell will ring continuously.

You should vacate the building in an orderly manner through the nearest available fire exit.

You should then proceed to Assembly Point J which is located at the southern entrance to the car park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

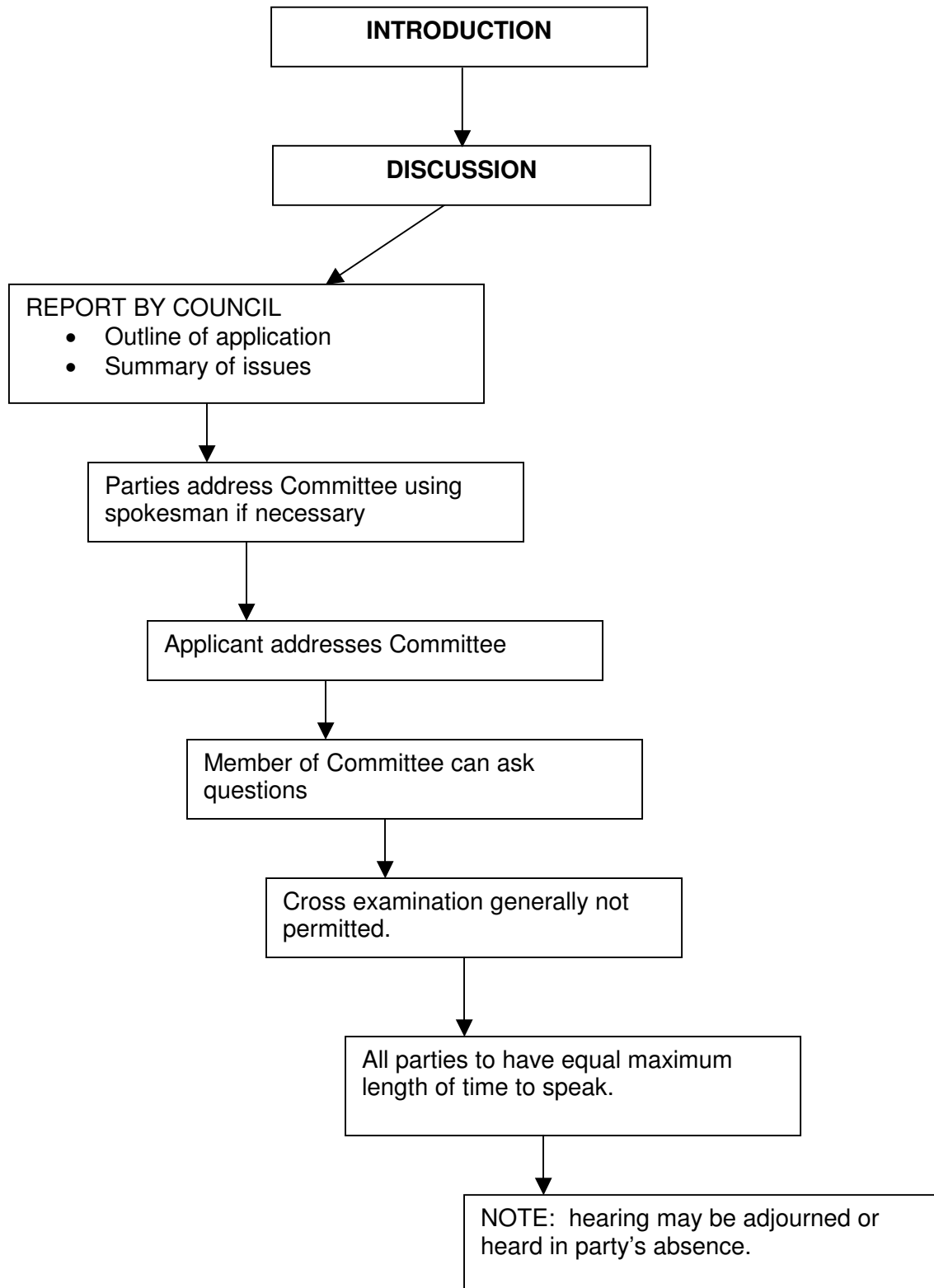
Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.





## LICENCING HEARING FLOW CHART





## APPLICATION FOR NEW PREMISES LICENCE 'THAI GALLERY, 48 & 49 BROAD STREET, HEREFORD, HR4 9AR.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Hereford

#### 1. Purpose

To consider an application for a new premises licence in respect of Thai Gallery, 48 & 49 Broad Street, Hereford, HR4 9AR.

#### 2. Background Information

|                             |                            |                                  |
|-----------------------------|----------------------------|----------------------------------|
| Applicant                   | Romano Mazzocchi           |                                  |
| Solicitor                   | N/K                        |                                  |
| Type of application:<br>New | Date received:<br>27/11/07 | 28 Days consultation<br>25/12/07 |

The advertisement for the premise has not been submitted to the licensing department at present.

#### 3. New Licence Application

The application for a new licence has received representations from responsible authorities and interested parties. It is therefore now brought before the sub-committee for determination.

#### 4. Summary of Application

The licensable activities applied for are: -  
Live Music  
Recorded Music  
Sale by Retail of Alcohol

#### 5. The following hours have been applied for in respect of all the above activities (Indoors): -

Monday – Saturday 12:00 – 00:00  
Sunday 12:00 – 23:00

#### 6. The premises to be open to the public All days of the week 12:00 – 00:00

#### 7. Non Standard hours

There is no application for 'non-standard' hours.

#### 8. Summary of Representations

Copies of the representations and suggested conditions can be found within the background papers.

**West Mercia Police**

Have no representation to make in relation to the application.

**Environmental Health**

The Environmental Health Officer has requested that the premises close at midnight on all days of the week and for a terminal hour of 23:30 Monday to Saturday and 23:00 on a Sunday in respect of all the licensable activities.

In respect of Public Safety she has requested 8 conditions and a further 3 conditions in respect of Public Nuisance.

To address the licensing objectives of the protection of children from harm she requests 2 further conditions.

**Fire Authority.**

The fire authority has no comment to make in relation to the application.

**Interested Parties.**

The Local Authority has received nine (9) letters of representation in respect of the application, eight of these letters are from local residents and one from a local business.

The concerns relate mainly to:

- Prevention of Public Nuisance

**9. Issues for Clarification**

This Authority has requested clarification from the applicant as follows: -

The hours of operation are shown as Monday to Saturday as 12:00 to 12:00 and on a Sunday as 12:00 to 11:00 on the application form. The applicant has been asked to confirm that the terminal hour stated is pm (i.e. Midnight and 11 pm).

The application requests live music yet the application provides no details and does not state whether it will be amplified or unamplified. The applicant has been requested to provide this information.

The application states within the proposed conditions that 'The restaurant won't be open into the early hours and in fact last orders for food will be around 10 pm'. It also states 'stop serving food before 11 pm, we stop the people using the restaurant as another drinking establishment'. No application has been made for the provision of late night refreshment and therefore it would be illegal to supply hot food or drink after 11 pm. As this is the case the applicant has been asked to explain to the Committee why he has applied to be licensed until midnight in respect of Live & Recorded Music and the supply of alcohol.

**10. Committees Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;

- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

**11. 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.

**12. Background Papers**

- a. Public Representation
- b. Environmental Health & Trading Standards Comments
- c. Application Form
- d. Location plan

**Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford, 30 minutes before the start of the hearing.**

**NOTES****RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS**

9.8. 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. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.

9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.

9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious 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. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.

9.11. Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgment. This may be difficult for ward councilors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councilor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

**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.





## APPLICATION FOR NEW PREMISES LICENCE 'THE WHITE SWAN, EARDISLAND, LEOMINSTER, HR6 9BD.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Golden Cross with Weobley

#### 1. Purpose

To consider an application for a new premises licence in respect of The White Swan, Eardisland, Leominster, HR6 9BD.

#### 2. Background Information

|                                    |  |   |
|------------------------------------|--|---|
| Applicant                          | <b>Admiral Taverns (Pyramid) Limited</b> |   |
| Solicitor                          | <b>Fraser Brown</b>                      |   |
| Type of application:<br><b>New</b> | Date received:<br><b>30/11/07</b>        | 28 Days consultation<br><b>27/12/07</b> |

The advertisement for the premise has been seen and accepted.

#### 3. New Licence Application

The application for a new licence has received representations from responsible authorities and interested parties. It is therefore now brought before committee to determine the application.

#### 4. Summary of Application

The licensable activities applied for are: -

Films

Indoor Sporting Events

Live Music

Recorded Music

Provision of facilities for making music

Provision of facilities for dancing

Provision of late night refreshment

Sale by Retail of Alcohol

#### 5. The following hours have been applied for Films, Indoor Sporting Events, Live Music, Recorded Music, Provision of facilities for Dancing and Making Music (*All Indoors*) and the sale by Retail of Alcohol (Both on & off premises): -

Sunday – Thursday 10:00 – 23:00

Friday – Saturday 10:00 – 00:00

#### 6. The following hours have been applied for in respect of late night refreshment (*Indoors*): -

Friday – Saturday 23:00 – 00:00

7. The premises to be open to the public  
Sunday – Thursday 10:00 – 23:30  
Friday – Saturday 10:00 – 00:30

8. **Non Standard hours**

There is an application for 'non-standard' hours. In respect of all the licensable activities the applicant applies for an additional hour to standard and non-standard timings on the day when British Summertime commences and from the end of permit hours on 31st December until the start of permitted hours on 1st January.

9. **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

**West Mercia Police**

Have no representation to make in relation to the application.

**Environmental Health**

The Environmental Health Officer has requested three (3) Conditions to address public safety and one (1) in respect of the protection of children from harm.

**Fire Authority.**

The fire authority has no comment to make in relation to the application.

**Interested Parties.**

The Local Authority has received six (6) letters of representation in respect of the application, from local residents.

The concerns relate mainly to:

- Prevention of Public Nuisance

10. **Issues for Clarification**

This Authority has not requested any clarification at this time.

11. **Committees Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

12. **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.

**13. Background Papers**

- a. Public Representation
- b. Environmental Health & Trading Standards Comments
- c. Application Form
- d. Location plan

**Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford, 30 minutes before the start of the hearing.**

**NOTES****RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS**

9.8. 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. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.

9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.

9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious 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. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.

9.11. Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgment. This may be difficult for ward councilors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councilor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

**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.



## APPLICATION FOR VARIATION OF A PREMISES LICENCE 'RED LION, HIGH STREET, PEMBRIDGE, HR6 9DS.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Pembridge & Lyonshall with Titley

### 1. Purpose

To consider an application for a variation of a premises licence in respect of the Red Lion, High Street, Pembridge, HR6 9DS.

### 2. Background Information

|  |                                   |   |
|--|-----------------------------------|---|
| Applicant                                | <b>Nicola Jane Pontifex-Price</b> |   |
| Solicitor                                | <b>N/K</b>                        |   |
| Type of application:<br><b>Variation</b> | Date received:<br><b>28/11/07</b> | 28 Days consultation<br><b>26/12/07</b> |

The advertisement for the premise has not been submitted to the licensing department at present.

### 3. Variation Licence Application

The application for a variation of the premise licence has received representations from responsible authorities and an interested party. It is therefore now brought before the sub-committee for determination.

### 4. Current Licence

The current licence only authorises the sale of alcohol:

- On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10 a.m. to 11 p.m.
- On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.
- On Good Friday, 12 noon to 10.30 p.m.
- On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

### 5. Summary of Application

The licensable activities applied for are: -

Live Music  
Recorded Music  
Late Nigh Refreshment  
Sale by Retail of Alcohol

6. The following hours have been applied for in respect of all live music (*Indoors*): -  
Saturday 20:00 – 01:00
7. The following hours have been applied for in respect of all recorded music (*Indoors*) and sale by retail of alcohol (*both and off premise*) : -  
Monday – Thursday 10:00 – 00:00  
Friday – Saturday 10:00 – 01:00  
Sunday 10:00 – 22:30
8. The following hours have been applied for in respect of late night refreshment (*Indoors*): -  
Monday – Thursday 23:00 – 00:00  
Friday – Saturday 23:00 – 01:00
9. The premises to be open to the public  
Monday – Thursday 10:00 – 00:00  
Friday – Saturday 10:00 – 01:00  
Sunday 10:00 – 22:30
10. **Non Standard hours**  
There is application for 'non-standard' hours for all the activities applied for: -  
Christmas Eve 10:00 – 01:00  
New Years Eve 10:00 – 02:00

11. **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

**West Mercia Police**

Have no representation to make in relation to the application.

**Environmental Health**

The Environmental Health Officer has recommended that the premises close at 23:30 Sunday to Thursday and at 00:30 on Friday and Saturday.

She also recommends a terminal hour for recorded music of 2300 Sunday to Thursday and of 00:00 on Friday and Saturday.

In respect of live music and music with a DJ she recommends a terminal hour of 22:30 Sunday to Thursday and at 23:00 on Friday and Saturday

In respect of Prevention of Public Nuisance she seeks five (5) conditions and a further six (6) conditions to address Public Safety.

To address the licensing objectives of the protection of children from harm she requests three (3) further conditions.

**Fire Authority.**

The fire authority has no comment to make in relation to the application.

**Interested Parties.**



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

The concerns relate to:

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

## 12. **Issues for Clarification**

This Authority did request clarification from the applicant which has since been provided.

## 13. **Committees Responsibility**

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- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
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## 14. **Options: -**

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- 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.
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- To reject the application.

## 15. **Background Papers**

- a. Public Representation
- b. Environmental Health & Trading Standards Comments
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