

# A G E N D A

## Regulatory Sub Committee

Date: **Tuesday, 4th November, 2008**

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Time: **9.30 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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**Herefordshire Council**



# AGENDA

## for the Meeting of the Regulatory Sub Committee

To: Councillors CM Bartrum, 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 'BLACK HORSE COACH HOUSE, 74 SOUTH STREET, LEOMINSTER, HR6 8JF'

To consider an application for a variation of a premises licence in respect of Black Horse Coach House, 74 South Street, Leominster, HR6 8JF.

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<b>6. GAMBLING ACT 2005 - REVIEW OF 10 PREMISES LICENCES</b>	7 - 10
To consider revocation of 10 Premise Licences issued under the Gambling Act 2005.	
<b>7. PREMISES LICENCE REVIEW 'STOKES STORES, 4 HOARWITHY ROAD, PUTSON, HEREFORD, HR2 6HA'</b>	11 - 16
To consider an application for a review of a premises licence in respect of Stokes Stores, 4 Hoarwithy Road, Putson, Hereford, HR2 6HA.	
<b>8. PREMISES LICENCE REVIEW 'SOMERFIELD, DISHLEY STREET, LEOMINSTER, HR6 8PX.'</b>	17 - 22
To consider an application for a review of a premises licence in respect of Somerfield, Dishley Street, Leominster, HR6 8PX.	
<b>9. PREMISES LICENCE REVIEW ' MCCOLL'S, 7 THE OVAL, HEREFORD, HR2 7HG.'</b>	23 - 28
To consider an application for a review of a premises licence in respect of McCOLL's, 7 The Oval, Hereford, HR2 7HG.	

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- 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.

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A public telephone is available in the reception area.

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- 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.

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## **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**

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

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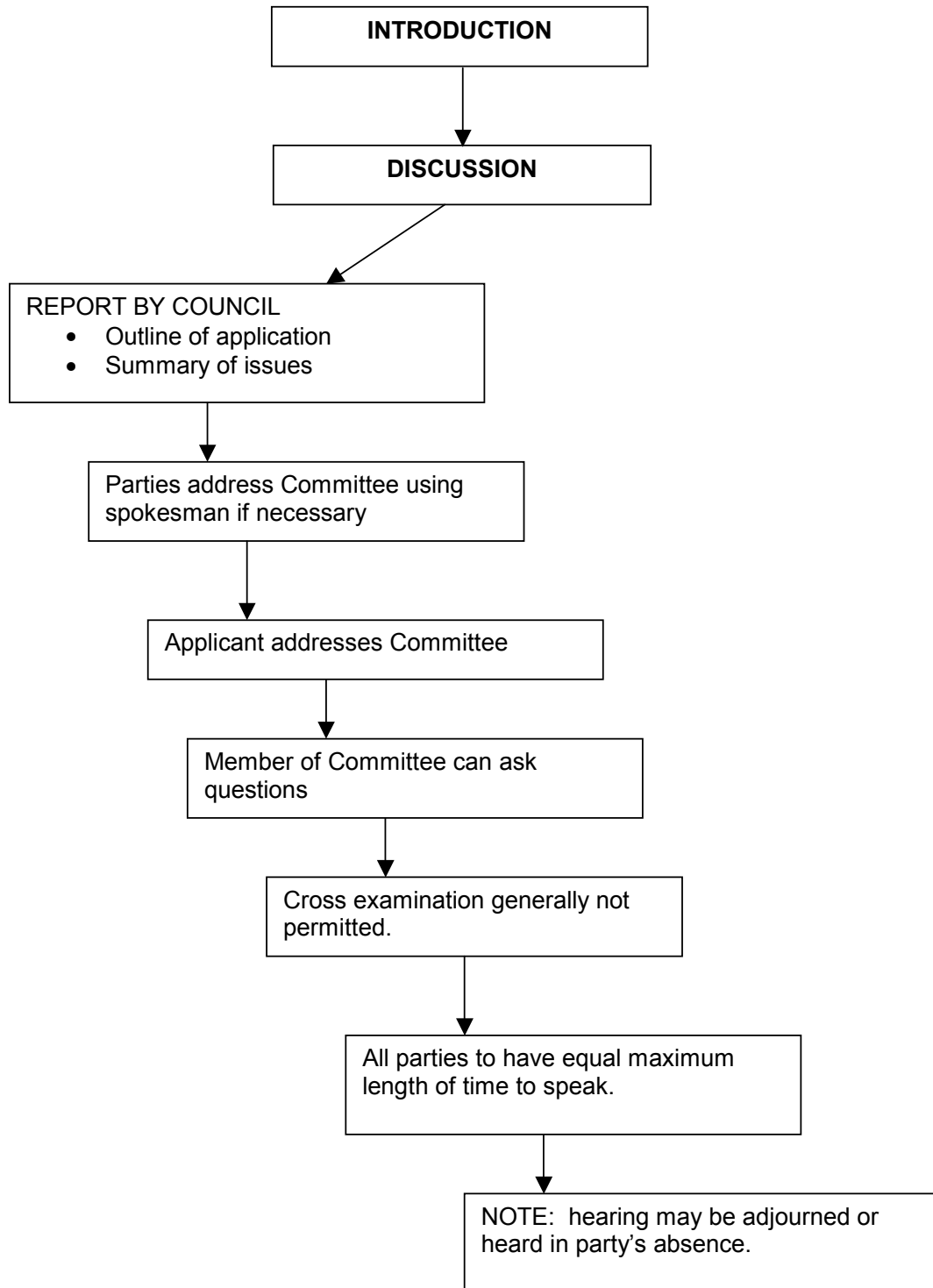
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Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.





## LICENCING HEARING FLOW CHART





## APPLICATION FOR VARIATION OF A PREMISES LICENCE IN RESPECT OF 'BLACK HORSE COACH HOUSE, 74 SOUTH STREET, LEOMINSTER, HR6 8JF.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Leominster

### 1 Purpose

To consider an application for a variation of a premises licence in respect of Black Horse Coach House, 74 South Street, Leominster, HR6 8JF.

### 2 Background Information

Applicant	<b>Newport Pub Company Ltd, Unit 5c, Ridgeway Court, Grovebury Road, Leighton Buzzard. LU7 4SR.</b>	
Solicitor	<b>Poppleston Allen, 37 Stoney Street, The Lace Market, Nottingham. NG1 1LS.</b>	
Type of application: <b>Variation</b>	Date received: <b>09/09/08</b>	28 Days consultation <b>07/10/08</b>

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

### 3 Current Licence

The current licence allows: -  
Sale by retail of alcohol

As shown below: -

- 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).

### 4 Summary of Application

The licensable activities applied for are: -

Live Music, Recorded Music, Performance of Dance, Provision of Facilities for music and dancing, (*All Indoors*) and Sale by Retail of Alcohol – Extended Hours (On & Off premise). For the following hours: -

Monday – Thursday	10:00 – 00:00
Friday – Saturday	10:00 – 01:00
Sunday	12:00 – 00:00

5. The following hours have been applied for in respect of late night refreshment  
(Indoors): -  
    Sunday – Thursday 23:00 – 00:00  
    Friday – Saturday 23:00 – 01:00
6. The premises to be open to the public for a further 30 minutes after the times shown at 4 above.

7. **Non Standard hours**

There is an application for 'non-standard' hours in respect of all the licensable activities: -

On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on New Years Day.

8. **Removal of Existing Conditions**

The application does not request the removal of any of the condition shown on the licence.

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 made representation and recommends that the hours applied for be reduced to 2300 hours in the week and until midnight on Friday and Saturday.

They request 6 conditions in relation to public nuisance, 7 in respect of public safety and 3 regarding 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 10 letters of representation in respect of the application, from interested parties, although 2 of them were out of time.

These address all 4 of the Licensing Objectives.

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. Environmental Health & Trading Standards Comments
- b. Public Representations
- 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.





**CONSIDERATION OF REVOCATION OF 10 PREMISE  
LICENCES ISSUED UNDER THE GAMBLING ACT 2005****Report By: Head Of Environmental Health And Trading Standards****Wards Affected:**

Countywide

**1. Purpose**

To consider revocation of 10 Premise Licences issued under the Gambling Act 2005.

**2. Legislation****The Gambling Act 2005****Section 184 - Annual fee**

(1) The holder of a premises licence—

(b) shall pay an annual fee to the licensing authority before each anniversary of the issue of the licence.

**Section 193 - Revocation for failure to pay fee**

(1) Where the holder of a premises licence fails to pay the annual fee in accordance with regulations under section 184 the licensing authority shall revoke the licence.

(2) But the licensing authority may disapply subsection (1) if they think that a failure to pay is attributable to administrative error.

**The Gambling (Premises Licence Fees) (England and Wales) Regulations 2007****Section 8 - Annual fee for premises licence**

(1) The amount of the annual fee for a premises licence shall be determined by the relevant licensing authority.

**3. Background**

The premises listed below were all issued with premises licences under the Gambling Act 2005 and these licences came into force on 1<sup>st</sup> September 2007. Accordingly the annual fee became payable prior to 1<sup>st</sup> September 2008. The premises listed below have not to date paid these annual fees.

The Licensing Authority are not required to notify licence holders of the annual fee, as the onus rests with the holder to ensure that the fee has been paid. However, despite this the licensing team has written to all the below premises and reminded them to pay their fee, so that they can retain their licence. Should this not be paid, they have been reminded that the Council will have no alternative but to revoke their licence.

**Type of Licence: Betting premises licence (in respect of premises other than a track) Fee £512 per annum**

**Premises: -**

William Hill, 42B Holme Lacy Road, Hereford, HR2 6BZ

William Hill, 4A St Peters Street, Hereford, HR1 2LA

William Hill, 3 Broad Street, Ross on Wye, HR9 7DZ

William Hill, 25/27 High Street, Leominster, HR6 8LZ

Leominster Bookmakers, 2-3 Chapel Walk, Burgess Street, Leominster. HR6 8DE

Racing, 49 High Street, Bromyard. HR7 4AE

**Type of Licence: Adult Gaming Centre. Fee £799 per annum**

**Premises: -**

Symonds Yat Leisure Park, Symonds Yat West. HR9 6BY

First Motorway Services Ltd, Magor Motorway Services Area, M4 Magor, Caldicot.  
NP26 3YL

**Type of Licence: Family Entertainment Centre. Fee £661 per annum**

**Premises: -**

Symonds Yat Leisure Park, Symonds Yat West. HR9 6BY

Ritz Snack Bar and Amusements, 47 Commercial Road, Hereford. HR1 2BJ

**4. Recommendation**

**That the current premise licences be revoked if the fees are not paid prior to today's hearing, in accordance with Section 193 of the Gambling Act 2005.**

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

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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.

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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.

**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 'STOKES STORES, 4 HOARWITHY ROAD, PUTSON, HEREFORD, HR2 6HA'.**

**Report By: Head Of Environmental Health And Trading Standards**

**Wards Affected:**

St. Martins and Hinton

**1. Purpose**

To consider an application for a review of a premises licence in respect of Stokes Stores, 4 Hoarwithy Road, Putson, Hereford, HR2 6HA.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Mrs Christine Ann Merrett, 20 Thompson Place, Whitecross, Hereford. HR4 0JP.</b>	
Solicitor	<b>N/K</b>	
Type of application:	Date received:	28 Days consultation
<b>Review</b>	<b>11 September 2008</b>	<b>9 October 2008</b>

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: -

Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no non-standard timings.

**4. Summary of Application**

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

- Prevention of public nuisance
- Protection of children from harm

5. **The grounds for the review are: -**

The premise has been the subject of eight separate test purchase operations since the start of the Licensing Act in November 2005. On three occasions sales to under age persons have occurred.

6. **The information provided to support this application is: -**

On 6 September 2006, Herefordshire Council's trading standards section and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

On 15 December 2006 Herefordshire Council's trading standards section and the West Mercia Constabulary carried out a further test purchase operation at the premise.

A 15 year old female was served alcohol without being challenged about her age.

The person who made the sale was issued with a fixed penalty notice.

On the 12 August 2008 Herefordshire Council's trading standards section and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old female was served alcohol without being challenged about her age.

The person who made the sale was issued with a fixed penalty notice.

The premise states that they operate the Challenge 21 policy.

7. **Summary of Representations**

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

**West Mercia Police**

Have since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee a number of conditions which may be applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

No representations have been received.

8. **Committee's 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: -**

- 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. Police Representation
- b. Trading Standard 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.**

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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 Authority's 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 stated: 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.



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**Report By: Head Of Environmental Health And Trading Standards**

**Wards Affected:**

Leominster

**1. Purpose**

To consider an application for a review of a premises licence in respect of Somerfield, Dishley Street, Leominster, HR6 8PX.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Somerfield Stores Ltd, Somerfield House, Whitchurch Lane, Bristol, BS14 0TJ.</b>	
Solicitor	<b>Blake Laphorn, New Kings Court, Tollgate, Chandler's Ford, Eastleigh, Hampshire, SO53 3LG.</b>	
Type of application:	Date received:	28 Days consultation
<b>Review</b>	<b>11 September 2008</b>	<b>9 October 2008</b>

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: -  
Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no Non-Standard Timings.

**4. Summary of Application**

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

- Prevention of public nuisance
- Protection of children from harm

**5. The grounds for the review are: -**

The premise has been the subject of three test purchase operations since December 2007 and has sold to under age persons on two of these occasions.

6. **The information provided to support this application is: -**

On 28 December 2007, Herefordshire Council's trading standards section and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

On 20 August 2008, Herefordshire Council's trading standards section and the West Mercia Constabulary carried out a further test purchase operation at the same premise.

A 16 year old female was again served alcohol without being challenged about her age.

The person who made the sale was issued with a fixed penalty notice.

The premise states that they operate the Challenge 25 policy.

7. **Summary of Representations**

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

**West Mercia Police**

Have since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee a number of conditions which may be applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

No representations have been received.

8. **Committee's 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: -**

- 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. Police Representation
- b. Trading Standard 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.

**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 Authority's 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 stated: 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 'McCOLL's, 7 THE OVAL, HEREFORD, HR2 7HG'.**

**Report By: Head Of Environmental Health And Trading Standards**

**Wards Affected:**

Belmont

**1. Purpose**

To consider an application for a review of a premises licence in respect of McCOLL's, 7 The Oval, Hereford, HR2 7HG.

**2. Background Information**

Applicant	<b>Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.</b>	
Premise Licence Holder	<b>Martin McColl Ltd, Martin McColl House, Ashwells Road, Brentwood, Essex. CM15 9ST</b>	
Solicitor	<b>N/K</b>	
Type of application:	Date received:	28 Days consultation
<b>Review</b>	<b>11 September 2008</b>	<b>9 October 2008</b>

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: -

Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no non-standard timings.

**4. Summary of Application**

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

- Prevention of public nuisance
- Protection of children from harm

**5. The grounds for the review are: -**

The premise has been the subject of eight separate test purchase operations since the start of the Licensing Act in November 2005. On one of these occasions a sale was made and on another occasion, 2 sales were made.

6. **The information provided to support this application is: -**

On 4 May 2007, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol without being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

On 12 August 2008 Herefordshire Council's trading standards service and the West Mercia Constabulary carried out a further test purchase operation at the premise.

On this occasion a 16 year old female was again served alcohol without being challenged about her age.

On the same day in August 2008 and immediately after the first test, another 16 year old was served with alcohol without being challenged about her age.

The person who made the sale was again issued with a fixed penalty notice.

The person who made this sale was a personal licence holder.

The premise states they operate the challenge 25 policy.

7. **Summary of Representations**

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

**West Mercia Police**

Have since provided additional evidence in support of the application.

**Trading Standards**

Who have a responsibility for the protection of children from harm have made representation and have suggested to the Committee a number of conditions which may be applied to the premise licence.

**Environmental Health, Fire Authority and Interested Parties.**

No representations have been receive..

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  - (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. Police Representation
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- for prostitution or the sale of unlawful pornography;
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