

A G E N D A

Regulatory Sub Committee

Date: **Friday, 18th November, 2005**

Time: **10.00 a.m.**

Place: **The Library, Shirehall, St. Peter's
Square, Hereford**

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

For any further information please contact:

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Tel: 01432 261885 Fax: 01432 260286*

email: rclarke@herefordshire.gov.uk

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors Mrs. S.P.A. Daniels, Brig. P. Jones CBE and R.I. Matthews

	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.	
5. APPLICATION FOR A NEW PREMISES LICENCE 'GOLDEN GALLEON, 61 COMMERCIAL ROAD, HEREFORD, HR1 2BP' To consider an application for a new premises licence in respect of Golden Galleon, 61 Commercial Road, Hereford, HR1 2BP.	5 - 10
6. APPLICATION FOR VARIATION OF PREMISES LICENCE 'GRAFTON MARKET (RE-RACK), GRAFTON HOUSE, BURGESS STREET, LEOMINSTER, HR6 8DE.' To consider an application for variation of the premises licence in respect of Grafton Market (Re-Rack), Grafton House, Burgess Street, Leominster, HR6 8DE.	11 - 18

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- 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 the Cabinet, 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, 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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Please Note:

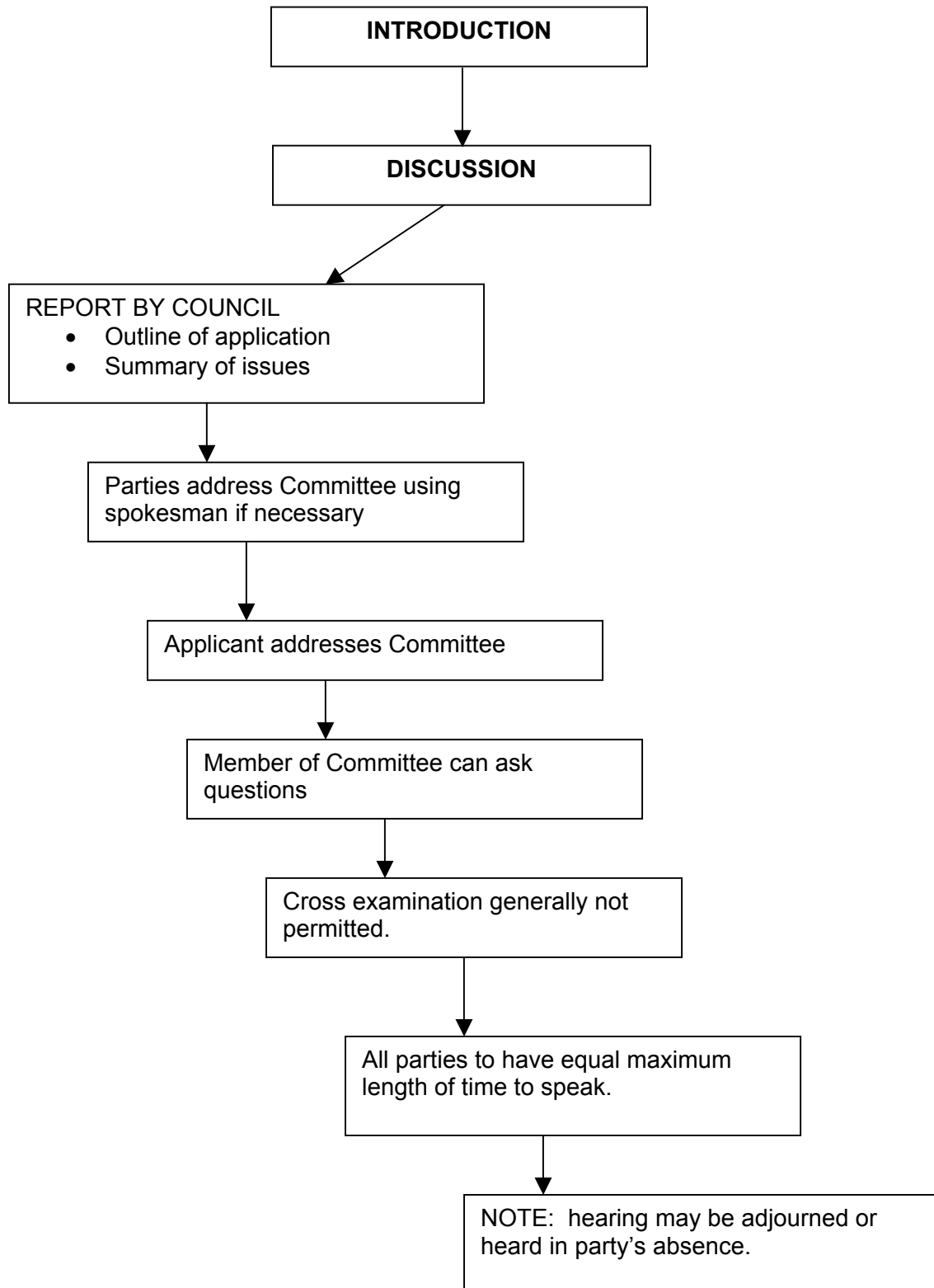
Agenda and individual reports can be made available in large print, Braille or on tape. Please contact the officer named below in advance of the meeting who will be pleased to deal with your request.

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LICENCING HEARING FLOW CHART



**APPLICATION FOR NEW PREMISES LICENCE
'GOLDEN GALLEON, 61 COMMERCIAL ROAD,
HEREFORD, HR12BP' - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Central

1. Purpose

To consider an application for a new premises licence in respect of Golden Galleon, 61 Commercial Road, Hereford, HR1 2BP.

2. Background Information

Applicant	Avatar Singh Boyal & Harjinder Singh		
Solicitor	Osborne Clarke		
Type of application: New	Date received: 27/09/05	28 Days consultation 26/10/05	Issue Deadline:

The advertisement for the premises has been seen and is included in the background papers.

3. New Licence Application

The application for a new licence has received representations by responsible authorities and interested parties. It is therefore now brought before the Regulatory Sub-Committee for determination.

4. Summary of Application

The licensable activities applied for are: -
Late Night Refreshment *
(* Not previously licensed)

5. The following hours have been applied for (*Indoors Only*) in respect of Late Night Refreshment and the hours the premises are to open to public: -
Monday to Sunday 1000 – 0500

Seasonal variations closed on Christmas day. Open from 1000 on New Years Eve to 0500 the following morning (New Years Day)

6. Non Standard hours

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

7. Summary of Representations

West Mercia Police

Have made representation in relation to the application in respect of the licensing objective of the prevention of crime and disorder.
They request the provision of CCTV and a terminal hour of 0130 hours.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public Safety and Public Nuisance.

In respect of public nuisance they seek conditions relating to smells emanating from the premises, prevention of grease accessing the drainage pipe work and the provision of litter receptacles and litter patrol.

They also request that no serviettes, straws, cutlery or eating utensils are to be distributed after 2300, no glass bottles or glass containers to be supplied after 2000 and that controls should be put in place to control persons entering the premises and the behaviour of customers.

No conditions have been agreed at the time of this report.

Interested Parties

The Local Authority has received 1 letter of representation in respect of the application, from Hereford City Partnership.

The concerns relate to:

- Prevention of crime and disorder
- Public Safety and
- Prevention of Public Nuisance

11. Herefordshire Council Licensing Policy

In making its decision the sub-committee will be obliged to have regard to its own policy, the DCMS guidance and also have regard to all of the documents submitted in respect of the application.

12. Options: -

It is for the committee to take such steps below, as it considers necessary, for the promotion of the licensing objectives:

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
- Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory condition set out in the Licensing Act 2003.

- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

13. **Background Papers**

- Public Representation
- Police Comments
- Environmental Health & Trading Standards Comments
- Application Form

Background papers are available for inspection in the Library, Shirehall, Hereford, 30 minutes before the start of the hearing.

NOTES**Guidance issued under section 182 of the Licensing Act 2003, Section S18(7)****Relevant, vexatious and frivolous representations**

- 5.73 A representation would only be "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives....
- 5.75 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious....

The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness....

Schedule 2 of the Licensing Act 2003 states: -

The provision of late night refreshment

- 1 (1) For the purposes of this Act, a person "provides late night refreshment" if-
- (a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or
 - (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises

Licensing Authorities power to exercise substantive discretionary powers.**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there

are relevant representations and the decision – making function under section 18 (3) is engaged.

**APPLICATION FOR VARIATION OF PREMISES
LICENCE IN RESPECT OF – ‘GRAFTON MARKET (RE-
RACK), GRAFTON HOUSE, BURGESS STREET,
LEOMINSTER, HR6 8DE’ - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Purpose

1. To consider an application for variation of the premises licence in respect of Grafton Market (Re-Rack), Grafton House, Burgess Street, Leominster, HR6 8DE.

Background Information

2.

Applicant	Re-Rack Ltd (owners) George Bedford and Carol Bedford.		
Solicitor			
Premises	Grafton Market (Re-Rack), Grafton House, Burgess Street, Leominster, HR6 8DE		
Type of application: Variation	Date received: 29 September 2005	28 Days consultation 27 October 2005	Issue Deadline:

Conversion Licence Application

3. A conversion licence will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon – Sat 1000 am – 2300 pm Sunday 1200 midday – 2230 pm New Years Eve 1000 am – 0000 midnight New Years Day 0000 – 2300 pm Christmas Day 1200 – 1500 and 1900 – 2250

With the following condition attached:-

- The premise will be permitted to open for up to 30 minutes after the end of the sale of alcohol.

The premises do not hold a current public entertainment licence.

- To retain all embedded permissions and restrictions attached to a Justices On Licence, the premises is a members only club.

Variation Licence Application

4. The application for a variation to the premises licence has received representations by responsible authorities and therefore is now brought before the sub committee for determination.

Summary of Application

5. The application has been submitted on a premises licence application form not a club premises form. Therefore the premises is varying the nature of the business to include any member of the public so they have applied to remove the members only clause.

The licensable activities applied for are: -

Indoor Sporting Events*

Live Music*

Recorded Music (indoors)*

Provision of facilities for dancing*

Provision of facilities for entertainment of a similar description to that falling within i or j (indoors)*

Supply of Alcohol (on and off premises)

* - Activities not previously licensed

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

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

7. The following hours have been applied for in respect of Live Music (*Indoors only*):-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

8. The following hours have been applied for in respect of recorded music (*Indoors only*):-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

9. The following hours have been applied for in respect of provisions of facilities for dancing:-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

10. The following hours have been applied for in respect of facilities for entertainment of a similar description to that falling within I or j (*indoors only*):-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

11. The following hours have been applied for in respect of supply of alcohol (on and off the premises):-

Mon – Thurs	1100 – 0000
Fri – Sat	1100 – 0200
Sun	1100 – 0000

12. The hours that the premises will be open to members of the public:-

Mon – Thurs	1100 – 0030
Fri – Sat	1100 – 0230
Sun	1100 – 0030

13. Non Standard hours

The application applies for ‘**non-standard**’ hours in relation to all licensable activities applied for, that:-

New years eve/day hours to remain as existing

14. Removal of Conditions

The applicant has applied to remove the ‘members only’ restriction.

15. Summary of Representations

West Mercia Police

Have made representation in relation to the application. This representation addresses whether the application should be viewed as an application to vary as opposed to being an application to grant.

Fire Authority

The fire authority have made no comments.

Environmental Health

Environmental Health Officers have made representations in relation to the application. This representation addresses the licensing objectives of Public safety, Public Nuisance, and Children from harm.

In respect of Public Safety they seek conditions in relation to precautions to ensure the safety of the public, ventilation, heating, first aid, and fire risk assessments.

With regards to public nuisance they recommend some conditions in respect of music levels and windows and doors.

With regards to the protection of children from harm they recommend some conditions in respect of the prevention of alcohol drugs and other products, and under age drinking precautions.

At the time of this report no negotiations had taken place in respect of these conditions.

Interested Parties

The Local Authority has received one objection letter holding signatures of 14 people in respect of the application, and general area from residents.

The concerns relate to:

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

16. Issues for Clarification

This Authority has requested clarification from the applicants, Re-Rack Ltd.

- A) Who's property does this building open out on to?
- B) What is the construction of the premises and what measures are taken to prevent noise nuisance to neighbouring properties?
- C) What are the planned provisions to ensure against over crowding?

17. Herefordshire Council Licensing Policy

In making its decision the committee will be obliged to have regard to its own policy, the DCMS guidance and have regard to all documents specified within the DCMS Guidance.

18. 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.

19. Background Papers

- Public Representation forms
- Environmental Health & Trading Standards Comments
- Application Form
- Any other associated papers

Background papers are available for inspection in the Library, Shirehall, 30 minutes before the start of the hearing.

NOTES

Guidance issued under section 182 of the Licensing Act 2003, Section S18(7)

Relevant, vexatious and frivolous representations

5.73 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives...

5.74 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious...

The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness...

The operating schedule

5.46 The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.

An operating schedule must also set out the following details:

- The relevant licensable activities to be conducted on the premises;
- The times during which it is proposed that the relevant licensable activities are to take place (including the times during each day of the week, during particular holiday periods and during particular seasons, if it is likely that the times would be different during different parts of the year);

Schedule 1 of the Licensing Act 2003 defines regulated entertainment as follows: -

The descriptions of entertainment are-

- a performance of a play,
- an exhibition of a film,
- an indoor sporting event,
- a boxing or wrestling entertainment,
- a performance of live music,
- any playing of recorded music,
- a performance of dance,
- entertainment of a similar description to that falling within paragraph (e), (f) or (g),

where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.

Incidental music

5.18 The incidental performance of live music and incidental playing of recorded music may not be regarded as the provision of regulated entertainment activities under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself entertainment or the provision of entertainment facilities.

So, for example, a juke box played in a public house at moderate levels would normally be regarded as incidental to the other activities there, but one played at high volume would not benefit from this exemption. Stand-up comedy is not regulated entertainment and musical accompaniment incidental to the main performance would not make it a licensable activity.

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.

