

A G E N D A

Regulatory Sub Committee

Date: **Tuesday, 9th August, 2005**

Time: **2.00 p.m.**

Place: **Meeting Room, Brockington, 35
Hafod Road, Hereford**

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

For any further information please contact:

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**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillor (none) (Chairman)
Councillor (none) (Vice-Chairman)

Councillors Brig. P. Jones CBE, R.I. Matthews and R. Preece

	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. THE LICENSING ACT 2003 PROCEDURE FOR HEARINGS To advise Members of the Licensing Act 2003 (Hearings) Regulations 2005 which set out the hearing procedure to be followed by a Committee/Sub-committee when determining licensing applications.	5 - 14
5. APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF PLAY NIGHTCLUB, 51-55 BLUESCHOOL STREET, HEREORD. To consider an application for variation of the premises licence in respect of Play nightclub, 51-55 Blueschool Street, Hereford, HR1 2AR.	15 - 22
6. APPLICATION FOR VARIATION OF THE PREMISES LICENCE IN RESPECT OF THE COURTYARD THEATRE, EDGAR STREET, HEREFORD, HR4 9JR. To consider an application for variation of the premises licence in respect of the Courtyard Theatre, Edgar Street, Hereford, HR4 9JR.	23 - 32

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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THE LICENSING ACT 2003 PROCEDURE FOR HEARINGS

Report By: County Secretary and Solicitor

Wards Affected

County-wide

Purpose

To advise Members of the Licensing Act 2003 (Hearings) Regulations 2005 which set out the hearing procedure to be followed by a Committee/Sub-committee when determining licensing applications.

Considerations

1. For a number of years the Committee has followed certain procedural arrangements when it has heard licensing applications, to ensure that the rules of natural justice are followed to ensure fairness to applicants and to officers. The Licensing Act 2003 (Hearings) Regulations 2005 which came into force on 7th February 2005 introduced a prescribed procedure to be followed in respect of hearings held by Licensing Authorities under the Act.
2. The Regulations contain specific requirements which the Council must comply with in advance of the hearing taking place such as a notice of the hearing and information which should accompany the notice. The Regulations also stipulate requirements that must be followed in the conduct of hearings
3. The procedure set out at Appendix A to this report has been prepared to ensure that the Council complies with the Regulations and to ensure that hearings are conducted in a fair and efficient manner

Recommendation

THAT: the requirements of the Licensing Act 2003 (Hearings) Regulations 2005 be noted and that the procedure set out at appendix A to this report be adopted



HEREFORDSHIRE
COUNCIL

LICENSING ACT 2003 PROCEDURE FOR HEARINGS

N.B. All references to the Committee will include the Regulatory Licensing Committee and any sub-committee of the Regulatory Licensing Committee as appropriate.

1. Pre-Hearing Date

- a. In accordance with the Licensing Act 2003 where relative representations are made the Authority must hold a hearing to consider them.
- b. All hearings will be held within the time limits specified within the regulations and notice of hearing shall be given accordingly.
- c. Where a hearing is to be held on more than one day the hearing will be arranged to take place on consecutive working days.
- d. A notice detailing the date, time and place at which the hearing is to be held will be made in accordance with the regulations.
- e. Notice of hearing will contain the following information:
 - The rights of the parties
 - The consequences if the party does not attend
 - The procedure to be followed at the hearing
 - And particular points on which the Authority request clarification from the parties for the hearing.all in accordance with the regulations.
- f. Notice of hearing shall be accompanied by relative documents as described in Schedule 3 of the regulations.
- g. A 'notice of intention' which contains the following information will be sent to the parties concerned to state whether or not: -
 - they will be attending the hearing or represented
 - they consider the hearing to be unnecessary and the reasons why
 - they request permission for another person to appear at the hearing to make on their behalf a point or points on which that person may be able to assist the authority in respect of the application, representation or notice
 - the applicant wishes to be kept updated by email.

- h. The Authority may dispense with a hearing if all parties have agreed in writing that it is unnecessary. The Authority will forthwith give notice to the parties concerned to this effect.
- i. Any representation may be withdrawn by giving written notice to the Authority not less than 24 hours before the hearing or orally on the day of the hearing.
- j. The Authority may extend a statutory time limit (defined within the regulations) where it considers this to be necessary in the public interest and will give notice to the parties concerned forthwith of the period of extension and reason(s) for it. The Authority may not extend a time period beyond the period in which the application would either be automatically granted or rejected under the Licensing Act 2003.
- k. The Authority may adjourn a hearing to a specified date or to arrange for a hearing to be held on specified additional dates where it is considered necessary for consideration of any representation or notice made by a party. The Authority will notify the parties concerned of the date, time and place of the hearing or the additional dates, times and places.
- l. Where the Authority has given notice to a party that they require clarification of a particular point then that party shall give further information in support of their application, representation or notices.
- m. When a party has informed the authority that they do not intend to attend the hearing or be represented at it, then it may proceed in their absence.
- n. When a party has not informed the authority that it will not be attending, or if they fail to attend or to be represented at the hearing, then the authority may either: -
 - a) adjourn the hearing to a specified date, where it considers it to be necessary in the public interest to do so; or
 - b) hold the hearing in their absence
- o. If the hearing is adjourned the parties will be notified forthwith of the new date, time and place of the hearing. If the hearing is held in their absence then the authority will consider their application and any representation or notice made by them.
- p. It shall be the responsibility of the applicant to produce evidence that the required press notice for a variation of a premises licence or club premises certificate or application of provisional statement has been published in the local press.
- q. The Committee at its discretion may adjourn the hearing until a date agreed by all parties to allow the evidence to be produced.

2. The Hearing

- a. The hearing will take the form of a discussion led by the Authority
- b. A party may attend a hearing and may be assisted or represented by any person whether legally qualified or not
- c. The hearing will take place in public unless a decision is made by the Committee to exclude the public from all or part of the hearing if they consider it to be in the public interest to do so. A party and any person assisting or representing a party may be treated as a member of the public.
- d. Where any notice received from a party containing a request for a named person together with a brief description of the point or points on which that person made be able to assist the authority is made such permission shall not be unreasonably withheld.
- e. If a party has informed the Authority that they do not intend to attend or be represented at the hearing, the hearing will proceed in their absence.
- f. If a party is not attendance and has failed to inform the Authority that they do not intend to attend or be represented at the hearing, the Committee may adjourn the hearing, if they consider it necessary to do so in the public interest or they may proceed in the party's absence.
- g. If the hearing proceeds in the absence of the party the Committee will consider the application and any representations or notice made by the party.
- h. If a party wishes to withdraw any representations and has not done so prior to the hearing, they may do so orally at the hearing.
- i. Information requested by the authority in respect of clarification of a particular point shall be provided to the committee at the hearing in support of any application, representation or notice.

3. The Procedure

- a. The Chair of the Committee will introduce all parties present, including the applicant and representatives and will explain the procedure to be followed at the hearing.
- b. The Committee will then consider: -
 - i) Any notice received from a party containing a request for a named person together with a brief description of the point or points on which that person made be able to assist the authority: and/or
 - ii) Any application by a party for an extension of the 10-minute time period.
 - iii) Any request to produce further documentary or other information in support of an application, representation or notice
- c. Officers will present a report outlining the application to be considered by the Committee and a summary of the issues identified.
- d. Parties who have made representations will be invited to address the Committee within the 10 minute allocated time slot (unless otherwise agreed) in the following order where applicable: -
 - West Mercia Police
 - Hereford and Worcester Fire Brigade
 - Representatives from the Health and Safety Executive
 - Local Authority Officers
 - Other persons making relevant representations
 -
- e. The applicant will then be invited to address the Committee.
- f. Parties will be given the opportunity to request permission from the Committee to cross-examine any other party.

4. Representations

- a. In considering representations or notice made by a party, the Committee will only consider documentary or other information produced by the party in support of their representations, application or notice either before the hearing or with the consent of the committee and all parties present.
- b. The Authority will disregard any information provided by a party that is not relevant to: -
 - the application or representations; and
 - the promotion of the licensing objectives.

5. Examination

- a. A party may only question another party or address the authority if give permission by the Committee to do so.
- b. The Members of the Committee will be able to ask questions of any party, during the hearing.
- c. Generally cross-examination should not be permitted unless the authority considers that the cross examination is required for it to consider, the representation(s), application or notice as the case may require.

6. Time

- a. The Committee will allow all parties an equal maximum length of time to address the Committee. This period will be restricted to 10 minutes for each party, unless requested by the applicant in writing five working days before the hearing that a longer time is required and stating the reasons for the extension. The Committee shall at their absolute discretion decide whether any such extension shall be permitted

7. Disruption of Meeting

- a. The Committee will require anyone behaving in a disruptive manner to leave the hearing. If they are not permitted to return to address the Committee, the Committee will allow them to submit, in writing, the information they would have been entitled to give orally had they not been required to leave.

8. Decision

- a. The Committee will determine the application in accordance with the requirements of the Licensing Act 2003, the Herefordshire District Council Licensing Policy and the relevant regulations.
- b. Where an application is made for: -
 - (i) an application for a premises licence made at the same time as an application for conversion of an existing licence
 - (ii) an application for a club certificate made at the same time as an application for a conversion of an existing club certificate
 - (iii) a counter notice following police objection to temporary event notice
 - (iv) review of premises licence following closure order
 - (v) determination of application for conversion of existing licence
 - (vi) determination of application for conversion of existing club certificate
 - (vii) determination of application by holder of a justices' licence for grant of personal licence),

the authority will make its determination at the conclusion of the hearing.

In any other case the authority will make its determination within the period of five working days beginning with the day or the last day on which the hearing is held.

- c. Where a hearing has been dispensed with the authority will make its determination within the period of ten working days beginning with the day the authority gives notice to the parties of that affect.
- d. Determination of the hearing will be given forthwith to all the parties concerned unless the regulations make provision of a further period in which case it will be given prior to the expiry of that period.
- e. The notice of determination will be in writing and will contain information regarding the right of appeal. The Chief Officer of Police will be informed of the decision forthwith even if not present.

9. MISCELLANEOUS

- a. A hardcopy record will be kept of the proceedings in respect of any hearing or appeal and will be kept for six years from the date of determination.
- b. Any irregularity resulting from any failure to comply with any provision of the Regulations, before the authority has made a determination shall not of itself render the proceedings void.
- c. In any case of such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.
- d. Clerical mistakes in any document recording a determination of the authority or errors arising in such document from an accidental slip or omission may be corrected by the authority.
- e. Any notices required to be given by these Regulations must be given in writing.
- f. The requirement shown in paragraph e. above shall be satisfied where: -
 - (i) the text of the notice—
 - is transmitted by electronic means;
 - is capable of being accessed by the recipient;
 - is legible in all material respects; and
 - is capable of being reproduced in written form and used for subsequent reference;
 - (ii) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and
 - (iii) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing.
- g. Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the requirements of paragraph (2)(a) are satisfied.

10. Interpretation

“the Act” means the Licensing Act 2003;

“authority” means, in relation to a hearing, the relevant licensing authority which has the duty under the Act to hold the hearing which expression includes the licensing committee or licensing sub-committee discharging the function of holding the hearing;

“determination” is to be interpreted in accordance with Schedule 4;

“hearing” means the hearing referred to in column 1 of the table in Schedule 1 as the case may require;

“legible in all material respects” means that the information contained in the notice is available to the recipient to no lesser extent than it would be if given by means of a document in written form;

“notice of hearing” means the notice given under regulation 6(1);

“party to the hearing” means a person to whom the notice of hearing is to be given in accordance with regulation 6(1) and “party” and “parties” shall be construed accordingly.

“regulations” means The Licensing Act 2003 (Hearings) Regulations 2005.

For avoidance of doubt these notes reflect the intended procedures to be followed at hearings before the Regulatory Committee of the Herefordshire Council. In event of any conflict between these notes and the relevant regulations namely The Licensing Act 2003 (Hearings) Regulations 2005 as amended then the regulations will prevail.

5 APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF PLAY NIGHTCLUB, 51-55 BLUESCHOOL STREET, HEREFORD. LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Central

Purpose

1. To consider an application for variation of the premises licence in respect of Play nightclub, 51-55 Blueschool Street, Hereford. HR1 2AR

Background Information

2.

Applicant	R & B Leisure		
Solicitor	N/A		
Premise	Play 51-55 Blueschool Street , Hereford		
Type of application: Conversion Variation	Date received: 15/05/05	28 Days consultation 13/7/05	Issue Deadline: 15/08/05

Conversion Licence Application

3. A conversion licence, on receipt of all the Justices Licences, will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon to Thurs – 1100 am - 0100 am Fri & Sat – 11am – 0130 am Sun 12 midday – 2230 pm
Late night refreshment	Mon to Sat 1100 – 0130 am Sun & Good Friday – 1200 and 2300 Christmas day - Midday – 1530 & 1900 - 2300
Live Music, Recorded Music, Performance of Dance	Mon to Thurs 1100 am – 01.00am Frid- Sat 1100 – 0130 Sun – Bank Holidays until – 12.30 the following morning except where Sunday

	precedes a Bank Holiday where hours are extended to 01.30am
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With the following conditions are attached:-

- The premise will be permitted to open for up to 30 minutes after the end of the sale of alcohol. (mentioned above)
- The maximum number of persons admitted to the premises shall be: 916 Ground Floor First Floor Mezzanine Area 100
- The maximum number of visually identifiable stewards shall be : Ground Floor 6 First Floor 2.
- The Standard Conditions for Licensing of Premises for Regulated Entertainment. [As specified in the outgoing public entertainment licence] (See Appendix A).

Variation Licence Application

4. The application for a variation has received representations by responsible authorities therefore is now brought before the committee to determine the application.
At the time of print it is believed that the application should read as follows;

Summary of Application

5. The licensable activities applied for are: -
Films
Live Music
Recorded Music
Anything similar eg peripheral entertainers, stilt walkers, fire eaters, dancers
Provision of facilities for dancing
Supply of Alcohol
Provision of table dancing
Hour's premises open to the public (Not licensable on it's own)
6. The following hours have been applied for in respect of the licensable activities shown above:-
Monday 1000 – 0300
Tuesday 1000 – 0300
Wednesday 1000 – 0300
Thursday 1000 – 0400
Friday 1000 – 0400
Saturday 1000 – 0400
Sunday 1200 noon – 0200

7. The hours applied for the premises be open to the public are: -
- | | |
|-----------|-------------|
| Monday | 2100 – 0300 |
| Tuesday | closed |
| Wednesday | Closed |
| Thursday | 2100– 0400 |
| Friday | 2100 – 0400 |
| Saturday | 2100 – 0400 |
| Sunday | 2100 – 0300 |

The application has indicated the premises will be open on Tuesday and Wednesday for an occasional private party.

Non Standard hours

8. The application applies for '**non-standard**' hours.

New years Eve 24 hours
New Years Day 24 hours
Christmas Eve 02.00 am
Bank Holiday Sundays until 3 am

Public Entertainment Licence Conditions

9. The applicant has confirmed that the current Public Entertainment Licence conditions will continue a copy of these are attached as **appendix A**.

Summary Of Representations

10. West Mercia Police

The police seek clarification on whether Play intend to remove any of the embedded conditions attached to the Justices on licence and the Section 77 Special Hours Certificate that currently the operation of Play Nightclub.

In order to promote the licensing objectives and in particular, with a view to preventing crime and disorder, The police seek that the licensing authority impose the conditions as stated in **appendix B and C**.

Due to applicant not submitting application to the police until 1 July 2005, it was agreed by all parties that the police's 28 day consultation period should be taken from this date.

11. Representations form the businesses and the public.

Herefordshire Council has received 6 letters objecting to the proposals, one from the Hereford City Partnership Manager and 5 from interested parties – one of which is on behalf of a neighbouring business.

The concerns relate to:

- Additional Nuisance and environmental impact on area
- Noise late at night /early morning
- Alcohol related incidents

Copies of representations are attached as **appendix D to I**

12. Environmental Health

Environmental Health Officers have made representations in relation to the extension of operating hours and noise emanating to neighbouring dwellings. **appendix J and K.**

Environmental Health also express concerns in relation to Play Nightclub's acoustic report.

GENERAL

Fire & Electrical Safety

Maximum number of persons on the premises

PUBLIC SAFETY

Ventilation and air conditioning

First aid

Lighting

Electrical installation

Fire safety

Exit doors

Gas installations

PREVENTION OF NUISANCE

Noise

Odours

Refuse

Lighting

PROTECTION OF CHILDREN FROM HARM

Proof of Age

Restrictions on access by children shall be conspicuously displayed throughout premises.

13. Fire Authority.

The fire authority have made no representations.

Request for further information

14. The applicant has been asked to provide the following information for this committee hearing.
- A) Please give details of the local address of the Designated Premises Supervisor (Page 4).
 - B) Non-Standard Times (Page 12-15)
 - i) Please confirm which hours and on what occasions the premises will be made available for hire for occasional private hires on Tuesdays and Wednesdays when the premise is not open to the public as indicated in Box O on page 17.
 - ii) Please clarify the statements 'At times detailed in proposed variations' under Boxes F - page 12, Box H – page 13 and Box J – page 14.
 - C) Please indicate on the plan the height of the steps on to the dance floor and the height of the steps up to the DJ area.
 - D) Additional Items
 - i) Please produce a copy of the Special Hours Certificate, certified as a true copy by either the chief executive of the licensing justices, by a solicitor or notary, or by a person of a specified description.
 - ii) Please confirm on page 15 – Box L (Late Night Refreshment) whether you wish to include this as part of your application or has the box been deleted.
 - E) Imbedded Conditions

Please clarify if this application is seeking to remove any of the imbedded conditions that are currently attached to the Justice's 'on licence', and Section 77 Special Hours Certificate, that currently govern the operation of this nightclub.

Herefordshire Council Licensing Policy

14. 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.

Options:-

15. 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.

Background Papers

- Standard Conditions for Licensing for Public Entertainment
- Police Authority comments
- Public Representation forms
- Environmental Health and Trading Standards Comments
- Application Form
- Any Other Associated Papers

Background papers are available for inspection in the Meeting Room, Brockington 30 minutes before the start of the hearing.

NOTES

1. Relevant, vexatious and frivolous representations

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

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....

2. Ad-hoc events

The application applies for extension by one hour before and one hour after the transmission of an international event, the details of which will be notified to the police 10 days beforehand.

DCMS Guidance

Under Section 182 of the Licensing Act 2003 The Secretary for Culture, Media & Sport (DCMS) issued Guidance in respect of the Act.

Paragraph 6.11 is titled 'Relaxation of opening hours for local, national and international occasions'. The guidance in respect of this is that it will be open to the Secretary of State to extend hours on these special occasions .e.g. World Cup

ACPO Guidance

The Association of Chief Police Officer (ACPO) have issued a letter in respect of this matter which states 'To maintain a consistent approach across the country ACPO suggest that Constabularies consider the following approach in relation to these applications - No more than 12 extensions per premises per year (excluding applications made under TENS) should be allowed.

A minimum of 7 days notice to police and the licensing authority.

An absolute veto for police in respect of any of these occasions.

It is, of course, open to all the other responsible authorities to raise objections if they consider it necessary."

West Mercia Police

It is known that the West Mercia Police do not endorse this guidance issued by ACPO. PC Steve Thomas will explain to the committee the current position for their perspective.

Section 17 (4) (b) Licensing Act 2003

An operating schedule is a document, which is in the prescribed form and includes a statement of the times during which it is proposed that the relevant licensable activities are to take place.

Guidance issued under section 182 of the Licensing Act 2003.

5.46 operating schedule... 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 set out 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, it is likely that the times would be different during different parts of the year.

3. 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.

6 APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF THE COURTYARD THEATRE, EDGAR STREET, HEREFORD. LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Three Elms and Aylestone

Purpose

- To consider an application for variation of the premises licence in respect of Courtyard Theatre, Edgar Street, Hereford, HR4 9JR.

Background Information

2.

Applicant	The Court Yard Trust		
Solicitor	N/A		
Premise	Court Yard Theatre, Edgar Street, Hereford, HR4 9JR		
Type of application: Conversion Variation	Date received: 15 June 2005	28 Days consultation 13/07/05	Issue Deadline: 15/08/05

Conversion Licence Application

- A conversion licence, on receipt of all the Justices Licences, will be issued as follows; -

Licensable activity	Hours
Sale of alcohol on and off the premises	Mon to Sat– 1100 am – 11 pm Sun 12 midday – 10.30 pm Good Friday – 12 pm – 10.30 pm Christmas day 12 pm – 3 pm & 7 pm – 10.30pm
Theatre Licence	Same as below for live music etc.
Live Music, Recorded Music, Performance of Dance	Mon to Sat 1100 am – 23.30 pm Sun 11.00 am – 10.30 pm (musical entertainment only) (for dancing where no charge for admission has been made)

With the following conditions are attached:-

- The premise will be permitted to open for up to 30 minutes after the end of the sale of alcohol. (mentioned above)
- The Standard Conditions for Licensing of Premises for Regulated Entertainment and theatres licence. [As specified in the outgoing public entertainment licence] (See **Appendix A and B** respectively).
- The maximum number of persons admitted and number of stewards as stated below:

	Maximum persons			Number of stewards		
	Seated	Or	Flat Floor	Seated	Or	Flat Floor
Studio/theatre	144		220	3		3
Stalls	264		460	4		4
1 st floor gallery	24		-	2		-
2 nd floor gallery	138		-	3		-
Rehearsal room	-		100	-		2
Bar/Foyer	-		380	-		4
The maximum number of persons allowed on the premises for Public Entertainment at any one time is to be restricted to 1,000						

Variation Licence Application

4. The application for a variation has received representations by responsible authorities and local residents therefore is now brought before the committee to determine the application.

At the time of print it is believed that the application should read as follows;

Summary of Application

5. The licensable activities applied for are: -
 - Plays
 - Films
 - Indoor sporting events
 - Live Music
 - Recorded Music
 - Performance of dance
 - Anything of a similar description
 - Provision of facilities for making music
 - Provision of facilities for dance
 - Provisions for entertainment of a similar description
 - Provision of Late night entertainment
 - Supply of Alcohol

6. The following hours have been applied for in respect of the licensable activities shown above:-

Plays (indoors and out), Films, Indoor sporting Events (although does not currently take place we are considering snooker exhibitions/competitions and other similar events), live music (indoors and out), performance of dance(indoors and out), and anything similar(indoors and out).

Provision of facilities for making music (indoors and out), Provision of facilities for dancing (indoors and out) and provision of facilities for entertainment of a similar description(indoors and out).

Monday	0900 – 2400
Tuesday	0900 – 2400
Wednesday	0900 – 2400
Thursday	0900 – 2400
Friday	0900 – 2400
Saturday	0900 – 2400
Sunday	0900 – 2400

Recorded music (indoors)

Monday	0600 – 0100
Tuesday	0600 – 0100
Wednesday	0600 – 0100
Thursday	0600 – 0100
Friday	0600 – 0100
Saturday	0600 – 0100
Sunday	0600 – 0100

Music played wherever premises open to the public.

Late night refreshment (indoors and out)

Monday	2300 – 0100
Tuesday	2300 – 0100
Wednesday	2300 – 0100
Thursday	2300 – 0100
Friday	2300 – 0100
Saturday	2300 – 0100
Sunday	2300 – 0100

Supply of alcohol (indoors and out)

Monday	1000 – 0100
Tuesday	1000 – 0100
Wednesday	1000 – 0100
Thursday	1000 – 0100
Friday	1000 – 0100
Saturday	1000 – 0100
Sunday	1000 – 0100

Box N in relation to adult entertainment states; films will be shown of all certifications and sold to those admissible accordingly.

7. The hours applied for the premises to be open to the public are: -
- | | |
|-----------|-------------|
| Monday | 0600 – 0100 |
| Tuesday | 0600 – 0100 |
| Wednesday | 0600 – 0100 |
| Thursday | 0600 – 0100 |
| Friday | 0600 – 0100 |
| Saturday | 0600 – 0100 |
| Sunday | 0600 – 0100 |

Section Q (a) of application states; as we do not intend to vary our current procedures and opening times this is not applicable. Only reason for making a variation is to cover all possible eventualities and those occasions when we would have previously applied for a special order.

Non Standard hours

8. The application applies for '**non-standard**' hours.

Box B Films times to be extended during film festivals (unknown until programmes)

Previous Licence Conditions To Be Removed

9. The applicant has not requested that all time restraints that due to the extended hours to cover all eventualities will no longer exist.

Summary Of Representations

10. West Mercia Police

Make no representations

11. Representations form the businesses and the public.

Herefordshire Council has received 5 letters objecting to the proposals from interested parties local residents.

The concerns relate to:

- Noise emanating from inside and outside the premises late at night
- Noise of bottles going into the bin late at night
- Noise from car in car park late at night.
- Concerned children will not be able to sleep through the noise.

Copies of representations are attached as **appendix C to G**.

12. Environmental Health

Environmental Health Officers have made representations in relation to the extension of operating hours and noise emanating to neighbouring dwellings. **appendix H**.

Environmental Health also express concerns in relation to

Prevention of nuisance

Reduce hours of licensable activities requested in application.
Restrict licensable activities taking place outside the premises.
Control of refuse

Protection of children from harm

Proof of Age
Restrictions on access by children shall be conspicuously displayed throughout premises.

13. Fire Authority.

The fire authority have made no representations.

14. Request for further information:

- A) To provide a written consent from the proposed premise supervisor Mr Martin Green.
- B) To provide information detailing where you propose the following activities to take place outside the premises as indicated on your application;
- Box A plays,
 - Box E Live music,
 - Box G, Performance of dance,
 - Box H Anything of a similar description to that falling within (e), (f) or (g),
 - Box I Provision of facilities for making music,
 - Box J Provision of facilities for dancing.
 - Box K provision of facilities for entertainment of a similar description to that falling within I or J,
 - Box L Late night refreshment standard days and timings and
 - Box M supply of alcohol standard days and timings.

- C) To confirm whether or not the films indicated in box N would include restricted 18 films requiring a sex establishment's licence.
- D) The plan provided states all areas of the building is to be used for all licensable activates, please confirm which rooms in the premise you would require the licensable activates to take place.
- E) In your application section Q a) 'it states you do not intend to carry our current procedures and opening times this is not applicable. The only reason for making a variation is to cover all possible eventualities and those occasions when we would have previously applied for a special order.' Also in box B you state under seasonal variation 'that times may be extended during film festivals (unknown until Programmed)'. Please provide information on what occasions and when you would use the extended hours.
- F) Please clarify what type of activates indicated in box H and box K would take place on the premises.
- G) Please clarify what type of late night refreshment and to whom the late night refreshment is intended to be supplied.
- H) Boxes A,B,E,E,G,I,J, do not specify the nature of the activity that will take place.
- I) In Box F recorded music, you state that music will be played 'whenever the building is open to the public' please clarify if this is pre-recorded background music.

Herefordshire Council Licensing Policy

14. 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.

Options:-

15. 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.

Background Papers

- Standard Conditions for Licensing for Public Entertainment
- Theatre Licence Conditions
- Public Representation forms
- Environmental Health and Trading Standards Comments
- Application Form
- Any Other Associated Papers

Background papers are available for inspection in the Meeting Room, Brockington 30 minutes before the start of the hearing.

NOTES

1. Relevant, vexatious and frivolous representations

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

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....

2. Ad-hoc events

The application applies for extension by one hour before and one hour after the transmission of an international event, the details of which will be notified to the police 10 days beforehand.

DCMS Guidance

Under Section 182 of the Licensing Act 2003 The Secretary for Culture, Media & Sport (DCMS) issued Guidance in respect of the Act.

Paragraph 6.11 is titled ‘Relaxation of opening hours for local, national and international occasions’. The guidance in respect of this is that it will be open to the Secretary of State to extend hours on these special occasions .e.g. World Cup

ACPO Guidance

The Association of Chief Police Officer (ACPO) have issued a letter in respect of this matter which states 'To maintain a consistent approach across the country ACPO suggest that Constabularies consider the following approach in relation to these applications - No more than 12 extensions per premises per year (excluding applications made under TENS) should be allowed.

A minimum of 7 days notice to police and the licensing authority.

An absolute veto for police in respect of any of these occasions.

It is, of course, open to all the other responsible authorities to raise objections if they consider it necessary."

West Mercia Police

It is known that the West Mercia Police do not endorse this guidance issued by ACPO. PC Steve Thomas will explain to the committee the current position for their perspective.

Section 17 (4) (b) Licensing Act 2003

An operating schedule is a document, which is in the prescribed form and includes a statement of the times during which it is proposed that the relevant licensable activities are to take place.

Guidance issued under section 182 of the Licensing Act 2003.

5.46 operating schedule... 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 set out 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.

3. 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.

