

# A G E N D A

## Regulatory Sub Committee

Date: **Friday, 16th September, 2005**

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Time: **10.00 a.m.**

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Place: **Town Hall, St. Owen's Street,  
Hereford**

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

*For any further information please contact:*

*Ricky Clarke, Members' Services,  
Tel: 01432 261885 Fax: 01432 260286*

*email: [rclarke@herefordshire.gov.uk](mailto:rclarke@herefordshire.gov.uk)*

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# AGENDA

## for the Meeting of the Regulatory Sub Committee

To: Councillors Mrs. S.P.A. Daniels, T.W. Hunt and Brig. P. Jones CBE

	Pages
<b>1. ELECTION OF CHAIRMAN</b> To elect a Chairman for the hearing.	
<b>2. APOLOGIES FOR ABSENCE</b> To receive apologies for absence.	
<b>3. NAMED SUBSTITUTES (IF ANY)</b> To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
<b>4. DECLARATIONS OF INTEREST</b> To receive any declarations of interest by Members in respect of items on the Agenda.	
<b>5. APPLICATION FOR VARIATION OF PREMISES LICENCE 'THREE HORSE SHOES, CORN SQUARE, LEOMINSTER, HEREFORDSHIRE HR6 8LR'</b> To consider an application for variation of the premises licence in respect of the Three Horse Shoes, Corn Square, Leominster, Herefordshire HR6 8LR.	5 - 10
<b>6. APPLICATION FOR VARIATION OF PREMISES LICENCE 'WHITE HOUSE, WHITTERN WAY, HEREFORD. HR1 1PG'</b> To consider an application for variation of the premises licence in respect of the White House, Whittern Way, Hereford. HR1 1PG.	11 - 16
<b>7. APPLICATION FOR VARIATION OF PREMISES LICENCE 'KINGS FEE, 49-53 COMMERCIAL ROAD, HEREFORD. HR1 2BP'</b> To consider an application for variation of the premises licence in respect of Kings Fee, 49-53 Commercial Road, Hereford. HR1 2BP.	17 - 24
<b>8. APPLICATION FOR VARIATION OF PREMISES LICENCE 'IMPERIAL, 31 WIDEMARSH STREET, HEREFORD. HR4 9EA'</b> To consider an application for variation of the premises licence in respect of the Imperial, 31 Widemarsh Street, Hereford. HR4 9EA.	25 - 32



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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.
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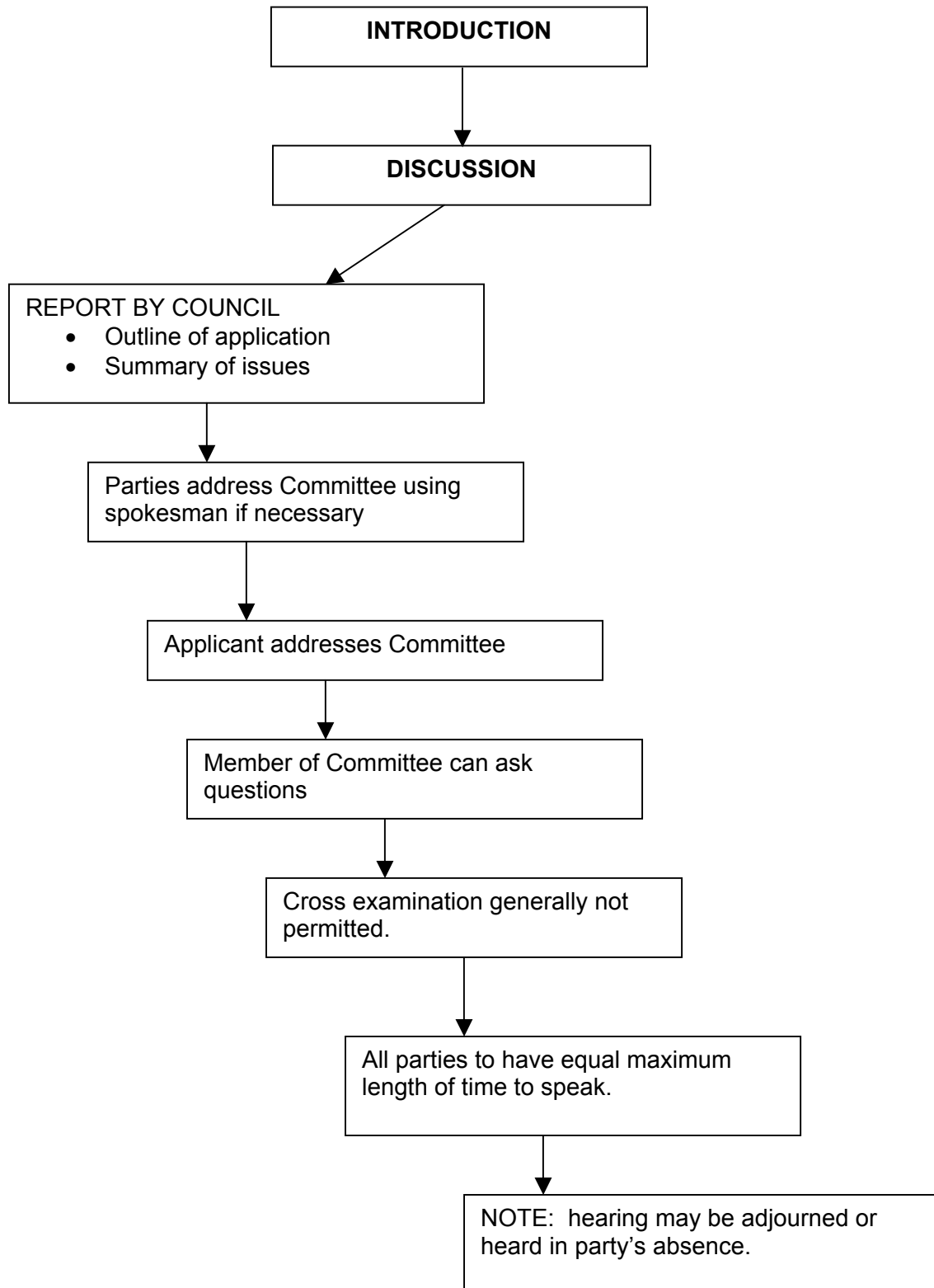
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## LICENCING HEARING FLOW CHART







**APPLICATION FOR VARIATION OF PREMISES  
LICENCE IN RESPECT OF THREE HORSE SHOES,  
CORN SQUARE, LEOMINSTER, HEREFORDSHIRE  
HR6 8LR - LICENSING ACT 2003**

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

**Wards Affected:**

Leominster South

**Purpose**

1. To consider an application for variation of the premises licence in respect of Three Horse Shoes, Corn Square, Leominster, Herefordshire HR6 8LR.

**Background Information**

2.

Applicant	<b>S A Brain &amp; Co. Ltd – Cardiff Brewery, Crawshaw Street, Cardiff, CF10 1SP</b>		
Premise Supervisor	<b>Andrew D Burgess</b>		
Solicitor	<b>Edwards Geldard Solicitors, Cardiff and TLT Solicitors Bristol</b>		
Premise	<b>Three Horse Shoes, Corn Square, Leominster HR6 8LR</b>		
Type of application: <b>Variation</b>	Date received: <b>21/07/05</b>	28 Days consultation <b>18/08/05</b>	Issue Deadline: <b>21/9/05</b>

The Justices Licence for the premise has been accepted. The press advertisement has been received.

**Conversion Licence Application**

3. A conversion licence will be issued as follows; -  
*(The premise only holds a justices on licence and no other licence).*

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon to Sat - 1000 to 2300 Sun and Good Friday - 1200 to 2230 Christmas day – 1200 Midday to 1500 & 1900 to 2230 New Years Eve 1000 to 0000 (31/12) and 0000 – 2300 New Years Day

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. (mentioned above)

The premises does not hold a current public entertainment licence.

### Variation Licence Application

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

### Summary of Application

5. The licensable activities applied for are:-  
**Live Music (Indoors)**  
**Recorded Music (Indoors)**  
**Provision of facilities for entertainment of a similar description to that falling within I or J**  
 Supply of Alcohol (*Both indoors and outdoors*)  
 Hours premises open to the public (Not licensable of it's own)  
**(Activities in Bold: Not previously licensed)**
6. The following hours have been applied for in respect of Live Music (*Indoors only*):-
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am – 0130 am(now amended to 0030) |
7. The following hours have been applied for in respect of recorded music (*Indoors only*):-
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am – 0130 am(now amended to 0030) |
8. The following hours have been applied for in respect of provision of facilities for entertainment of a similar description to that falling within I and J
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am– 0030 am (now amended to 0030) |
9. The following hours have been applied for in respect of supply of alcohol:-
- |                             |  |
|-----------------------------|--|
| Monday and Saturday         | 0900 am – 0130 am                      |
| Tues, Wed, Thurs and Friday | 0900 am – 0030 am                      |
| Sunday                      | 1000 am – 0130 am(now amended to 0030) |
10. The hours that the premises will be open to members of the public:-
- |                             |                   |
|-----------------------------|-------------------|
| Monday and Saturday         | 0900 am – 0200 am |
| Tues, Wed, Thurs and Friday | 0900 am – 0100 am |

Sunday 1000 am – 0200 am(now amended to 0030)

## 11. Non Standard Hours

The applicant applies for '**non-standard**' hours.

In respect of Live Music, Recorded Music, Provision of facilities for Entertainment of a similar description to that falling within I or J, the applicant has stated a further additional hour following every 'Easter Bank Holiday weekend; Thursday 1:30am, Friday, Saturday and Sunday 02:30am (now amended to 00.30) and Monday until 01:30am'

A further additional hour into the morning Friday, Saturday and Sunday until 02:30 am and Monday 01:30 am for May Whitsun and August Bank Holiday.

An additional hour into the morning of Christmas Eve, Boxing Day and New Years Day;

An additional hour into the morning of St Georges Day and St Patrick's Day

The option to open 30 minutes before and 30 minutes after any televised international sporting event.

New Years Eve hours to remain with 30 minutes drinking up time.

## 13. Summary of Representations

### **West Mercia Police**

Have made representations about the opening times for major international sporting events and ad hoc events, and have recommended a number of conditions.

### **Fire Authority**

The fire authority have made comments about a fire risk assessment being required.

### **Environmental Health**

Environmental Health Officers have made representations in relation to the application under Public Nuisance and Public Safety.

The suggestions are listed in the background papers

In respect of prevention of Public Nuisance they seek conditions in relation to the prevention of noise and vibrations and the use of Temporary Event Notices for major international sporting events.

With regards to public safety, they recommend some general conditions as well as conditions in relation to; Gas & Electrical Safety, Fire Safety and First

Aid. The applicant has subsequently agreed to reduce the closing time on Sundays to 0030.

14. **Issues for Clarification**

This Authority has requested clarification from the applicant.

**Non Standard Timings**

Clarification on what time the entertainment will finish.

Confirmation that the hours the premises is open will be 0030 am and not 0200 am

Clarification on section K; provision of facilities for entertainment falling within a similar description to I and J.

15. **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.

16. **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.

17. **Background Papers**

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

**Background papers are available for inspection in The Town Hall St Owen's Street 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...

5.74 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.

**APPLICATION FOR VARIATION OF PREMISES  
LICENCE 'WHITE HOUSE, WHITTERN WAY,  
HEREFORD. HR1 1PG' - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

**Wards Affected:**

Belmont

**1. Purpose**

To consider an application for variation of the premises licence in respect of White House, Whittern Way, Hereford. HR1 1PG.

**2. Background Information**

Applicant	<b>Punch Taverns, Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire. DE14 2WF.</b>		
Solicitor	<b>TLT Solicitors, 1 Redcliff Street, Bristol. B51 6TP.</b>		
Type of application: <b>Variation</b>	Date received: <b>25/07/05</b>	28 Days consultation <b>22/08/05</b>	Issue Deadline: <b>25/09/05</b>

Both the Justices Licence and advertisement for the premises have been seen and accepted.

**3. Conversion Licence Application**

The premises currently hold a Justices On Licence. A conversion licence has been issued as follows; -

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon-Sat 1000 to 2300 hours
	Sun 1200 to 2230 hours
	Good Friday 1200 to 2230 hours
	Christmas Day 1200 to 1500 hours and 1900 to 2230 hours.
	New Years Eve 1000 hours to 2300 hours
	New Years Day

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. (Drinking up time).

The premises do not hold a public entertainment licence.

**4. Variation Licence Application**

The application for a variation has received representations by responsible authorities and also a member of the public. It is therefore is now brought before committee to determine the application.

**5. Summary of Application**

The licensable activities applied for are: -

Live Music \*

Recorded Music \*

Supply of Alcohol

(\* Not previously licensed)

**6. The following hours have been applied for in respect Live Music and Recorded Music (*Both Indoors Only*), the supply of alcohol (*Both On & Off Premises*) : -**

Monday to Thursday 1100 – 0000

Friday & Saturday 1100 – 0100

Sunday 1200 – 2230

**7. The hours the premises will be open are: -**

Monday to Thursday 1100 – 0030

Friday & Saturday 1100 – 0130

Sunday 1200 – 2230

**8. Non Standard hours**

The application applies for ‘**non-standard**’ hours in respect of all the licensable activities as follows: -

A further additional hour on every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday.

A further additional hour on Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday

A further additional hour on Christmas Eve and Boxing Day

**9. Summary of Representations****West Mercia Police**

Have no representation to make regarding the application.

**Environmental Health**

Environmental Health Officers have made representations in relation to the application. The representations address the licensing objectives of Public Nuisance, Public Safety and the Protection of Children from Harm.

In respect of Public Nuisance they seek conditions in relation to the prevention of noise and vibration control.



In respect of public safety they ask for some general conditions as well as conditions in relation to Overcrowding, Ventilation and Heating, Gas & Electricity Installations, Fire Safety, Lighting, First Aid and removal of open containers.

In respect of the protection of children from harm they request a further five conditions.

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

The suggested conditions can be found in the background papers.

#### **Fire Authority.**

The fire authority has made no comment.

#### **Interested Parties**

The Local Authority has received 1 letter of representation in respect of the application, from a local resident.

The concerns relate to:

- Prevention of Public Nuisance

#### 10. **Issues for Clarification**

This Authority has requested clarification on particular points from the parties shown.

##### Applicant – Punch Taverns

Has been requested to provide clarification in respect of matters relating to the application as follows: -

##### Live Music

The live music provided will be limited to two entertainers only.

#### 11. **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 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.

**17. Background Papers**

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

**Background papers are available for inspection in the Town Hall, 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....

**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 'KINGS FEE, 49-53 COMMERCIAL ROAD,  
HEREFORD. HR1 2BP' - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

**Wards Affected:**

Central

**1. Purpose**

To consider an application for variation of the premises licence in respect of Kings Fee, 49-53 Commercial Road, Hereford. HR1 2BP.

**2. Background Information**

Applicant	<b>JD Wetherspoon PLC, Wetherspoon House, Reeds Crescent, Watford. WD24 4QL.</b>		
Solicitor	<b>Gosschalks, Queens Gardens, Hull.HU1 3DZ.</b>		
Type of application: <b>Variation</b>	Date received: <b>26/07/05</b>	28 Days consultation <b>23/08/05</b>	Issue Deadline: <b>25/09/05</b>

The Justices Licence, Children's Certificate and advertisement for the premises have been seen and accepted.

**3. Conversion Licence Application**

The premises currently hold a Justices On Licence and a children's certificate. A conversion licence, has been issued as follows; -

<b>Licensable activity</b>	<b>Hours</b>	
Sale of alcohol on and off the premises	Mon-Sat	1000 to 2300 hours
	Sun	1200 to 2230 hours
	Good Friday	1200 to 2230 hours
	Christmas Day	1200 to 1500 hours and 1900 to 2230 hours.
	New Years Eve	1000 hours to 2300 hours
	New Years Day	

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. (Drinking up time).

The premises do not hold a public entertainment licence.

**4. Variation Licence Application**

The application for a variation has received representations by responsible authorities. It is therefore now brought before the sub-committee for determination.

**5. Summary of Application**

The licensable activities applied for are: -

Late Night Refreshment

Supply of Alcohol

(\* Not previously licensed)

**6. The following hours have been applied for in respect Late Night Refreshment (*Indoors Only*): -**

Sunday to Thursday 2300 – 0030

Friday & Saturday 2300 – 0200

**7. The following hours have been applied for in respect the supply of alcohol (*Both On & Off Premises*): -**

Sunday to Thursday 0900 – 0030

Friday & Saturday 0900 – 0200

**8. The hours the premises will be open to the public are: -**

Sunday to Thursday 0700 – 0130

Friday & Saturday 0700 – 0300

**9. Non Standard hours**

The application applies for '**non-standard**' hours in respect of all the licensable activities as follows: -

On Christmas Eve until 3.00 am

On Boxing Day until 3.00 am

For an additional hour to finish times on the following days: -

Burns Night – 25 January

Australia Night – 26 January

St David's Day – 1 March

St Patrick's Day – 17 March

St George's Day – 23 April

St Andrew's Day – 30 November

For an additional 30 minutes to finish times on the following days: -

Thursday immediately proceeding Good Friday

Sunday immediately proceeding a Bank Holiday Monday

From 6.00 am until the beginning of the standard hours or until 3.00 am as follows: -

On no more than 12 occasions per calendar year. These extensions for the supply of alcohol can only take place if at least 7 days notice is provided to the police and the licensing authority and only if the police give their consent.

The application applies for '**non-standard**' hours in respect 'Hours Premises are open to the public as follows: -

In line with the hours mentioned under non-standard timings in Box M plus an additional hour.

For an additional hour on the morning of the day the clocks go forward (in order to negate the effect of the change from British Summer Time to Greenwich Meantime).

Notwithstanding these usual opening times, the premises, in accordance with the converted right, may choose to open to the public at any time for non-licensable activities/purposes.

#### 10. **Removal of Conditions**

The application applies to remove the following conditions: -

1. To remove the restrictions and effects of Section 168, 168A and Section 171 Licensing Act 1964 so as to allow the provisions under the Licensing Act 2003 to apply in relation to children.
2. To remove the restrictions relating to permitted hours as set out in Section 60 Licensing Act 1964 with the exception of New Years Eve.
3. To remove the restrictions on consumption of alcohol as set out in Section 63(1) Licensing Act 1964 (i.e. drinking up time).

#### 11. **Summary of Representations**

##### **West Mercia Police**

Have made representation in relation to the 12 ad-hoc occasions applied for.

They also request a further seven conditions to address the licensing objective of the prevention of crime and disorder.

The suggested conditions can be found within the background papers.

##### **Environmental Health**

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

In respect of Public Nuisance they seek conditions in relation to the use of the beer garden after 11pm.

In respect of public safety they ask for conditions in relation Gas and Electricity Safety certificates.

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

The suggested conditions can be found within the background papers.

**Fire Authority.**

The fire authority has no comment to make.

10. **Issues for Clarification**

This Authority has requested clarification on particular points from the parties shown.

Applicant – JD Wetherspoon

Has been requested to provide clarification in respect of matters relating to the application as follows: -

Licensing Objectives

It has been noted that the application, within the above section, states that the following JD Wetherspoon's Documents 'Overview of Operations' and 'Approach to Responsible Drinks Retailing' are referred to throughout the objectives. Clarification is sought that whenever either of these document are updated or amended that the Licensing Authority will be supplied with an updated copy.

It has also been noted that these documents would only appear to apply during the additional hours applied for. Clarification is therefore sort that these documents and procedures will apply during the time the premises are used for all licensable activities.

11. **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.

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.

17. **Background Papers**

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



**Background papers are available for Inspection in the Town Hall, 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....

**Relaxation of opening hours for local, national and international occasions**

6.11 It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year – such as bank holidays – and to incorporate appropriate opening hours for these occasions in their operating schedules. Similarly, temporary event notices – in respect of which a personal licence holder may give fifty each year – should be sufficient to cover events like Golden Wedding Anniversaries or 21st Birthday parties which take place at premises which do not have a premises licence or club premises certificate. However, with the passage of time exceptional events of local, national or international significance will arise which could not or have not been anticipated. Such events can give rise to the need to vary the conditions of large numbers of premises licences and club premises certificates. In such circumstances, it will be open to the Secretary of State to make a licensing hours order to provide for premises with a premises licence or club premises certificate to open for specified, generally extended, hours on these special occasions. Examples might include a one-off local festival, a Royal Jubilee, a World Cup or an Olympic Games.

6.12 Such events should be genuinely exceptional and the Secretary of State will not consider making such an order lightly. Licensing authorities (or any other persons) approaching the Secretary of State about the making of such an order are advised that they should give at least six months notice before the celebration in question. Before making such an order, the Secretary of State is required to consult such persons as she considers appropriate, and this would generally enable a wide-range of bodies to make representations to her for consideration. In addition, such an order will require the approval of both

Houses of Parliament. Six months would be the minimum period in which such a process could be satisfactorily completed.

**West Mercia Constabulary Position is: -**

It is the view of the Chief Constable that non-standard timings related to known fixed events such as the bank holidays applied for in this application as opposed to events identified on an ad hoc basis by the operators of the premise. Provision has been made in the act to cover such ad hoc events by way of temporary event notices and there is no legal basis for the applicant to hold such ad hoc days

The guidance provided by section 182 of the act also provides at 6.11 specific power for the secretary of state to make a licensing hours order to cover such events.

**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 'IMPERIAL, 31 WIDEMARSH STREET,  
HEREFORD. HR4 9EA' - LICENSING ACT 2003**

Report By: Head Of Environmental Health And Trading Standards

**Wards Affected:**

Central

**1. Purpose**

To consider an application for variation of the premises licence in respect of Imperial, 31 Widemarsh Street, Hereford. HR4 9EA.

**2. Background Information**

Applicant	<b>Barracuda Pubs &amp; Bars Company Ltd, Henley Road, Medmenham, Marlow. Bucks. SL7 2ER.</b>		
Solicitor	<b>John Gaunt &amp; Partners, Omega Court, 372 Cemetery Road, Sheffield. S11 8FT</b>		
Type of application: <b>Variation</b>	Date received: <b>26/07/05</b>	28 Days consultation <b>23/08/05</b>	Issue Deadline: <b>25/09/05</b>

The Justices Licence, Public Entertainment Licence and Section 77 Licence for the premises have been seen and accepted. The advertisement has not been seen at this time.

**3. Conversion Licence Application**

The premises currently hold a Justices On Licence, a PEL and Section 77 Licence (Special Hours Certificate). A conversion licence, has been issued as follows:-

<b>Licensable activity</b>	<b>Hours</b>
Sale of alcohol on and off the premises	Mon-Sat 1000 to 2300 hours Sun 1200 to 2230 hours Good Friday 1200 to 2230 hours Christmas Day 1200 to 1500 hours and 1900 to 2230 hours. New Years Eve 1000 hours to 2300 hours New Years Day
Public Entertainment	Mon to Sat 1100 to 2330 hours Sunday 1100 to 2230 hours for musical entertainment only and 1900 to 22.30 for dancing where no admission charge is made
Section 77 Licence	Friday & Saturday 1200 to 1500 Then 1900 to 0100

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. (Drinking up time).

#### 4. **Variation Licence Application**

The application for a variation to the premise licence has received representations by responsible authorities. It is therefore now brought before the sub-committee for determination.

#### 5. **Summary of Application**

The licensable activities applied for are: -

Films \*  
 Indoor Sporting Events \*  
 Live Music  
 Recorded Music  
 Performances of Dance \*  
 Provision of facilities for making music \*  
 Provision of facilities for dancing \*  
 Late Night Refreshment  
 Supply of Alcohol  
 (\* Not previously licensed)

6. The following hours have been applied for (*Indoors Only*) in respect of Films, Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Provision of facilities for making music and dancing, Late Night Refreshment and the Supply of Alcohol (*Both on and off premises*): -  
 All days of the week      1000 – 0100

7. The hours the premises will be open to the public are: -  
 All days of the week      0800 - 0130

#### 8. **Non Standard hours**

The application applies for '**non-standard**' hours in respect all the licensable activities applied for (with the exception of the sale of alcohol) and states the following:-

'When hours for sale of alcohol are extended hereunder these hours are also extended (see box M below)'

Under Box M 'Sale of Alcohol' the following is shown against no standard times: -

'To the extent that the variation in Part B1 paragraph 4 is not granted or does not permit: to permit the sale of alcohol and such regulated entertainment as authorised hereunder until 0100 on Friday, Saturday, Sunday and Monday at Bank Holiday Weekends, Christmas Eve, Boxing Day and also to the extent that the variation in part B1 paragraph 4 is not granted to open to the same

hour on up to 20 occasions per annum at my discretion upon 14 days prior notice to the police (if required by them)

Christmas Day: 1100 to 2300

New Years Eve: 1000 to New Years Day – terminal hour proposed.

To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours such opening times for this purpose to be confined upon 14 days prior notice in writing to the police before the premises intend to open, such notification to include opening times and the sporting event which is to be shown.

Part B1 paragraph 4 states: -

'To allow the sale of alcohol and such regulated entertainment as specified in the appropriate boxes below.

## 9. **Removal of Conditions**

The applicant has applied to remove all embedded restrictions inherent in the Licensing Act 1964, The Cinematograph (Safety) Regulations 1955 and The Children and Young Persons Act 1933

## 10. **Summary of Representations**

### **West Mercia Police**

Have made representation in relation to the application for the ad-hoc events applied for.

They request a further twelve conditions to be shown on the licence to address the licensing objective of the prevention of crime and disorder.

The suggested conditions can be found within the background papers.

### **Environmental Health**

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

In respect of public safety they ask for a condition in relation to Fire Safety.

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

The suggested conditions can be found within the background papers.

### **Fire Authority.**

The fire authority has made no representation.

## 11. **Issues for Clarification**

This Authority has requested clarification on particular points from the parties shown.

The Applicants - Barracuda Pubs & Bars Company Ltd

Have been requested to provide clarification in respect of matters relating to the application as follows: -

Non Standard Timings Box M

The statement contained within Box M states: -

'To the extent that the variation in Part B1 paragraph 4 is not granted or does not permit: to permit the sale of alcohol and such regulated entertainment as authorised hereunder until 0100 on Friday, Saturday, Sunday and Monday at Bank Holiday Weekends, Christmas Eve, Boxing Day and also to the extent that the variation in part B1 paragraph 4 is not granted to open to the same hour on up to 20 occasions per annum at my discretion upon 14 days prior notice to the police (if required by them). If has been requested that the applicant explains this in simple terms as to exactly what they are applying for if the application for extended hours is unsuccessful.

It is noted that in respect of the application for films, indoor sporting events, live music, performance of dance and late night refreshment that the box which asks for 'Further Details' in each case it states 'As stated in B1 above'

*Box B1 states: -*

1. To permit regulated entertainment comprising: Live music and amplified voice, recorded music by juke box and music systems, comperes for functions and quizzes and similar forms of entertainment, indoor pub games comprising a sporting event in the presence of an audience, video entertainment on screens and TV screens and amusement machines.
2. To the extent that the variation in paragraph 4 is not granted or does not permit: to permit sale of alcohol and such regulated entertainment until 01:00 the following morning on Friday, Saturday, Sunday and Monday at bank holiday weekends, Christmas Eve, Boxing Day and also to the extent that the variation in paragraph 4 is not granted to open to the same hour on up to 20 occasions per annum at my discretion upon 14 days prior notice to the police (if required by them).
3. To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours as identified in box M such opening times for this purpose to be confirmed upon 14 days prior notice in writing to the police before the premises intend to open, such notification to include the opening times and the sporting event which is to be shown.
4. To allow the sale of alcohol and such regulated entertainment as specified in the appropriate boxes below.
5. To permit provision of refreshment after 23:00
6. To remove the special conditions on the PEL as identified in box P.
7. To remove the requirement for the provision of entertainment and the requirement for the availability of food under the Special Hours Certificate.
8. To remove all embedded restrictions under LA 1964 and in particular those restrictions relating to the, Special Hours Certificate, Children and



Young Persons Act 1933, Cinematograph (Safety) Regulations 1955 and Sporting Events (Control of Alcohol etc) Act 1985.

Clarification is therefore sort in respect of the details of the activities applied for as follows: -

*Films*

The type and certification of the videos to be shown on the premises. Whether additional seating will be provided. If so, then a plan showing the seating arrangement.

*Indoor Sporting Events*

The type of pub games the premises will be used for and whether spectators will be seated or not. If seated the number of seats to be provided.

*Performance of Dance*

The type of dance that will be performed on the premises and the number of dancers likely to be involved in the performance.

*Provision of facilities for making music*

The type of equipment at the premises for the making of music

*Provision of facilities for dancing*

Whether or not the premises have a clearly defined dance floor.

12. **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.

13. **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.

14. **Background Papers**

- Public Representation Form
- Police Comments
- Environmental Health & Trading Standards Comments
- Fire Officers 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....

#### **Relaxation of opening hours for local, national and international occasions**

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