

A G E N D A

Regulatory Committee

Date: **Tuesday, 15th February, 2005**

Time: **10.00 a.m.**

Place: **The Council Chamber, Town
Hall, St Owen St, Hereford**

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

For any further information please contact:

*Pete Martens, Members' Services, Tel:
01432 260248, Fax: 01432 261809*

e-mail: pmartens@herefordshire.gov.uk

**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Committee

To: Councillor R.I. Matthews (Chairman)
Councillor Brig. P. Jones CBE (Vice-Chairman)

Councillors Mrs. S.P.A. Daniels, G.W. Davis, D.J. Fleet, J.W. Hope, T.W. Hunt,
G. Lucas, J.W. Newman, R. Preece, D.C. Taylor and P.G. Turpin

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY) To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
3. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda.	
4. MINUTES To approve and sign the Minutes of the meeting held on 14th December, 2004.	1 - 6
5. PROCEDURAL ARRANGEMENTS To note the procedural arrangements for the meeting.	7 - 8
6. APPLICATION FOR PUBLIC ENTERTAINMENTS LICENCE - RADNOR AND WEST HEREFORDSHIRE HUNT BALL - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 To consider an Occasional Public Entertainment application that requests a finishing time later than the current policy of 0100 hours. Ward:	9 - 20
7. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CS5 IN THE PARISH OF CASTLE FROME To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert footpath CS5 in the parish of Castle Frome. Ward: Frome	21 - 24
8. THE LICENSING ACT 2003 To consider the attached report and receive an update about the latest	25 - 36

developments in respect of the Licensing Act 2003.

Wards: County-wide

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the next item will not be, or is likely not to be, open to the public and press at the time they are considered

RECOMMENDATION: That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below

9. **APPLICATION FOR DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

37 - 48

To consider an application for a dual drivers licence.

This item discloses information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority)

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- 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.
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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

**MINUTES of the meeting of Regulatory Committee held at
The Council Chamber, Brockington, 35 Hafod Road,
Hereford on Tuesday, 14th December, 2004 at 2.00 p.m.**

Present: Councillor R.I. Matthews (Chairman)
Councillor Brig. P. Jones CBE (Vice Chairman)

Councillors: Mrs. S.P.A. Daniels, G.W. Davis, D.J. Fleet, T.W. Hunt,
G. Lucas, R. Preece, D.C. Taylor and P.G. Turpin

In attendance: Councillors P.J. Edwards and P.E. Harling (ex-officio)

24. APOLOGIES FOR ABSENCE

Apologies were received Councillor JW Hope and Councillor JW Newman.

25. NAMED SUBSTITUTES (IF ANY)

Councillor JHR Goodwin for Councillor JW Hope

26. DECLARATIONS OF INTEREST

There were no declarations of interest.

27. MINUTES

RESOLVED: That the minutes of the meeting held on 30th November 2004 be approved as a correct record and signed by the Chairman

**28. REPORT ON A PROPOSAL TO CHANGE PUBLIC ENTERTAINMENT LICENCE
OPENING HOURS CONDITIONS/REGULATIONS FOR CHRISTMAS EVE 2004 -
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

A report was presented by the Licensing Manager suggesting that the Head of Environmental Health and Trading Standards be authorised to vary the hours of public entertainment licence closing times for Christmas Eve 2004. She advised that Public Houses were able to open until 2345 but that clubs could only open until 2359 under the Councils licensing arrangements. She advised that this gave limited dispersal time for clients attending pubs and clubs and she suggested that premises be permitted to remain open for the purpose of public entertainment up to 0100 on Christmas morning. PC Thomas of West Mercia Constabulary confirmed that such an arrangement would considerably help the Police in dealing with any potential public order problems if the closing time of pubs and clubs was staggered to permit a gradual dispersal of those attending. The Committee noted that there had been no complaints about noise or nuisance in previous years when similar arrangements had been introduced and agreed with the proposals of the Licensing Manager.

RESOLVED THAT the Head of Environmental Health and Trading Standards be authorised to permit premises to remain open for the purpose of public entertainment up to 01:00 after receiving recommendations from the Police, Fire Brigade and Environmental Health

29. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for hearing appeals to ensure that the laws of natural justice were followed to give a fair hearing to the applicants and to the Licensing Officers.

30. PUBLIC ENTERTAINMENT LICENSING APPLICATION TO VARY THE CHRISTMAS EVE 2004 OPENING HOURS FOR TIME, 100 COMMERCIAL ROAD, HEREFORD BEYOND THE HOURS SET BY COUNCILS STANDARD CONDITIONS AND TO PERMANENTLY REMOVE CHRISTMAS DAY CLOSING HOUR RESTRICTIONS - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

The Licensing Manager presented the report of the Head of Environment, Health and Trading Standards in respect of an application from Time Nightclub to vary the opening hours to 0200 on Christmas Morning 2004 instead of the Council's standard licensing condition of midnight on Christmas Eve 2004. She outlined the application and provided the Committee with details of the Council's Policies for granting Public Entertainment Licenses and said that the finishing time was in place to protect the local community and individuals from disturbance from events involving music, singing and dancing. She said that in 2003 the Committee had decided on a finishing time of 0100 Christmas Morning for such premises. She added that the Fire Authority and the Police had no objection to the application and that the area Environmental Health Manager had also raised no objections. She reminded the Committee that last year the applicants had won an appeal in the Magistrates Court for the license to be varied to 0200.

The Solicitor acting on behalf of the applicants said that the finishing time of 0200 had been applied for by her clients for commercial reasons to enable the differential to be maintained between the nightclub and the finishing time of pubs, which had been increased to 2345 on Christmas Eve. She said that the later finishing time would also enable a more gradual dispersal of customers during the evening. She advised that her clients had already been granted an extension of their liquor licence to 0200 and that they wanted the Public Entertainments Licence to tie in with this. PC Thomas said that the Police were in favour of a later finishing time to assist with the dispersal of the public from the pubs and clubs on Christmas Eve.

At the conclusion of the hearing the applicants, the licensing officers and the police withdrew from the meeting whilst consideration was given to the application. The Committee noted that no complaints had been made about noise or nuisance disturbance for local residents last year and decided that the application should be granted.

RESOLVED THAT the request for the Public Entertainment License be varied with a finishing time on 0200 on Christmas morning 2004 in respect of Time Nightclub, 100 Commercial Road, Hereford be approved

31. IMPLEMENTATION OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY FOR COMMERCIAL ROAD AREA OF HEREFORD CITY - LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

The Licensing Manager presented the report of the Head of Environmental Health and Trading Standards to consider

- (a) the adoption of the licensing policy to be used by Herefordshire Council from 7 February 2005 in respect to carrying out its functions under the Licensing Act 2003; and
- (b) the adoption of a special licensing policy for the cumulative impact of premises in the Commercial Road area of Hereford city.

She outlined the legislation covered by the Licensing Act 2003, the consultations which had take place with the Police and Fire Authorities and other interested parties and presented the options that were available to the Council. She also said that the proposals had been presented at Local Area Forums, to Town and Parish Councils, to the holders of Public Entertainment Licences and also been advertised through press releases and news items on local radio. The Committee and the Head of Environmental Health and Trading Standards thanked the officers for their hard work in preparing the proposals and undertaking the consultation process.

RESOLVED THAT the licensing policy and the cumulative impact policy for Commercial Road, Hereford under the provisions of the Licensing Act 2003 and guidance issued under section 182 of the Licensing Act 2003 set out in the report of the Head of Environment Health and Trading Standards be adopted

32. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE, DRIVER AND OPERATOR CONDITIONS. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) LICENCE ACT 1976

The Licensing Manager presented a report about proposed revised conditions for hackney carriage and private hire licences. She said that a review had taken place as part of a rolling programme of licensing and also as requested by the taxi trade. The new licence conditions were a combination of the previous conditions, experience gained since 1998, the best practice of other licensing authorities and recommendations from the trade. All appropriate licence holders had been consulted along with the local Taxi Association Steering Group. An advert was placed in the Hereford Times inviting comments and all Members of the Council were consulted.

RESOLVED THAT the proposed new licence conditions set out in the report of the Head of Environmental Health and Trading Standards in respect of the following be approved:

- private hire vehicle operators;
- dual drivers (private hire and hackney carriage); and
- private hire and hackney carriage vehicles

EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED: That under Section 100 (A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

33. DETERMINATION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

The Licensing Manager presented a report about an application for the renewal of a dual hackney carriage and private hire drivers license. She said that the application required the applicant to disclose any criminal convictions and police cautions and she outlined those that had been disclosed. In the light of the information provided by the applicant the license had not been issued and instead referred to the Committee for consideration.

Having considered all the facts put forward by the Licensing Manager and the applicant, the Committee decided that Licence should remain suspended until 1st

April 2005.

The meeting ended at 4.05 p.m.

CHAIRMAN

Document is Restricted

REGULATORY COMMITTEE
LICENSING APPEAL PROCEDURE

1. Introduction by Clerk to the Panel.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Panel or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Clerk to the Panel, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Panel. When the additional information has been furnished, they should all be asked to leave again.
8. The Panel can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is a refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second application the same way.

**PUBLIC ENTERTAINMENTS LICENSING
DETERMINATION TO GRANT A LICENCE FOR
RADNOR AND WEST HEREFORDSHIRE HUNT BALL
ON SATURDAY 19TH FEBRUARY 2005 IN A MARQUEE
AT THE OLD CINEMA, SHOBDON HEREFORDSHIRE.
LOCAL GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1982**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Shobdon

Purpose

1. To consider a n Occasional Public Entertainment application that requests a finishing time later than the current policy of 01.00 hours.

Background

2. Local Authorities are, when licensing public entertainment events, permitted to make the licence conditional.

The purpose of conditions attached to and forming part of a licence broadly fall into four categories.

- a) Securing the safety of everyone present: this includes fire safety and some health and safety matters
- b) Securing adequate access to the premises in emergencies
- c) Ensuring adequate sanitary arrangements in the premises and
- d) Preventing nuisance and disturbance in the neighbourhood.

The holder of an Entertainment's Licence may at any time apply to the Authority for such variations of the terms, conditions and restrictions on a subject to which the licence is held.

The Authority may:-

- a) Make the variations specified in the application
- b) Make such variations as they think fit, including subject to the four categories above. Impose terms, conditions or restrictions other than those specified or

Further information on the subject of this report is available from Suzanne Laughland, Licensing Manager on
(01432) 261675

- c) Refuse the application

Conditions

3. Amongst the various Conditions and Regulations there are specific ones which related to finishing times for events.

Condition 4.1 of the Standard Conditions for Licensing of Premises for Public Entertainment.

Premises licensed for public entertainment shall only be opened and used for any of the said purposes on such days and during such hours as the Licensing authority specifies in the schedule to the licence conditions.

The Regulations (Standard Conditions) of the Council specify the opening times of entertainment establishment as follows:-

11.00 until 01.00 the following day Monday to Saturday	In respect of premises that <u>do not</u> have the benefit of a liquor licence under the Licensing Act 1964
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The application for deviation from policy

4. Mr M J Williams and Mrs S Gardiner on behalf of the Radnor and West Herefordshire Hunt requests a variation of the conditions to extend the opening entertainment hours from 01.00 to 03.00, the intended venue for this event is a industrial building with marquee lining at The Old Cinema, Shobdon on Saturday 19th February 2005.

Issues

5. The main cause of concern to the Police and ourselves is the potential for disturbance to others. The 01.00 hours finishing time is a policy designed to limit the intrusive effects of events and has worked well over the years supported by and with the co-operation of the police.
6. This is a one off event, we have no problem with granting a licence until 01.00 hours, whether this event should be allowed to finish later than 01.00 hours is the matter for consideration.
7. The applicants have applied an been granted an occasional liquor licence until 02.00am
8. The Council in the past has dealt with such applications for deviation from policy and to allow many of them to terminate at times later than the 01.00 hours but impose special conditions designed to minimise the chances of nuisance occurring. (The special conditions imposed can be found in appendix 1)
9. The Police were consulted and state they have no objections.

Further information on the subject of this report is available from Suzanne Laughland, Licensing Manager on (01432) 261675

10. The Fire Brigade were consulted and state

Access to the performance area for all emergency vehicles should be maintained at all times.

Egress from the performance site should be maintained so that the audience and players can disperse away in the event of an accident.

Receptacles should be provided for rubbish.

Any props or materials used in the production should be non-flammable.

A Fire Risk Assessment should be carried out to identify any risks and control measures put in place. This should include the provision of fire fighting equipment.

Recommended follow guidance notes on fire precautions in Tents and Marquees.

Options

- To grant the extended hours.
- To grant the extended hours and impose conditions.
- To refuse the extended hours.
- To come to some other conclusion.

Annex 1

Public Entertainment's Special Conditions

Annexe for Occasional Licences

1. Police & Fire Officer Recommendations

To comply with any recommendations made by the police or the fire officer in particular the number of stewards specified

2. Car Parking

Adequate car parking facilities shall be made available to the satisfaction of the Licensing Authority, with stewards being appointed where necessary to control car-parking arrangements.

3. Measures to minimise noise nuisance

The Licensee(s) shall make contact with the Environmental Health Pollution Area Manager before the event commences and discuss with him measures required to prevent noise nuisance occurring. Those measures shall be agreed with the Area Manager and implemented before and during the event.

4. Notification of event to nearby residents

The Licensee(s) shall take all reasonable steps to ensure that any residents who may be affected by noise emanating from the event or disturbed by vehicles entering and/or leaving the event, are given sufficient information regarding the event and such information shall be to the satisfaction of the Environmental Health Pollution Area Manager.

5. Means of contacting the Licensee(s) during the event

The telephone number of a Licensee or some other nominated person who has control of the event shall be given to the Environmental Health Pollution Area Manager before the event commences and that the person(s) shall be contactable during the course of the event.

6. Electrical Certificates

An electrical certificate shall be forwarded to the Licensing Officer before the event commences. An inspection should take place prior to the event by a competent electrician to determine whether the electrical installation conforms to legal and any industry-recognised standards. A certificate should be provided to this effect. If a generator is to be used appropriate safety Certificates shall be forwarded prior to the event.



**WEST MERCIA
CONSTABULARY**
TOGETHER - WORKING FOR SAFETY AND JUSTICE

Licensing Unit
Hereford Police Station,
Bath Street, Hereford, HR1 2HT
Lo-Call Tel: 08457 444888 Ext: 4732
Direct Dial 01432 347132

Fax: 01432 347148
Email: stephen.thomas@westmercia.pnn.police.uk

Our Ref: ST/AW
Your Ref

31 JANUARY 2005

Mrs J Acaster
Licencing Officer
Herefordshire Council
Unit 10
Blackfriars Street
HEREFORD
HR4 9HS

Dear Mrs Acaster

APPLICATION FOR AN OCCASIONAL PEL
19 FEBRUARY, 2005 - 8pm-2am
THE OLD CINEMA, SHOBDON, LEOMINSTER

We write to confirm there are no police objections to the above application.

Yours faithfully

Stephen Thomas
clerk

ST S THOMAS
PC697
LICENCING DEPT.



Awarded for excellence

Policing in Herefordshire, Shropshire, Telford & Wrekin and Worcestershire



INVESTOR IN PEOPLE



Hereford and Worcester Combined Fire Authority

Hereford and Worcester Fire Brigade

West District, St. Owen Street,
Hereford HR1 2JW

File

D.J. O'Dwyer QFSM, MA, DMS, MIFire E
Chief Fire Officer / Chief Executive

Environmental Health & Trading
Standards
PO Box 233
Bath Street
Hereford
HR1 2ZF

Telephone 01432 274561 Fax: 01432 270298

Your Reference

My Reference D23/98969/GKB/kl/Old Cinema

Please ask for Station Officer Blanch

For the attention of Mrs Acaster

Date 19 January 2005

Dear Madam

**THE OLD CINEMA, SHOBDON, LEOMINSTER
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

Further to the application for an Occasional Public Entertainment Licence this Fire Authority has no objection for the granting of the licence.

The maximum number of persons allowed on the premises should be 250 with 3 stewards who should be aware of their duties in the event of an emergency.

Should you require any additional advice, please do not hesitate to contact me.

Yours faithfully

FIRE SAFETY OFFICER



"Hereford and Worcester Combined Fire Authority
will provide a professional and dedicated Fire Brigade
responsive to visitors and residents of
Herefordshire and Worcestershire."

F:\Admin\FIRESAFE\Old Cinema.doc

APPLICATION FOR AN OCCASIONAL LICENCE
AND/OR A SPECIAL ORDER OF EXEMPTION

COURT SITS
 AT 10 AM

Herefordshire Magistrates' Court

Full name of applicant: **NEIL REID-WARRLOW**
 Name of licensed premises or club, address, and telephone number: **THE CRAVEN ARMS HOTEL**
SHEEPSBURY ROAD
CRAVEN ARMS SY79QJ
01522 673331

POSTAL APPLICATION
 FRIDAY
 7.1.05

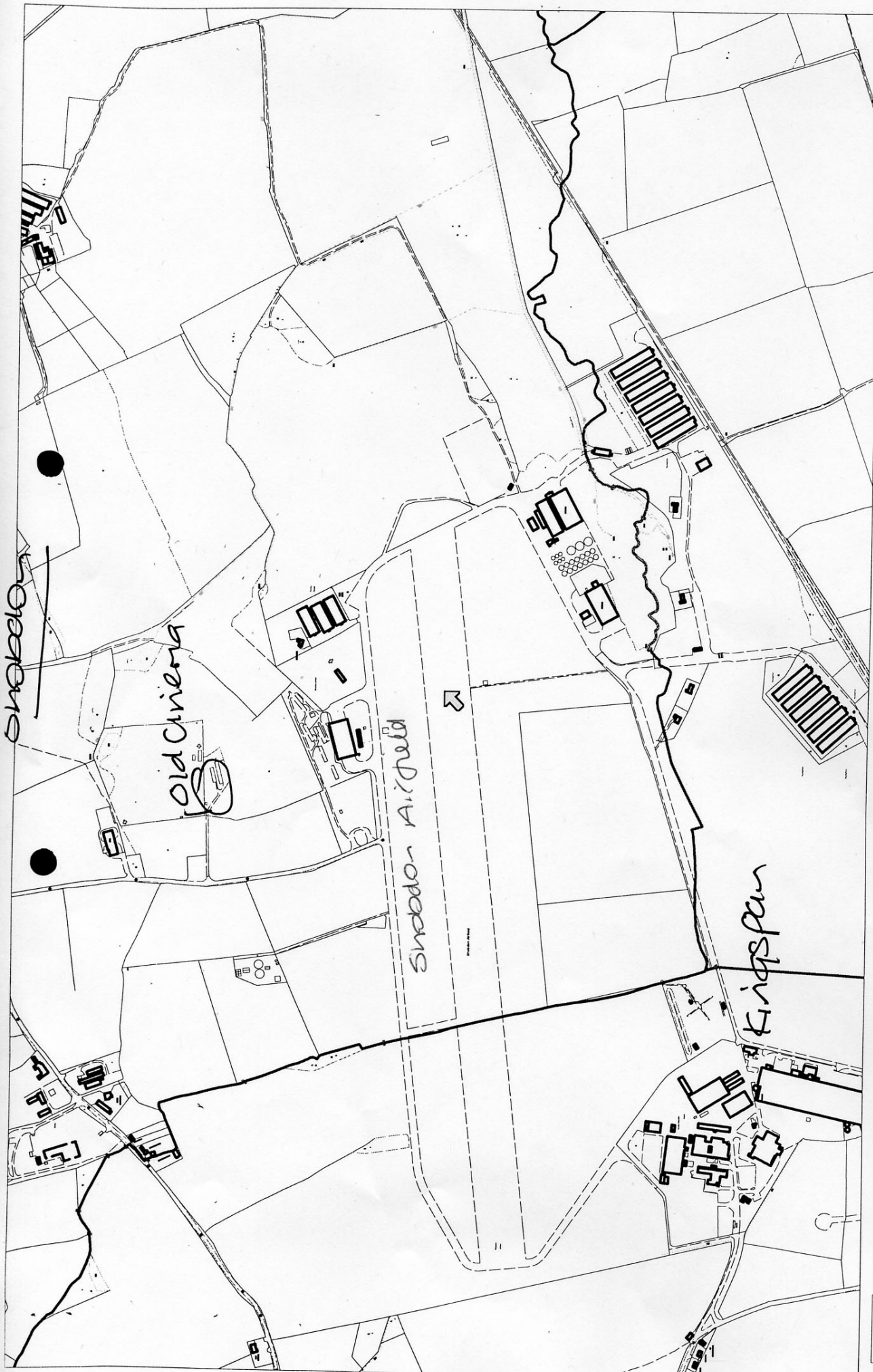
SHALL ATTEND COURT TO MAKE THE APPLICATION(S) ON

Occ. Lic. or S. Order	Where function is being held	Day and date of function	Duration of function		Licensed hours applied for		Description of function Number attending Name of organiser and organisation Private or public function
			From	To	From	To	
cc. lic.	THE OLD CINEMA SHORDON LEOMINSTER HERFS	19 TH FEBRUARY 2005 SATURDAY	19 30	03 00	19 00	02 00	1. RAJNEE + WEST HEREFORD HUNT BALL 2. 350 3. MICHAEL WILLIAMS, R.W.H.H. 4. PRIVATE (TICKET ONLY)
							1. <i>Magistrate</i> 2. <i>29/11</i>
							1. GRANTED 2. FOR YOUR INFO

For Office Use Only

See 7/1
 Read 25.12.04

FORE COMPLETING THIS FORM
 PLEASE READ IMPORTANT NOTES
 VERLEAF



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 IT Services Division,
 Thorn Office Centre,
 Holme Lacy Road,
 Rotherwas,
 Hereford, HR2 6JT,
 Tel: 01432 260160
 Email: helpdesk@herefordshire.gov.uk



Map Location Title
Scale 1:



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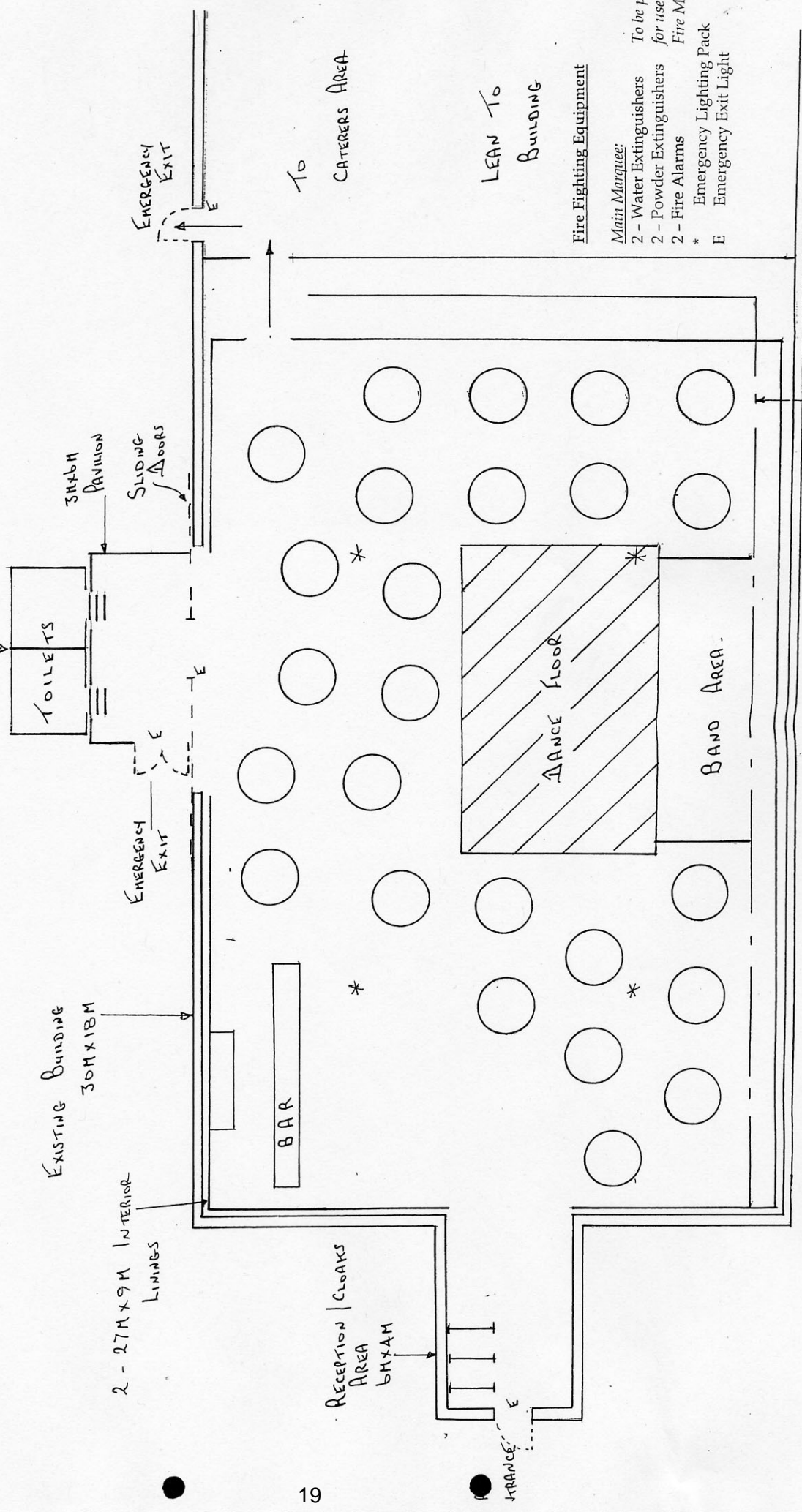
At THE CONVENIENCE COMPANY'S SHOWROOM.

BURGOYNES
CONSULTANTS LTD

SCALE:
 DISTRIBUTION
 Office: Customer:
 Attention: Other:
 Date: 15 NOVEMBER 2004

TARMAC DRIVE

APPROX. 7M TO FENCE



Fire Fighting Equipment

Main Marquee:

- 2 - Water Extinguishers
 - 2 - Powder Extinguishers
 - 2 - Fire Alarms
 - * Emergency Lighting Pack
 - E Emergency Exit Light
- To be positioned for use by two Fire Marshall's

7 HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CS5 IN THE PARISH OF CASTLE FROME

Report By: Head of Highways and Transportation

Wards Affected

Frome

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert footpath CS5 in the parish of Castle Frome.

Considerations

- 1 The application for the diversion of the public footpath was originally made in April 1997, by Sunderlands acting as Agents for Trustees. The proposal is shown on drawing number 79-5,6 (appendix 2) (produced by Hereford and Worcester County Council). The reason for which was to take the path away from the pond and buildings currently causing obstructions to the path.
- 2 The initial consultation drew objections because the proposal would have also extinguished a portion of footpath CS6 through St Michael Church Yard. It was also considered to be more circuitous than necessary. The Open Spaces Society proposed a further alternative for the diversion, which is shown in drawing number D268/79/5(i) (appendix 3).
- 3 The suggestion made by the Open Spaces Society was sent out to the applicant in June 2004 (appendix 4). As a result it transpired that Sunderlands were no longer involved in the application, and the new owner, Mr K Whittal of Town Farm agreed to carry on with the application.
- 4 The applicant has agreed to pay for advertising and to reimburse in full the Council's costs incurred in making the diversion order.
- 5 Following a site visit made on the 11th of August 2004, it became clear that the route proposed by the Open Spaces Society would not be practicable, due the difference in level on either side of the ditch at point C. A further proposal was agreed upon (drawing number D268/79-5(ii), appendix 5) and subjected to a pre-order consultation.
- 6 The Parish Council have no objection to the proposal and feel it is common-sense to divert the footpath away from the farm buildings. The Local Member has not responded.

Further information on the subject of this report is available from Lisa Hughes Assistant Rights of Way Officer on (01432) 261721

- 7 As a result of the pre-order consultation, the Ramblers Association and Malvern Hills District Footpath Society put forward a further proposal, which utilises an existing gap in the hedge in an adjoining field, which would mean safer access to the road. This proposal has been agreed by the applicant, and is shown on the Order plan D268/79-5(iii) as shown in appendix 1. This proposal has been sent to the Local member and the Parish Council, neither has made any further comment.

Alternative Options

Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

Risk Management

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Statutory undertakers.
- Divisional Surveyor, Tom Davies
- Local Member - Councillor R Manning
- Stretton Grandison Group Parish Council

RECOMMENDATION

THAT A public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D268/79-5(iii).

Reasons

The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:

- The proposal benefits the owner of the land crossed by the existing path.
- The proposal does not alter the point of termination of the paths.

The proposal is not substantially less convenient to the public.

Further information on the subject of this report is available from Lisa Hughes Assistant Rights of Way Officer on (01432) 261721

Appendix

Appendix 1: Drawing number: D268/79-5(iii)

Appendix 2: Drawing number: 79-5,6

Appendix 3: Drawing number: D268/79-5(i)

Appendix 4: Letter to Sunderlands, June 2004

Appendix 5: Drawing number: D268/79-5(ii)

Further information on the subject of this report is available from Lisa Hughes Assistant Rights of Way Officer on
(01432) 261721

8 FOR THE LICENSING ACT 2003 LICENSING COMMITTEE TO ADOPT THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY FOR COMMERCIAL ROAD AREA OF HEREFORD CITY - LICENSING ACT 2003, GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

Report By: HEAD OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS

Wards Affected:

County-wide

Purpose

1. To formally adopt the Herefordshire Councils licensing policy and cumulative impact policy as agreed by the Committee on the 14 December 2005 to be used by Herefordshire Council licensing committee and sub committees in respect to carrying out it's functions under the Licensing Act 2003 (attached).

Law

2. Section 5 of the Licensing Act 2003 requires the local authority to determine every three years its policy with respect to the exercise of its licensing functions and publish a statement of that policy.
3. The 7 February 2005 is the first appointed date when local authorities can start receiving the licensing applications made under the Licensing Act 2003.
4. The Councils Regulatory Committee agreed the Herefordshire Councils Licensing Policy and Cumulative Impact Policy on the 14 December 2004. This policy was published on the Councils website in January 2005.

Recommendation

For the Herefordshire Councils Regulatory Committee taking on the role as the Licensing Committee as prescribed under the Licensing Act 2003, to formally adopt the Licensing Policy and Cumulative Impact Policy and to exercise its functions in accordance with those said policies.

LICENSING POLICY 2005-2008

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
LICENSING POLICY 2005-2008

1. Introduction and Overview

- 1.1 The County of Herefordshire District Council (hereinafter “the Council”) is responsible for the licensing of licensable activities within Herefordshire. Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the Licensing Act 2003 (hereinafter “the Act”). This policy document sets out the policies that the Council will apply when making decisions upon applications received for:
- a. the sale by retail of alcohol;
 - b. the supply of alcohol by or on behalf of a club to or to the order of a member of the club;
 - c. the provision of regulated entertainment; and
 - d. the provision of late night refreshment.
- 1.2 The Council will be issuing further guidance notes to support the Policy. These do not form part of the Policy but are intended as further guidance and information for the applicant.
- 1.3 The Policy takes into account Department of Culture, Media and Sport (DCMS) guidance to Local Authorities, Central Government’s alcohol harm reduction strategy and is consistent with Section 17 of the Crime and Disorder Act 1998 which requires the Local Authority to do all that it reasonably can to prevent crime and disorder within its locality. The policy is consistent with the Human Rights Act 1998, the Environmental Protection Act 1992, the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 and the Anti-social Behaviour Act 2003. The Licensing Authority will have due regard to other organisation’s policies and strategies which contribute to the four licensing objectives.
- 1.4 The Council has a duty under the Act to exercise its functions with a view to promoting the four licensing objectives, which are:
- a. the prevention of crime and disorder
 - b. public safety
 - c. the prevention of public nuisance; and
 - d. the protection of children from harm.
- Without prejudice to other obligations imposed on it, it is the duty of the Authority to exercise it’s various functions with due regard to the likely affect of the exercise of those functions on, and the need to do all it reasonably can to prevent crime and disorder.
- 1.5 This policy is made after consultation with:
- a. The Chief Officer of Police;
 - b. The Hereford and Worcester Combined Fire Authority;
 - c. Bodies representing local holders of premises licences;
 - d. Bodies representing local holders of club premises certificates;
 - e. Bodies representing local holders of personal licences; and
 - f. Bodies representing bodies business and residents in the Council’s locality
 - g. The Primary Care Trust

- h. The Health Authority in Herefordshire
- i. The Ambulance Service
- j. The Herefordshire Community Safety Partnership
- k. Departments within the Herefordshire Council (e.g. Planning, Environmental Health, Public Health)

- 1.6 The purpose of this policy document is to assist both Officers and Members in arriving at decisions on particular applications, setting out those matters that will normally be taken into consideration. Additionally, the policy document seeks to provide clarity for applicants, residents and other persons interested in or occupying property to enable them to make plans to move, remain or invest in the communities of Herefordshire with some measure of certainty. Whilst the Council has produced this [to be adopted] policy, as the general approach to be taken in considering applications, the Council recognises that each application will always be considered on its individual merits and shall base this decision on the operating Schedule and Risk assessments provided by the applicant and consultation with interested parties.
- 1.7 The objective of the licensing process is to allow the carrying on of retail sales of alcohol and the provision of regulated entertainment in a way that ensures public safety and which is neither to the detriment of the residents, nor gives rise to loss of amenities. It is the Council's wish to facilitate well-run and well-managed premises with licence holders displaying sensitivity to the impact of their premises on local residents and the community.

2. Cumulative Impact

- 2.1 The Council will assess the cumulative impact of licensed premises on the promotion of the licensing objectives set out in 1.4. It is important however that this issue is not confused with the perceived "need" for the premises which is a judgement relating to commercial demand for a particular public house, restaurant or similar venture. The issue of "need" is therefore a matter for planning consideration or for market forces to decide and does not form part of the licensing policy statement.
- 2.2 The Council may refuse individual licenses if representations are received from either a responsible authority or an interested party as defined in the Act. Licenses may also be refused if the cumulative impact of new licenses is leading to an area becoming saturated with premises of a particular type, making it a focal point for large groups of people to gather thus creating exceptional problems of disorder and/or nuisance which out weights the impact from the individual premises themselves. The Council cannot refuse correctly completed applications that meet legislative requirements unless relevant representations have been made. In all such cases the issue of cumulative impact can be taken into account when considering the individual merits of any application. See Annex One – Special Policy. The Council is currently considering representations from the West Mercia Police regarding Commercial Road. Should a cumulative impact policy be adopted, it is recognised that premises vary in style and nature and therefore, applications within the defined area will still be considered on their own merits.
- 2.3 Where representations are made by an interested party or responsible authority the Council will consider, inter alia:
- a. Identifying an area from which problems are arising and the boundaries of that area.

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- b. adopting a policy about future applications for premises within that area;
 - c. making an assessment of the causes; and
 - d. gathering evidence and identifying serious and chronic concern from a responsible authority or local residents about nuisance and disorder.
- 2.4 Where such representations are made, it shall be for the responsible authority or interested party making those representations to prove any assertion that the licensing of the premises concerned would cause the cumulative impact claimed.
- 2.5 The Council recognises the fact that licensing is not to be the sole or only means of addressing problems caused by unruly or anti-social behaviour. Other mechanisms include: -
- a. Planning controls;
 - b. powers of local authorities to designate areas prohibiting the consumption of alcohol in public places or through existing bylaws;
 - c. police powers to close premises or temporary events on grounds of disorder or likelihood of disorder or excessive noise;
 - d. the prosecution of personal licence holders who sell alcohol to customers who are drunk;
 - e. the powers of the police, local businesses or residents to demand a review of a licence
 - f. police enforcement of the law with regard to disorder and anti-social behaviour;
 - g. the powers of the Fire Service to close premises or temporary events in the interests of public safety; and
 - h. the powers of Environmental Health to close premises as a result of excess noise.

3. Relationship with the Planning Process

- 3.1 All premises for which a licence is required must have a suitable authorised use under planning legislation. For example:
- a. "Use for the sale of food and drink for consumption on the premises or of hot food for consumption off the premises" (use Class A3);
 - b. Retail shop licensed for the sale liquor (use Class A1);
 - c. A hotel that has a restaurant or bar included in its authorised use (use Class C1).
 - d. Dance halls, bingo halls and casinos (use Class D2)
- 3.2 The Council's planning policies are set out in its Unitary Development Plan. Additionally, Government guidance in the form of planning policy guidance notes (PPG's), planning policy statements (PPS's) and regional planning policy guidance notes (RPG's) are relevant. The Council, as local planning authority, gives considerable weight to these policies in order to ensure consistency in decision-making.
- 3.3 Planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. This policy also states a commitment to avoid duplication with other regulatory schemes such as Health and Safety at Work.
- 3.4 There is no legal basis for the Licensing Authority to refuse a licensing application because it does not have planning permission, however, the applicant would have to show compelling reasons why the premises should be considered for a licence.

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- 3.5 Arrangements have been made for the Licensing Committee to receive, where appropriate, reports on the needs of the employment situation and local tourist economy for the area to ensure that these are reflected in their considerations
- 3.6 The Licensing Committee, where appropriate, will provide regular reports to the Planning Committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This is to ensure that the Planning Committee is fully informed whilst making decisions.

4. Licensing Hours

- 4.1 The Council recognises that fixed licensing hours can lead to disturbance and disorder when large numbers of people leave licensed premises at or about the same time. Longer and more flexible licensing hours regarding the sale of alcohol may therefore be considered as an important factor in reducing the possibility of disorder and friction at late night fast food outlets, taxi ranks, bus stops and other areas where incidents of disorder and disturbance have historically occurred. With regard to shops, stores and supermarkets these will be free to provide the sale of alcohol for consumption off the premises only when the retail outlet is open for shopping unless a responsible authority or interested party can show cause why more stringent conditions should be imposed.
- 4.2 The Council in deciding whether to issue a licence will consider each application on its merit. However stricter conditions are likely to be imposed with regard to noise control in the case of premises situated in predominantly residential areas. The Council does not intend any form of "zoning" to be introduced. Research has shown this can lead to significant migration of people across zonal boundaries in search of premises, which remain open for longer hours.
- 4.3 When considering applications for premises licences, the Council will take into account applicant's requests for terminal hours in the light of:
- a. Environmental quality;
 - b. Residential impact and amenity;
 - c. The character and nature of a particular area;
 - d. The nature of the proposed activities to be provided at the premises.
- 4.4 The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect any of the above matters. The Council may set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area and where appropriate representations are made.

5. Licensed Premises and Children

- 5.1 The Council recognise that there are numerous and diverse premises for which licenses may be sought. Such premises may include cinemas, public houses, nightclubs, takeaway bars, community halls and restaurants. Access by children to all types of the premises will not be limited in any way unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm. Whilst the Council will decide each application on its own individual merits, examples which might give rise to concern would include premises:
- a. Where alcohol sale and/or consumption is the primary or exclusive purpose;
 - b. Where there has been a known association with drug taking or drug dealing;

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- c. Where there is a strong element of gambling taking place;
 - d. Where entertainment is provided of an adult or sexual nature;
 - e. Where there have been convictions for the serving of alcohol to persons under the age of 18; and
 - f. Where there is a reputation for under age drinking.
- 5.2 In the case of premises that are used for film exhibitions (such as cinemas) conditions will be imposed restricting access only to those who meet the required age limit in which any certificate granted by the British Board of Film Classification. Where a large number of children are likely to present on any licensed premises (e.g. for the showing of a film predominantly aimed at children or a pantomime) then conditions will be imposed requiring the presence of an appropriate number of adult staff to ensure public safety and the protection of children from harm. Suitable options for limiting access by children to licensed premises might include:
- a. A limit on the hours when children may be present;
 - b. A limitation or exclusion when certain activities take place;
 - c. The requirement to be accompanied by an adult;
 - d. Access limited to parts of the premises, but not the whole; and
 - e. An age limitation (for under 18).
- 5.3 The Council will not impose any condition to the effect that children must be admitted to any given premises. Admission, unless otherwise limited, will be at the discretion of those managing the premises.
- 5.4 The Council commends the Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks that seeks to ensure that drinks are packaged and promoted in a socially responsible manner.
- 5.5 The Council supports the Herefordshire Proof of Age Standards Scheme and other Proof of Age Standards Scheme (PASS) accredited systems.

6. Conditions of Licence

- 6.1 The Council will enforce against Operation plans but recognises that it may be necessary for conditions to be imposed on any licence that is tailored to the individual style and characteristics of the premises and events concerned. Conditions attached to various licences will be focussed on matters that are within the control of individual licensees and others in possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises. The Council does not propose to implement standard conditions of licence uniformly across its area, but instead will draw upon a model pool of conditions issued by the DCMS and attach conditions as appropriate and following appropriate representations in accordance with the circumstances of each individual application. If no representations are made in connection with an application conditions cannot be imposed by the licensing authority that are over and above those tended by the applicant as contained within the operating schedule.
- 6.2 The Council will primarily focus on the direct impact of the activities taking place in the licenses premises. The model conditions will include, amongst other things, guidance issued surrounding crime and disorder; public safety; cinemas and fire safety; public nuisance and the protection of children from harm. Additional guidance notes detail which of the pool conditions may be imposed.

7. Enforcement

- 7.1 The Council has already established joint inspections of premises together with the West Mercia Constabulary and the Hereford and Worcester Fire Authority. It is proposed to continue such inspections to ensure the prevention of crime and disorder and the safety of the public. Inspections will take place at the discretion of the Council and its partner agencies and resources will be concentrated on areas perceived as having the greatest need.
- 7.2 Protocols between the Police, the Fire Service and other licensing enforcement officers to deal with, amongst other things, enforcement issues, the visiting of licensed premises, and the sharing of information will be developed with West Mercia Police. All enforcement will be in line with the Environmental Health and Trading Standards Enforcement Policy and Enforcement Concordat.

8 Personal Licence

- 8.1 The Licensing Act 2003 includes a regime for the granting of personal licences to individuals to supply, or to authorise the supply of alcohol. The personal licence is separate from the licence that authorises the premises to be used for the supply of alcohol. The licensing of individuals separately from the licensing of premises permits the movement of personal licence holders from one premise to another, allowing greater flexibility.
- 8.2 A personal licence does not authorise its holder to supply alcohol anywhere, but only from establishments or events with authorisation to supply alcohol in accordance with the premises licence or the temporary event notice. An individual may hold only one personal licence at any one time.
- 8.3 To qualify for a personal licence the applicant must fulfil certain criteria. The licensing authority must grant the licence if it appears that:
- a. the applicant is aged 18 or over;
 - b. no personal licence held by the applicant has been forfeited within the period of five years before making the application;
 - c. the applicant possesses an accredited licensing qualification, or is a person of prescribed description; and
 - d. the applicant has not been convicted of any relevant or foreign offence.
- 8.4 If the applicant fulfils all these criteria, the licence will be granted. If any of the first three criteria are not met, the licensing authority must reject the application. The licensing authority must notify the chief officer of police for its area if it appears that an applicant has been convicted of any relevant or foreign offence. If the police make no objections within a 14-day period, the licence must be granted.

9. Films

- 9.1 No film shall be exhibited at any licensed premises, which is likely to:
- a. Lead to public disorder, or;

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- b. Stir up hatred or incite violence towards any section of the public on grounds of colour, race, ethnicity, or national origin, disability or religious beliefs, sexual orientation or gender.
- 9.2 If, in the opinion of the Council, a particular film in the opinion of the Council falls into any of the above categories, the Council may rule that it is not to be shown. The Council's decision is final in that respect.

10. Live Music, Dancing and Theatre

- 10.1 The Council recognises that in implementing its cultural strategy, proper account shall be taken of the need to encourage and promote live music, dancing and theatre for the cultural benefit of the wider community. Conditions imposed on relevant licences will not discourage the promotion of such entertainment, but will relate solely to the promotion of the licensing objectives.
- 10.2 The Council will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing.

11. Capacity

- 11.1 The fire safety certificate should impose number restrictions for individual premises. The Council may impose conditions in relation to the maximum number of persons to attend premises where;
- a. It considers it to be necessary for the purpose of crime and disorder, and;
 - b. If the fire safety certificate was issued prior to any licence/activity taking place at the premises.
- 11.2 Should there be no fire certificate, the Council will impose a maximum number of persons to be on all premises where licensable activities are provided at any one time in order to promote the licensing objectives. The Council can only impose an occupancy figure following a relevant representation from a responsible authority.
- 11.3 Occupancy limits should be clearly stated in both Operating schedules and Risk assessments submitted as part of a licence application.

12. Transport

- 12.1 The Council will have regard to the policies and strategies as set out in the Local Transport Plan. Reporting arrangements to local authority transport committees will be made so that those committees may have regard to the need to disperse people from town and city centres swiftly and safely to avoid concentrations that produce disorder and disturbance.

13. Complaints and Reviewing Licences

- 13.1 In every case, the representations to review a licence must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations that do not support or improve the case of the original representation may not be made at the hearing.
- 13.2 Representations may be made by a responsible authority such as the police or fire authority, or by an interested party such as a local resident's association, local business or trade association.
- 13.3 Where the request originates with an interested party, the Council will first consider whether the complaint made is not relevant, vexatious, frivolous or repetitious.
- (a) A representation is only relevant if it relates to the effect of the licence on the promotion of at least one of the licensing objectives. After a premises licence has been granted a complaint relating to general crime and disorder situations would generally not be considered unless it could be positively tied or linked by a casual connection to a particular premises.
 - (b) A vexatious bears its ordinary meaning in relation to representation. The Council will determine, on its merits, whether a representation by an interested party is vexatious.
 - (c) A frivolous representation are categorised by a lack of seriousness. A trivial complaint may not always be frivolous but it would have to be pertinent in order to be relevant. The Council will determine, on its merits, whether a representation by an interested party is frivolous.
 - (d) A repetitious representation is one that is identical or substantially similar to a ground for review specified in an earlier application for review, was considered when the premises licence was first applied for, has already been excluded by reason of an issue of a provisional statement or because a reasonable interval has not elapsed since the original application or previous review.
- 13.4 Reviews will be conducted in accordance with DCMS guidance. However, in accordance with the spirit of the act, the Council will seek to resolve issues.

14. Applications

- 14.1 Applications should be submitted in the prescribed manner. Full details required in applications will be covered by Government Regulations that are due to be issued in September 2004

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15. Fees

15.1 The Council will not issue any licence until the appropriate prescribed fee in respect of the same has been paid to the Council.

16. Scheme of Delegated Functions

16.1 Committee Members can elect to go to full Committee at any time.

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated personal licence holder		If a police objection	All other cases
Request to be removed as designated personal licence holder			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for Interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexations etc			All cases
Decision to object when local authority is a consultee and not the lead authority		All cases	
Determination of a police representation to a temporary event notice		All cases	

17. Further Information

For more information regarding licensing contact:

Appendix One

Special Policy

There are currently no areas in Herefordshire where a Special Policy applies. Special Policies may be implemented at a future date following consultation with the West Mercia Police. West Mercia police have already made representations in relation to Commercial Road, these are being considered by the Council and are available on the website

1. The Council has a special policy of refusing new licenses whenever it receives relevant representations about the cumulative impact that it concludes should lead to refusal.
2. These conclusions will be drawn from an evidential basis. Consideration of the adoption of a special policy include:
 - Identification of concern about crime and disorder and public nuisance;
 - Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area the area and the boundaries of the area from which the problems are arising; or that risk factors are such that the area is reaching a point where a cumulative impact is imminent
3. The effect of this is to create a rebuttal presumption that applications for new premises or material variations will normally be refused if relevant representations to that effect are made unless it can be demonstrated that the operation of the premises will not add to the cumulative impact already being experienced. The special policy does not relieve responsible authorities or interested parties of the need to make a relevant representation.
4. Special policies will be reviewed regularly to assess if they are still needed or if they require expansion.

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