

A G E N D A

Regulatory Sub Committee

Date: **Wednesday, 28th May, 2008**

Time: **10.00 a.m.**

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

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

**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors JHR Goodwin, JW Hope MBE and P Jones CBE

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 VARIATION OF PREMISES LICENCE 'SAXTYS CAFE BAR, 33 WIDEMARSH STREET, HEREFORD, HR4 9EA.'

1 - 6

To consider an application for variation of the premises licence in respect of Saxtys Café Bar, 33 Widemarsh Street, Hereford, HR4 9EA.

6. APPLICATION FOR A REVIEW OF A PREMISE LICENCE 'THE HORSE & JOCKEY, 9-10 NEW STREET, ROSS-ON-WYE, HR9 7DA.' | 7 - 14

To consider an application for a review of a premise licence in respect of The Horse & Jockey, 9-10 New Street, Ross On Wye, HR9 7DA.

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.

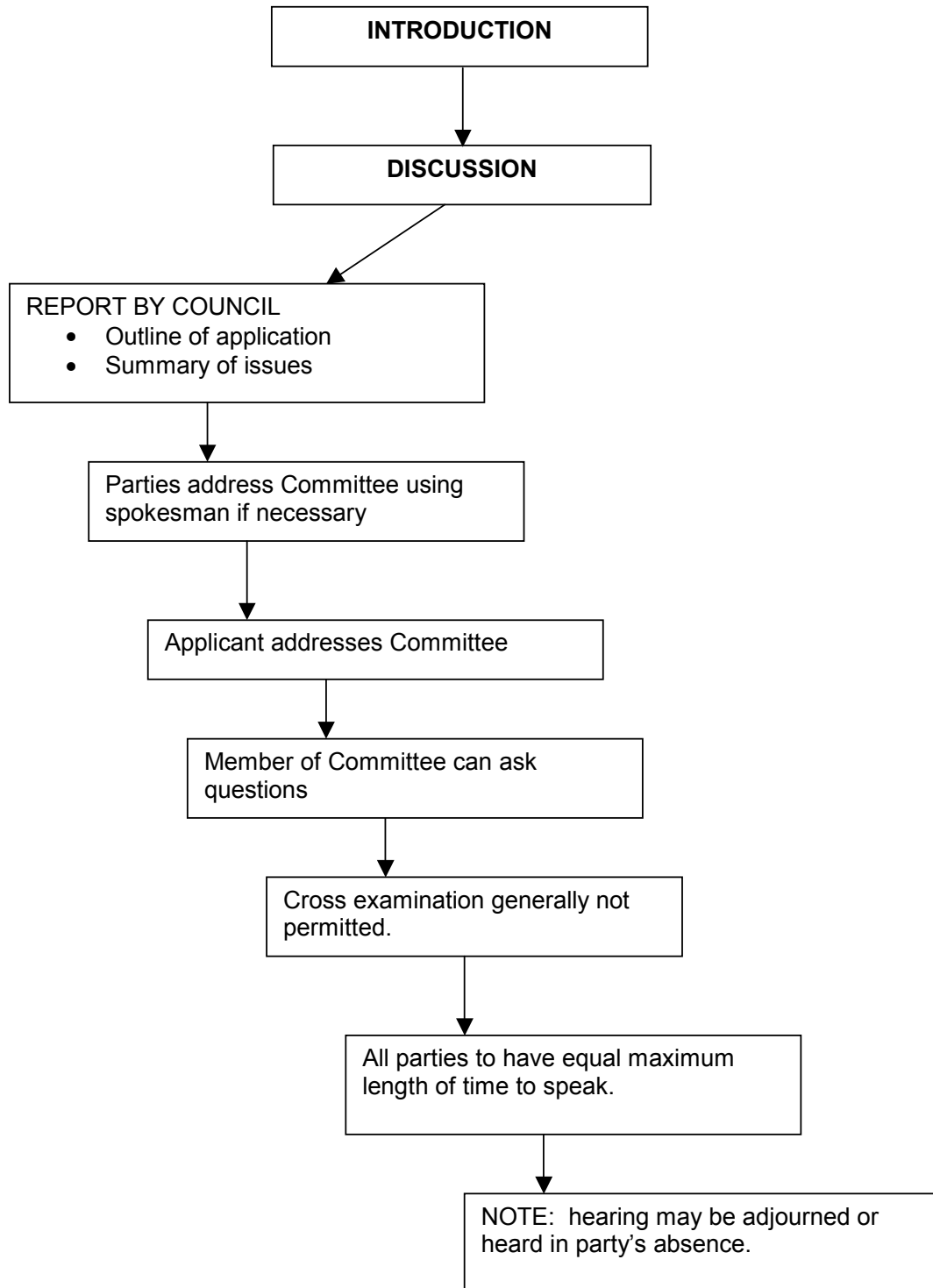
You should vacate the building in an orderly manner through the nearest available fire exit.

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 VARIATION OF A PREMISES LICENCE IN RESPECT OF 'SAXTYS CAFÉ BAR, 33 WIDEMARSH STREET, HEREFORD, HR4 9EA.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford City

1. Purpose

To consider an application for a variation of a premises licence in respect of Saxtys Café Bar, 33 Widemarsh Street, Hereford, HR4 9EA.

2. Background Information

Applicant	Edward Neville SYMONDS	
Solicitor	Gabb & Co	
Type of application: Variation	Date received: 31/03/08	28 Days consultation 28/04/2008

The advertisement for the premise has not been seen at this time.

3. Current Licence

The current licence allows: -

- An exhibition of a film
- A performance of live music
- Any playing of recorded music
- A performance of dance
- Other entertainment
- Facilities for Dancing
- Provision of late night refreshment
- Sale by retail of alcohol

As shown below: -

Monday-Wednesday: 10:00 - 00:00
 Thursday: 10:00 - 02:00
 Friday-Saturday: 10:00 - 03:00
 Sunday: 12:00 - 01:00

Non standard timings are: -

Sundays before a Bank Holiday Monday 12:00 - 03:00
 Christmas Eve finish time 02:00 (on Christmas Day)
 New Year's Eve finish time 04:00 (on New Years Day)
 Monday Thursday 10:00 am to 03:00 (on Good Friday)

In December: Monday - Wednesday 10:00 - 01:00, Thursdays 10:00 - 03:00, Fridays & Saturdays 10:00 - 04:00 and Sundays 12:00 - 01:00.

4. Summary of Application

There is no application to change the licensable activities shown on the premise licence. However the application requests to include areas not previously licensed. This includes the rear courtyard and outside the front of the building on the pavement.

The hours applied for, for these areas, are the same as the existing licence.

5. Removal of Existing Conditions

The application requests to remove the condition shown on the licence: -
All windows to the bar and entertainment area shall be kept closed after 00.00 hours Sundays to Thursdays and 01.00 hours Fridays and Saturdays.

6. 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 made representation and recommends that the application for music and films in the courtyard be refused on the grounds of the prevention of public nuisance.

Highway Authority

Whilst not a responsible authority this authority has commented upon the application.

Fire Authority.

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

Interested Parties.

The Local Authority has received no letters of representation in respect of the application, from interested parties.

7. Issues for Clarification

This Authority has not requested any clarification at this time.

8. 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

9. **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.

10. **Background Papers**

- a. Environmental Health & Trading Standards Comments
- b. Application Form
- c. 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 REVIEW OF A PREMISE LICENCE ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT OF 'THE HORSE & JOCKEY, 9-10 NEW STREET, ROSS ON WYE, HR9 7DA'.

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Ross on Wye

1. Purpose

To consider an application for a review of a premises licence in respect of 'The Horse & Jockey, 9-10 New Street, Ross On Wye, HR9 7DA'.

2. Background Information

Applicant	Mrs Janet ROBERTS 8 New Street, Ross on Wye, HR9 7DA	
Premise Licence Holder	Punch Taverns Plc Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF	
Solicitor	TLT	
Type of application: Review	Date received: 2/04/08	28 Days consultation 29/04/08

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

3. Current Licence

The current licence allows: -
A performance of live music
Any playing of recorded music
Facilities for similar entertainment
Dancing
Sale by retail of alcohol

At the times shown: -
Monday-Wednesday: 11:00 - 23:00
Thursday-Saturday: 11:00 - 00:00
Sunday: 12:00 - 22:30

The following non-standard timings apply to all licensable activities listed above: -

Friday, Saturday, Sunday and Monday of all Bank Holiday weekends, Thursday preceding Easter weekend, Christmas Eve, Boxing Day: An additional hour permitted at the end of normal licensing hours.

On New Year's Eve the permitted hours shall extend through from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

4. **Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Crime & Disorder
- Prevention of Public Nuisance

5. **The grounds for the review are stated by Mrs Roberts are: -**

I wish to request of the Licensing Authority:

1) PREVENTION OF PUBLIC NUISANCE

a) suspension of the pub's music licence and a responsibility put upon the Landlord to reduce the rowdiness of his customers (inside the pub) until it has been satisfactorily sound-proofed.

b) A restriction on drinking and smoking in the pub doorway and on the pavement outside the pub and my front door.

2) PREVENTION OF PUBLIC DISORDER

a) A responsibility put upon the Landlord to ensure customers do not behave in drunk, foul-mouthed and disorderly fashion on the pavement outside the pub and my home.

b) A responsibility put upon the Landlord to ensure customers are refused entry or further drink when they have clearly had enough - this, in the hope that customers will no longer vomit outside my front door.

6. **The information provided to support this application by Mrs Roberts states: -**

The voluntary limitation on noise emissions from the Horse and Jockey pub into my home was never very successful and has now broken down. Due to the recent change of personnel at Punch Taverns and loss of officers in the Environmental Health Dept the matter appears to have been dropped since no-one contacted me, as promised, to progress the matter of sound-proofing. In addition, the pub (in a residential area) has now become a very rowdy town-centre pub with fights, bad language, personal abuse (to me) by drunken people outside my home.

Recent instances of noise nuisance:

Music audible in my bedroom and preventing sleep: Sat 16/2/08, Sat 23/2, Sun 24/2, Sat 1/3, Sat 8/3, Thurs 13/3

Music audible in downstairs rooms - most evenings and/or afternoons

Loud yelling/shouting/laughing by customers, very audible downstairs Tues 11/3, Sun 24/2, Sat 23/2, Wed 20/1, Sat 16/2

Recent instances of customers drinking/smoking/being noisy outside pub and my home: Sat 9/2 two instances of loud noise o/s my front door; Sat 23/2 two instances c a dozen people at 9.30pm; Tue 4/3; 2/2 Sun 10/2 4 or 5 people, one with glass Of beer in hand, one sitting on my windowsill, much bad language; Mon 11/2 Fri 7/3 loud yelling o/s pub.

Recent instances of drunken disorderliness outside pub and my home:

One Jan evening. Two young girls fighting/swearing. When requested to go away, one told me "shut yer f ... ing face or I'll 'it yer, yer f ... ing old granny"

Sun 24/2 8.20pm, drunken customer, much swearing

Tue 4/3 Drunken man, shouting into the pub doorway.

Mon 10/3 4 drunken people, shouting, swearing, quarrelling o/s my front door. On asking them to go away, one woman said 'No, go call the police'. So I did. Incident No. 777S 100308. The officer confirmed he could hear the row over the phone.

Instances of piles of vomit immediately outside my front door (which is about 2 feet away from the pub door, cleared up by Landlady:

Sun 11/11, Mon 31/12

Example of one Saturday (2/2/08) becoming more and more typical:

4-10 pm - c 8pm. Alternate very loud customer noise and music audible in downstairs rooms.

8.15 - 8.25 pm Dog barking loudly o/s my front door. Opened it to investigate and found Landlady's partner in the pub doorway and a chap (dog owner?) with glass of wine in hand leaning against my wall/door and chatting to him. On my objecting, they all moved inside the pub. 8.30 - 9.40pm Loud music and customer noise in downstairs rooms with lots of shrieking young people outside my door c 9.35
9.40 - 12.00 Music audible everywhere incl. bedroom. Unable to sleep.

Analysis of noise nuisance and public disorder ref: The Horse & Jockey Pub.
Easter weekend: Fri 23/3 to Mon 24/3 2008

Friday: from 8pm to 11pm	Music with Repetitive Bass Beat (RBB) downstairs in my living room and kitchen) and in Bedroom. Managed to fall asleep c 11pm
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Saturday: from 1.20 - c3.00 pm	Intermittently, TV noise in living room and kitchen
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From 9pm - midnight	Music varying from quiet to loud plus RBB downstairs and in bedroom. Unable to sleep through it.
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Plus, intermittently, loud customer noise downstairs.

Sunday:	A dreadful day with no peace at all for almost 9 hours
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from 2.15 - c 6pm	Very loud customer noise (yelling, shouting, cheering, a football match?) downstairs. Also, in street outside my front door on three occasions, noisy customers smoking and drinking.
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From 6pm -c11.00pm Music varying from quiet to loud, downstairs and in bedroom plus customer noise downstairs and yelling outside the pub.

Monday: from 5 - c6pm and 8-c9pm Loud RBB and 'droning' downstairs in kitchen and l/room.

From 9,15- c 10.30+ pm. quieter droning with RBB. Managed to fall asleep through it.

7. Summary of Representations

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

West Mercia Police, Environmental Health & Fire Authority

No representation has been received from these.

Interested Parties.

Three letters have been received from local residents support the reviewing of the premise licence.

Five letters have been received from local residents supporting the DPS of the premises and against the review.

One letter was received against the review but contained no house number.

Two letters were received which were considered not to be relevant representations.

8. Committees Responsibility

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- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

9. Options: -

- Take no action
- Take any of the following steps: -
 - (a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;

(e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

10. **Background Papers**

- a. Letters from Interested parties
- b. Application Form
- c. Location plan

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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.

REVIEWS

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22

- A number of reviews may arise in connection with crime that is not directly connected with licensable activities
- Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.
- Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52

- (11) A determination under this section does not have effect—
- (a) until the end of the period given for appealing against the decision, or
 - (b) if the decision is appealed against, until the appeal is disposed of.

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.